September 28, 2023

FCC FACT SHEET*

Connect America Fund, Connect America Fund – Alaska Plan, Universal Service Reform – Mobility Fund

Notice of Proposed Rulemaking and Report and Order – WC Docket Nos. 10-90, 16-271, WT Docket No. 10-208

Background: This Notice of Proposed Rulemaking addresses continued Universal Service support for Alaska. It seeks comment in a number of areas to help the Commission determine the most effective and efficient future use of universal service funding for high-cost fixed and mobile services in Alaska. The Report and Order makes certain administrative modifications to, and clarifications of, Commission rules to improve the administration of the high-cost program. These changes do not alter providers' preexisting obligations.

What the *Notice of Proposed Rulemaking* Would Do:

- Seek comment on the development of an Alaska Connect Fund to provide future support to fixed and mobile carriers in the provision of voice and broadband services in high-cost areas in Alaska.
- Seek comment on a variety of issues relating to the scope and implementation of an Alaska Connect Fund, including how to define eligible areas and services, determine eligible providers, determine support amounts, set a budget, define public interest obligations, and improve accountability
- Seek comment on term length and timing of future programs, especially to limit possible duplication of support, and methods to transition or phase down current support
- Seek comment on inclusion and impact on Tribal Nations and Tribal Lands in Alaska and other aspects of digital equity
- Seek comment on imposing certain conditions on participating carriers, including participation in the Affordable Connectivity Program, adoption of cybersecurity standards, and use of renewable energy

What the *Notice of Proposed Rulemaking* Would Do:

- Adopt administrative rule changes to improve the administration of the high-cost program
- Reduce certain duplicative filing requirements and eliminate unnecessary optional filings
- Modify certain reporting deadlines, grace periods and associated support reductions to align these requirements more closely with the high-cost program's purpose and objectives
- Expand certain reporting requirements as necessary to improve Commission oversight, including increased performance testing reporting, elimination of waiver exceptions for study area boundary changes, and notice of ETC relinquishment before state authorities
- Clarify rules relating to rate-of-return carrier mergers, consolidations and acquisitions and simplifies the process to calculate the new entity's Access Recovery Charge (ARC), Connect

* This document is being released as part of a "permit-but-disclose" proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket Nos. 10-90, 16-271, and WT Docket No. 10-208, which may be accessed via the Electronic Comment Filing System (https://www.fcc.gov/ecfs/). Before filing, participants 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 *et seq.*

America Fund – Intercarrier Compensation (CAF ICC) support, and reciprocal compensation and switched access rate caps

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Connect America Fund – Alaska Plan	)	WC Docket No. 16-271
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Telecommunications Carriers Eligible to Receive Universal Service Support	)	WC Docket No. 09-197
	)	

NOTICE OF PROPOSED RULEMAKING AND REPORT AND ORDER*

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

Comment Date: (60 days after date of publication in the Federal Register)
Reply Comment Date: (90 days after date of publication in the Federal Register)

By the Commission:

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* This document has been circulated for tentative consideration by the Commission at its October 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 Chairwoman 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 C.F.R. §§ 1.1206, 1.1200(a). 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. In this Notice of Proposed Rulemaking (*Notice*), we seek comment on the next phase of high-cost fixed and mobile support in Alaska (the "Alaska Connect Fund" or "ACF").[1] We ask how the Commission can best support the rural and remote areas of Alaska once the support terms for the current incumbent Local Exchange Carriers (LECs) and competitive eligible telecommunications carriers (ETCs) have ended. The Commission has recognized that these areas of Alaska are some of the hardest to serve in the country, where many residents lack access to high-quality affordable broadband and the

[1] All references to the next phase or version of the Alaska Plan in this document are references to Alaska Connect Fund or ACF.

opportunity to keep up with the advances in technology that Americans living elsewhere enjoy.[2] We initiate this rulemaking to seek comment on innovative solutions and unique accommodations necessary to continue supporting broadband service to Alaska.

2. Currently, the Commission provides high-cost support to Alaska Plan carriers,[3] Alaska Communications Systems (ACS),[4] and Alternative Connect America Cost Model (A-CAM) carriers operating in Alaska to fund the deployment of voice and broadband networks.[5] In the *2016 Alaska Plan Order*, the Commission stated that it expected to conduct a rulemaking prior to the close of the 10-year support term to determine how support would be determined after the end of the 10-year support term for rate-of-return carrier participants in the Alaska Plan, and that the Commission would consider adjustments for marketplace changes and the realities of the current time.[6] In the *ACS Order*, the Commission stated that it expected to begin a rulemaking in year eight of the program to determine how support might be awarded for the ACS locations at the end of the ten-year period.[7]

3. In this *Notice*, we initiate a rulemaking to better understand all the changes, both in technology and in the broadband availability and funding landscape, that have occurred in Alaska since the inception of the Alaska Plan and *ACS Order* in 2016. We undertake a fresh look at the most efficient use of Universal Service Fund high-cost support in Alaska going forward not only to help connect unserved Alaskan communities, but also to support existing service and service funded through other federal and state programs. We rely on our experiences from the existing Alaska Plan and the record stemming from proposals in recent petitions to develop a framework on how best to structure and target Alaska Connect Fund support.[8]

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[2] *See, e.g,*, *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086, 12086, para. 1 (2016) (*ACS Order*) (adopting Connect America Fund Phase II obligations for ACS in Alaska); *Connect America Fund – Alaska Plan*, *et al*., WC Docket Nos. 16-271 and 10-90, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10139, 10141-42, 10159, paras. 1, 5-6, 66 (2016) (*Alaska Plan Order*).

[3] *See generally Alaska Plan Order*.

[4] *See Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086 (2016) (*ACS Order*) (adopting Connect America Fund Phase II obligations for ACS in Alaska).

[5] *See Wireline Competition Bureau Authorized 186 Rate-of-Return Companies to Receive An Additional $65.7 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2780 (2019); *see also Wireline Competition Bureau Authorizes Totah Communications, Inc. to Receive Additional Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 3779 (2019). The summary report for all carriers authorized to receive A-CAM support, including those subject to prior authorizations in December 2016, January 2017, July 2018, and April 29, 2019 is available at https://docs.fcc.gov/public/attachments/DOC-352788A1.xslx (listing two Alaska carriers). We note that the Enhanced A-CAM elections and authorizations are still pending, therefore, if elected by the current Alaska Alternative Connect America Model (A-CAM) carriers, it may not be necessary to include A-CAM carriers in Alaska Plan 2.0. *See Expanding Broadband Service Through the ACAM Program*, et al., WC. Docket Nos. 10-90, RM-11868, et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60 (July 24, 2023) (*Enhanced A-CAM Order*).

[6] *Alaska Plan Order*, 31 FCC Rcd at 10150, para. 33. We note that this *Notice* will address high-cost fixed and mobile carrier support in Alaska.

[7] *ACS Order*, 31 FCC Rcd at 12093, para. 24. Year eight for ACS is 2023.

[8] *See Alaska Telecom Association Petition for Expedited Rulemaking*, WC Docket Nos. 10-90, 16-271 (Jan. 4, 2023) (ATA Petition) (ATA Members participating in the petition: Adak Telephone Utility; Alaska Communications; Alaska Power & Telephone; Arctic Slope Telephone Association Cooperative, Inc.; Bristol Bay Telephone Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; Cordova Telephone Cooperative, Inc.; Ketchikan Public Utilities; Matanuska Telecom Association, Inc.; Nushagak Electric & Telephone

(continued….)

4. In this item, we also adopt a Report and Order (Order) amending existing rules and requirements governing the management and administration of the Federal Communications Commission (FCC)'s Universal Service Fund (USF) high-cost program. The modifications adopted today streamline processes, align timelines, and refine certain rules to more precisely address specific situations experienced by carriers.

II. THE ALASKA CONNECT FUND FOR FIXED CARRIERS

A. BACKGROUND

5. The Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996, directs the Commission to base policies for the preservation and advancement of universal service on several principles, including the principles that "[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation."[9] It is the Commission's statutory obligation to maintain the Universal Service Fund (USF) consistent with that mandate and to continue to support the nation's telecommunications infrastructure in rural, insular, and high-cost areas. The statute also requires the Commission to update its mechanisms to reflect changes in the telecommunications marketplace. Indeed, Congress explicitly defined universal service as "an evolving level of telecommunications services . . . taking into account advances in telecommunications and information technologies and services."[10] In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans.[11] As part of these reforms, the Commission adopted a two-phase Connect America Fund to provide support to high-cost areas served by price cap carriers.[12] However, the Commission recognized that "Alaska faces uniquely challenging operating conditions," and that "national solutions may require modification to serve the public interest in Alaska."[13] Accordingly, the Commission ensured that its approach was "flexible enough to take into account the unique conditions in places like Alaska," and made a "number of important modifications to the national rules . . . to account for those special circumstances."[14]

Cooperative, Inc.; OTZ Telephone Cooperative, Inc.; Fastwyre Broadband d/b/a Interior Telephone Company, Inc.; Fastwyre Broadband d/b/a Mukluk Telephone Company, Inc.; Summit Telephone Company, United-KUC, Inc.; United Utilities, Inc.; and Yukon Telephone Company, Inc. The mobile wireless providers and affiliates participating in the petition include Arctic Slope Telephone Association Cooperative; Bristol Bay Cellular; Copper Valley Wireless; Cordova Wireless; GCI Communication Corp.; OTZ Wireless; Fastwyre Broadband d/b/a TelAlaska Cellular; and Windy City Cellular); *Alaska Remote Carrier Coalition Petition for Rulemaking to Adopt Alaska Middle Mile Expense Support Plan*, WC Docket No. 16-271, RM-11938 (Nov. 29, 2022) (ARCC Petition) (ARCC is composed of Alaska Telephone Company, Arctic Slope Telephone Association Cooperative, Inc., Bettles Telephone Company, Bristol Bay Telephone Cooperative, Bush-Tell, Incorporated, Copper Valley Telephone Cooperative Incorporated, Cordova Telephone Cooperative, Inc., North Country Telephone Company, Nushagak Electric & Telephone Cooperative, Inc., OTZ Telephone Cooperative, Inc., and TelAlaska d/b/a Fastwyre (Interior Telephone Company, Inc. and Mukluk Telephone Company, Inc.).

[9] 47 U.S.C. § 254(b)(2).

[10] *Id.* § 254(c)(1); *see also Alaska Plan Order*, 31 FCC Rcd at 10145, para. 15, n.33.

[11] *See generally Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[12] *Id.* at 17725, para. 156.

[13] *See id.* at 17829, para. 507.

[14] *See id.* at 17829, para. 508.

6. In the *2016 Rate-of-Return Reform Order*, the Commission modified certain aspects of its longstanding mechanisms for the distribution of support in rate-of-return areas, and adopted a voluntary path under which rate-of-return carriers could elect model-based support calculated by A-CAM for a term of 10 years in exchange for meeting defined deployment obligations.[15] However, the Commission specifically exempted Alaskan rate-of-return carriers from certain reforms adopted in the *2016 Rate-of-Return Reform Order*, stating "that a framework tailored to the unique circumstances that exist in Alaska merits serious consideration."[16] The Commission also noted that Alaskan rate-of-return carriers "remain free to elect the voluntary path to the model if they so choose."[17] The Commission acknowledged that Alaskan carriers face unique circumstances in serving this geographic region, including Alaska's large size, varied terrain, harsh climate, isolated populations, shortened construction season, and lack of access to infrastructure, that make it challenging to deploy voice and broadband-capable networks.[18] Not only do Alaskan carriers face conditions that are unique to the state, but those conditions can also vary widely depending on carriers' service areas within Alaska.[19]

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[15] *See Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*2016 Rate-of-Return Reform Order*). In April 2016, ATA proposed draft rules for its proposed Alaska support mechanism in light of the newly adopted reforms for rate-of-return carrier support mechanisms. Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed Apr. 18, 2016) (ATA Apr. 18, 2016 *Ex Parte* Letter).

[16] *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3090, para. 4, n.10.

[17] *Id.*; *see also Alaska Plan Order*, 31 FCC Rcd at 10153, para. 42. Ultimately, the Commission authorized two Alaska carriers that accepted the revised offer of A-CAM support and whose support runs from January 1, 2019-December 2028. The summary report for all carriers authorized to receive A-CAM support is available at https://docs.fcc.gov/public/attachments/DOC-352788A1.xslx.

[18] *See, e.g.*, ATA Petition at 11-12, Attach. B; ARCC Petition at 9-10 (citing State of Alaska Governor's Task Force on Broadband); Letter from Shawn Williams, VP of Government Affairs & Strategy, Pacific Dataport, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 16-271, RM-11942 at 1 (filed Jan. 2, 2023) (Jan. 2023 Pacific Dataport Comments); *Alaska Plan Order*, 31 FCC Rcd at 10141-42, para. 5; *ACS Order*, 31 FCC Rcd at 12092, para. 23. *See also* ATA May 9, 2016 *Ex Parte* Letter at Attach. (identifying Alaska-specific challenges, such as the lack of access to and cost of middle mile); Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Feb. 3, 2016) (ATA Feb. 3, 2016 *Ex Parte* Letter) (noting "Alaska's unique circumstances, including its vast geography, extreme climate, limited supporting infrastructure, lack of ubiquitous fiber networks, necessary continued reliance, in some areas, on microwave and satellite backhaul, and historical position lagging the rest of the country with respect to all types of broadband deployment"); Letter from David B. Cohen, Senior Policy Advisor, GVNW Consulting, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed June 24, 2015) (GVNW June 24, 2015 *Ex Parte* Letter) ("From the Arctic Slope service territory in the north that would in and of itself be the tenth largest *state* in the country, to the Aleutian island chain, to difficult-to-reach areas on the thousands of miles of coastline, to the largely unpopulated regions around the state, Alaska Telephone Association members provide state-of-the-art communications in some of the most desolate and harshest geographic, topographic and climatic conditions anywhere on earth."); *USF/ICC Transformation Order*, 26 FCC Rcd at 17829, para. 508 (noting unique conditions in Alaska "such as its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season").

[19] *See* Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Jan. 14, 2016) (GCI Jan. 14, 2016 *Ex Parte* Letter) (noting the "substantial diversity" within Alaska, and that "[t]his diversity presents a significant challenge both in fitting Alaska into any high cost universal service reform plan that works in the Lower 48, and also in developing mechanisms that work in all parts of Alaska").

7. In 2016, the Commission adopted the Alaska Plan, an integrated plan to address both fixed and mobile voice and broadband service in high-cost areas of the state of Alaska, which built on a proposal submitted by the Alaska Telephone Association.[20] Given the unique climate and geographic conditions of Alaska, the Commission found it was in the public interest to provide Alaskan carriers with the option of receiving fixed amounts of support over ten years to deploy and maintain their fixed and mobile networks. The Plan was expected to bring broadband to as many as 111,302 fixed locations and 133,788 mobile consumers by the end of the 10-year term.[21] In 2016, the Commission also adopted the *ACS Order*, a tailored service plan for ACS, the only price cap carrier in Alaska, in which ACS was provided frozen support for a 10-year term in return for offering voice and broadband service to at least 31,571 locations, primarily in high-cost census blocks that were not served by unsubsidized competitors.[22] The Alaska Plan currently supports 13 carriers.[23] A small number of Alaska carriers elected A-CAM support.[24]

8. Since 2016, several significant changes to the broadband landscape have occurred. The Broadband DATA Act,[25] enacted in March 2020, requires the Commission to establish a semiannual collection of geographically granular broadband coverage data (Broadband Data Collection or BDC) for use in creating coverage maps[26] and directs the Commission to create a comprehensive database of broadband serviceable locations—i.e., the Broadband Serviceable Location Fabric (Fabric).[27] This Act also requires the Commission to use these maps "to determine the areas in which terrestrial fixed, fixed wireless, mobile, and satellite broadband internet access service is and is not available," and "when making any new award of funding with respect to the deployment of broadband internet access intended for use by residential and mobile customers."[28] The Commission released the latest version of the National Broadband Map in May 2023 and will continue to release major updates to the map twice per year.[29] In addition, on November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA or

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[20] *See generally Alaska Plan Order*.

[21] *Id.* at 10140, para. 1.

[22] *ACS Order*, 31 FCC Rcd at 12086, para. 1.

[23] *See Wireline Competition Bureau Authorizes Alaska Plan Support for 13 Alaskan Rate-of-Return Companies*, WC Docket Nos. 10-90, 16-271, Public Notice, 31 FCC Rcd 13347 (WCB 2016) (*Alaska Plan Wireline Authorization Public Notice*).

[24] *See supra* note 5.

[25] Broadband Deployment Accuracy and Technological Availability Act, Pub. L. No. 116-130, 134 Stat. 228 (2020) (codified at 47 U.S.C. §§ 641-646) (Broadband DATA Act). In Division N of the Consolidated Appropriations Act, 2021, Congress appropriated $65 million for the Commission to carry out its responsibilities related to the Broadband DATA Act. *See* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 906(1), 134 Stat. 1182, 2144 (2020).

[26] 47 U.S.C. § 642(a)(1)(A), (a)(2).

[27] *Id.* § 642(b)(1). The Fabric is a dataset of all business or residential locations in the United States and its Territories where fixed broadband Internet access service is, or can be installed. It contains geocoded information for each such location and is the foundation upon which all data relating to the availability of fixed broadband Internet access service collected in the BDC is overlaid.

[28] *Id.* § 642(c)(2)(A)-(B).

[29] *Wireline Competition Bureau Authorized 186 Rate-of-Return Companies to Receive An Additional $65.7 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2780 (2019); *see also Wireline Competition Bureau Authorizes Totah Communications, Inc. to Receive Additional Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 3779 (2019). The summary report for all carriers authorized to

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Infrastructure Act) was signed into law. The Infrastructure Act and other enacted legislation provide unprecedented broadband funding to the National Telecommunications and Information Administration (NTIA), United States Department of Agriculture (USDA), and United States Department of the Treasury for broadband deployment, and to the Commission to enhance broadband affordability through the Affordable Connectivity Program (ACP).[30] These laws direct multiple agencies to work towards expanding broadband access nationwide.[31] The Infrastructure Act, which directs NTIA to establish the Broadband Equity Access and Deployment (BEAD) program, instructs states to award funding in a way that gives priority to projects that will provide service to unserved locations (defined as those without reliable access to 25/3 Mbps service), then to underserved locations (defined as those without reliable access to 100/20 Mbps service), and next to community anchor institutions (that lack access to gigabit broadband service).[32] Broadband networks funded by the BEAD program must provide download speeds of at least 100 Mbps and upload speeds of at least 20 Mbps and "latency that is sufficiently low to allow reasonably foreseeable, real-time, interactive applications."[33] Grant recipients must provide service to every customer that desires broadband service in the project area and must offer at least one low-cost service option for eligible subscribers.[34]

9. In June 2021, pursuant to the Broadband Interagency Coordination Act of 2020 (BICA), the FCC, the U.S. Department of Agriculture (USDA) and the National Telecommunications and Information Administration (NTIA) entered into an interagency agreement (BICA Interagency Agreement) to share information and coordinate for the distribution of funds for broadband deployment.[35] To further facilitate broadband deployment funding coordination, the FCC, USDA, and NTIA entered

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receive A-CAM support, including those subject to prior authorizations in December 2016, January 2017, July 2018, and April 29, 2019 is available at https://docs.fcc.gov/public/attachments/DOC-352786A1.xlsx..

[30] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (Infrastructure Act or IIJA). ReConnect was established in the Consolidated Appropriations Act, 2018 (Pub. L. 115-141), 132 Stat. 348 at 399, Sec. 779 (2018). The Tribal Broadband Connectivity Program received an appropriation of $1 billion in the Consolidated Appropriations Act, 2021 and $2 billion in the Infrastructure Act. *See* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. N, Title IX, § 905(c), 134 Stat. 1182 at 2138-9 (2021) (*Consolidated Appropriations Act, 2021*). Infrastructure Act, Division J, Title II, 135 Stat. 429 at 1353. The Enabling Middle Mile Infrastructure Program, operated by NTIA, received a $1 billion appropriation. Infrastructure Act, Division J, Title II, 135 Stat. 429 at 135. The Broadband Infrastructure Program, also run by NTIA, received a $288 million appropriation. *See Consolidated Appropriations Act, 2021*, div. N, Title IX, § 905(d), 134 Stat. 1182 at 2139-42. Congress also appropriated $17.2 billion for the ACP and its predecessor, the Emergency Broadband Benefit Program. *See* Infrastructure Act, div. J, tit. IV; *Consolidated Appropriations Act, 2021*, div. N, § 904, 134 Stat. 1182 at 2129-2136. The Emergency Connectivity Fund was created and initially received an appropriation of $7.17 billion in the American Rescue Plan Act, Pub. L. No. 117-2, 135 Stat. 4 at 109, § 7402 (2021).

[31] Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (Infrastructure Act or IIJA). *See also Future of USF Support* at paras. 24-26.

[32] Infrastructure Act § 60102(h)(1)(A).

[33] *Id.* § 60102(h)(4)(A)(i). Networks must also be reliable, with outages not exceeding, on average, 48 hours over any 365-day period. *Id.*

[34] *Id.* § 60102(h)(4)(A)(ii), (B), (C).

[35] The Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, 134 Stat. 3214, Div. FF, tit. IX, § 904 (2020), codified at 47 U.S.C §1308 et seq. (BICA); Press Release, FCC, FCC, NTIA, and USDA Announce Interagency Agreement to Coordinate Broadband Funding Deployment (June 25, 2021), https://www.fcc.gov/document/fcc-ntia-usda-sign-interagency-pactbroadband-funding-deployment.

into an interagency agreement with the Department of Treasury in 2022.[36] Representatives of the agencies meet regularly. On February 17, 2023, the Commission released a report on the effectiveness of the Broadband Interagency Coordination Agreement (BICA), detailing the steps that the agencies are taking to ensure the most efficient allocation of federal broadband funding.[37]

10. Under the current Commission funding programs, disbursements to ACS, Alaska Plan carriers, and A-CAM carriers are scheduled to conclude by 2025, 2026, and 2028, respectively.[38] To date, Alaskan carriers have made progress towards achieving their required service obligations, and in reaching previously unserved Alaskan consumers.[39]

11. *Current State of Alaska Federal Broadband Funding*. The State of Alaska has received a significant amount of federal funding to improve access to broadband across the state. The Commission has been providing various forms of USF high-cost support to Alaskan carriers for more than twenty years. In 2022, Alaska received more than $167.6 million in high-cost support.[40] In addition, Alaska was recently allocated more than $1 billion in NTIA BEAD funding,[41] which comes on the heels of providers in the state being awarded over $100 million in USDA's ReConnect program,[42] more than $88 million in

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[36] *FCC, NTIA, USDA, and Treasury Announce Interagency Agreement to Collaborate on Federal Broadband Funding*, News Release, DOC-383280A1 (May 12, 2022), https://www.fcc.gov/document/fcc-ntia-usda-treasury-announce-broadband-info-sharing-agreement (last visited July 14, 2023) (*FCC, NTIA, USDA and Treasury Interagency Agreement Press Release*); *see also Memorandum of Understanding Regarding Information Sharing*, DOC-38278A1 (May 9, 2022), https://docs.fcc.gov/public/attachments/DOC-383278A1.pdf (last visited Aug. 8, 2023).

[37] Wireline Competition Bureau, Report on the Effectiveness of the Broadband Interagency Coordination Agreement Pursuant to § 1308 of the Broadband Interagency Coordination Act (2023), https://docs.fcc.gov/public/attachments/DOC-391167A1.pdf (*FCC BICA Report*); *see also* Press Release, FCC, FCC Reports to Congress on Success of Broadband Interagency Coordination Act (Feb. 17, 2023), https://www.fcc.gov/document/fcc-reports-success-broadband-interagency-coordination-act.

[38] *See ACS Order*, 31 FCC Rcd at 12092-93, para 24, *Alaska Plan Order*, 31 FCC Rcd at 10150, para. 32, *see also Wireline Competition Bureau Announces Offers of Revised A-CAM Support Amounts and Deployment Obligations Authorized A-CAM Companies to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 906 (2019) (*A-CAM Third Revised Offer Public Notice*). *See also Wireline Competition Bureau Announces Enhanced Alternative Connect America Cost Model Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 23-779 (Aug. 30, 2023) (*Enhanced ACAM Offers PN*); *Expanding Broadband Service Through the ACAM Program*, et al., WC Docket Nos. 10-90, 16-271, et al., Order, DA 23-778 (Aug. 20, 2023) (*Aug. 2023 Enhanced ACAM Order*).

[39] *See*, *e.g.*, ATA Petition at 2; Letter from Governor Mike Dunleavy, State of Alaska, to Marlene Dortch, Secretary, Federal Communications Commission (dated. Feb.21, 2023) (Alaska Governor Mike Dunleavy Comments); Letter from Bryce Edgmon, Alaska State Representative, District 37 to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Feb. 21, 2023) (Representative Bryce Edgmon Comments) (marking Alaska Plan as the catalyst for increased access in Southwest Alaska); WTA Comments at 1-2 (agreeing with ATA Petition and noting service has been provided to more locations and at higher speeds than committed).

[40] This includes Alaska Plan, ACS, ACAM and ICC. *See USAC High Cost Funding Disbursement Tool*, *available at* https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi. In 2023, to date, USAC has disbursed over $83.7 million to Alaska. *Id*. (filtered for funding year 2023 and Alaska).

[41] Alaska was awarded $1,017,139.42 in BEAD funding. *See* Internet4all, Funding Recipients, Alaska, https://internet4all.gov/funding-recipients (last visited Aug. 8, 2023).

[42] *See* U.S. Department of Agriculture, ReConnect Loan and Grant Program at www.usda.gov/reconnect (last visited Aug. 4, 2023) (identifying Alaska awardees in all four rounds of awards); *see also* Representative Bryce Edgmon Comments (noting Alaska projects funded with ReConnect and TBCP funding to deploy fiber networks).

NTIA's Middle-Mile program,[43] and more than $387 million through NTIA's Tribal Broadband Connectivity Program (TBCP) that will fund 23 Tribal projects in Alaska[44] and other programs.[45]

12. *Petitions for Alaska Universal Service Fund Support*. In the past year, both the Alaska Telephone Association (ATA) and the Alaska Remote Carrier Coalition (ARCC) filed petitions requesting changes to the Commission's high-cost funding in Alaska, including an extension of the Alaska Plan at an increased level of funding and new funding for middle-mile facilities.[46] The Wireline Competition Bureau (Bureau or WCB) sought comment on these petitions.[47]

13. *ATA Petition*. The ATA Petition, filed in January 2023, asked that the Commission take four main actions: (1) extend the term of the Alaska Plan starting in January 2024 through December 2034, with automatic one-year extensions thereafter unless the Commission takes action otherwise; (2) increase support to account for inflation and make adjustments annually for inflation going forward; (3) provide an option for ACS and Alaska A-CAM carriers to participate; and (4) allow updated performance commitments through 2034 with a midpoint milestone in 2028.[48]

14. ATA supplemented its initial petition with an *ex parte* filing reiterating its requests and the need for high-cost support in Alaska.[49] ATA argued that service types and speeds in Alaska are varied based on population, remoteness, and access to middle mile service.[50] ATA encouraged the Commission to begin work on a successor plan and target completion in 2024, rather than waiting until 2027, arguing that the commitment of support now would assure carriers of their investments and allow for more efficient planning for the upcoming years.[51] ATA argues that the next phase of support will complement

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[43] NTIA, BroadbandUSA, Funding Programs, Enabling Middle Mile Broadband Infrastructure Program, Funding Recipients, https://broadbandusa.ntia.gov/funding-programs/enabling-middle-mile-broadband-infrastructure-program/funding-recipients (Aug. 4, 2023) (listing QSH Parent Holdco LLC for the Nome to Homer Express Route project).

[44] NTIA, BroadbandUSA, Maps, TBCP Awards, Alaska, https://nbam.maps.arcgis.com/apps/dashboards/8285506482b941ae8f9de43f8acf3746 (last visited Sept. 26, 2023) (listing recipients and funding amounts for TBCP in Alaska).

[45] *See*, *e.g*., Internet4all, Funding Recipients, Alaska https://www.internetforall.gov/interactive-map/Alaska (listing nearly $568K in State Digital Equity Planning Grant and nearly $3 million to the University of Alaska Fairbanks for Connecting Minority Communities Pilot Program); *see also* NTIA, BroadbandUSA, Maps, CMC Awards, https://nbam.maps.arcgis.com/apps/dashboards/1bbcd97a1e8a4320b5aaf61add10a5d6 (last visited Sept. 26, 2023). The Alaska State Legislature has also awarded over $21 million under the School Broadband Assistance Grant (BAG) – a program established in 2013 to assist schools in reaching speeds of 25 Mbps download. *See* The Great State of Alaska, Education & Early Development, Libraries, Archives, Museums, Library Development, Alaska School Broadband Assistance Grants, Home, https://lam.alaska.gov/schoolbag at (last visited Sept. 26, 2023) (providing link to awards from FY2019-2023). In 2023, BAG awarded $6.68 million to school districts across the state. *Id*; *see also* NTIA Broadband USAC, State Broadband Programs, Alaska at https://broadbandusa.ntia.doc.gov/node/166 (last visited Sept. 26, 2023).

[46] *See* ATA Petition, ARCC Petition.

[47] Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings File, Report No. 3189, RM-11938, Public Notice (Dec. 6, 2022) (*ARCC Petition PN*).

[48] *See* ATA Petition at 2-3. We note that the support term proposed would be an 11 year program.

[49] Letter from Christine O'Connor, Executive Director, Alaska Telecom Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 16-271 (July 28, 2023) (July 2023 ATA *Ex Parte* Letter).

[50] July 2023 ATA *Ex Parte* Letter at 1.

[51] *Id*. at 2-4.

BEAD funding by providing ongoing operating and maintenance support, which will help carriers present their operations as sustainable – a requirement to bid for capital funding through BEAD.[52] ATA also claims that BEAD funding will be mostly awarded for middle mile projects, which helps avoid duplicative support.[53] Lastly, ATA argues that any reduction in support would be detrimental, putting long-term investments and plans in jeopardy and causing providers to be unable to meet their current commitments.[54]

15. *ARCC Petition and the Alaska Middle Mile Expense Support Calculator*. The Alaska Middle Mile Expense Support (AMMES) Plan Petition, filed in November 2022 by the Alaska Remote Carrier Coalition (ARCC),[55] requested that the Commission initiate a rulemaking to address the extremely high costs of middle mile transport expenses for portions of the state of Alaska and adopt the AMMES fund.[56] As proposed, the AMMES plan would establish an 8-year support term with possible extension based on a review at the end of the program. The budget would begin at $25 million, decrease to $15 million after year four, and continue to be phased down after year eight as middle mile expenses or prices decline. The support would be provided monthly for middle mile operating costs. A calculator (AMMCAT) is proposed to identify carrier locations that exhibit ultra-high (greater than $75/Mbps) middle mile costs and focus support to these areas. Support would be available to ETCs that are obligated under the Alaska Plan or Alaska Connect Fund, ACAM, or CAF II funding commitments to the extent they can document "ultra-high" middle mile costs. The plan would also allow a one-time opportunity to opt-in to the program for all villages in Alaska that can demonstrate "ultra-high" costs.[57]

16. On July 14, 2023, ARCC supplemented its AMMES petition with the proposal of a Transitional Middle Mile Plan (TMMP) in Alaska.[58] The proposed support mechanism would provide three years of high-cost support beginning in 2024 for Alaska Plan recipients that can demonstrate ultra-high middle mile costs in at least one market and opt-in to the program.[59] Support amounts would be between 25-33% of middle mile transport costs subject to a maximum. The plan proposes an extension of this funding if the Alaska Connect Fund has not begun by the end of 2026. As proposed, support for the TMMP budget would come from high-cost funding reallocated pursuant to the Alaska Plan Order.[OB]

B. DISCUSSION

17. In this *Notice*, we seek comment on a number of issues to ensure Alaskans continue to have access to reliable, affordable high-speed broadband as we approach the end of the Alaska Plan and the *ACS Order* obligations and support terms. We appreciate that Alaskan carriers still face unique circumstances and conditions that make it challenging both to deploy and maintain voice and broadband-capable networks in much of Alaska, including varied terrain, harsh climate, isolated populations, shortened construction season, and lack of access to infrastructure. However, we also recognize that much progress has been made to date, due to the several years of USF high-cost support as well as the

[52] *Id*. at 3-4.

[53] *Id*. at 4-5.

[54] *Id*. at 5.

[55] *See* ARCC Petition.

[56] *See* ARCC Petition.

[57] *Id*. at 11-12. We note that the petition does not define "villages."

[58] Letter from Jens Laipenieiks, ASTAC CEO to Marlene Dortch, Secretary, Federal Communications Commission, RM-11938, Docket Nos. 10-90, 16-271 (July 14, 2023) (July 2023 ARCC *Ex Parte* Letter).

[59] July 2023 ARCC *Ex Parte* Letter at Attach. A.

advancements in technology and the availability of additional federal funding programs for broadband services.

18. Carriers and commenters alike applaud the progress that has been made in extending fiber networks to rural and remote areas of Alaska, which has brought thousands of residents and small businesses online.[60] However, while progress has been made, other commenters and carriers point out that much work remains in Alaska to reach unserved and underserved residents with the necessary infrastructure.[61] Indeed, based on Broadband Data Collection data as of December 2022, Alaska ranks 55th of 56 states and territories for availability coverage for fixed and mobile service.[62] Thus, there continues to be a significant need for funding to support broadband service in Alaska. We seek comment on the solutions that will result in the greatest improvements in access. How can we ensure the Alaska Connect Fund will result in Alaska residents having access to affordable service plans? How can we ensure that USF high-cost support best complements other programs focused on improving affordability? Alaska receives support from all the USF programs, including Lifeline, E-Rate and Rural Healthcare Program.[63] We seek comment on ways that the Alaska Connect Fund support can be utilized to work in cooperation with other USF disbursements to optimize the provision of advanced voice and broadband services.

19. As current funding programs for Alaskan carriers near their end dates, we seek guidance on how USF high-cost support can best serve the public interest in Alaska. In so doing, the Commission must take into account legislative requirements, improved mapping of broadband availability, and broadband support provided by other federal agencies. We seek comment on the broader picture for universal service support in Alaska and urge commenters to address specifically the changes in technology, mapping, and other federal funding programs and how they might affect the future of the Alaska high-cost support program. Below we seek comment on targeted issues related to the next phase of the Alaska high-cost support mechanism, including eligible areas and location, support amounts or mechanisms, budget, term of support, public interest obligations, support term, eligible carriers, accountability and oversight. We also seek comment on transitional and phase-down support, digital equity, broadband affordability, cybersecurity and supply chain risk management, and Tribal matters.

1. Eligible Areas and Services

20. While significant progress has been made in Alaska since the original Alaska Plan was established,[64] many areas in the state could still be considered unserved or underserved; and now, we have the required data and the resulting maps to efficiently inform our decision making going forward. We can determine statewide, using the National Broadband Map, that about 21% of broadband-serviceable units lack at least 25/3 Mbps and about 27% of broadband-serviceable units lack at least 100/20 Mbps fixed terrestrial service. We can granularly see exactly where those broadband-serviceable units are located. Furthermore, the National Broadband Map allows us to conveniently assess coverage based on technology type, which may be valuable to tackle the distinct challenges in Alaska. In recognition of the

[60] *See supra* note 39.

[61] *See* Comments of Alaska Tribal Broadband LLC at 1-2 (noting the remaining need for rural Alaska Native villages) (ATB Comments); Comments of Pacific Dataport (Feb. 24, 2023) (Feb. 2023 Pacific Dataport Comments) (identifying the changing landscape of the broadband market in Alaska and noting the shortcomings of the Alaska Plan in reaching all rural Alaska communities).

[62] *See* The National Broadband Map, Data Download, Broadband Summary by Geography Type, Alaska, https://broadbandmap.fcc.gov/data-download (last visited Sept. 26, 2023).

[63] *See* USAC Open Data, Program Tools, https://opendata.usac.org/.

[64] As of December 31, 2022, the Commission's Alaska Plan, A-CAM and CAF II ACS programs have resulted in the deployment of broadband for the first time or increased broadband speeds to over 88,000 locations.

unique challenges of Alaska, below we seek comment on how to define unserved and, if needed, underserved for the purposes of this next phase for support in Alaska.[65]

Image A: Map of Alaska Areas Served by 25/3 Mbps Fixed Terrestrial Service[66]

[65] *See* National Broadband Map Version 3, https://broadbandmap.fcc.gov/home (last visited Sept. 21, 2023) (data filtered for Alaska only and as of December 31, 2022).

[66] Based on the National Broadband Map data as of December 31, 2022.

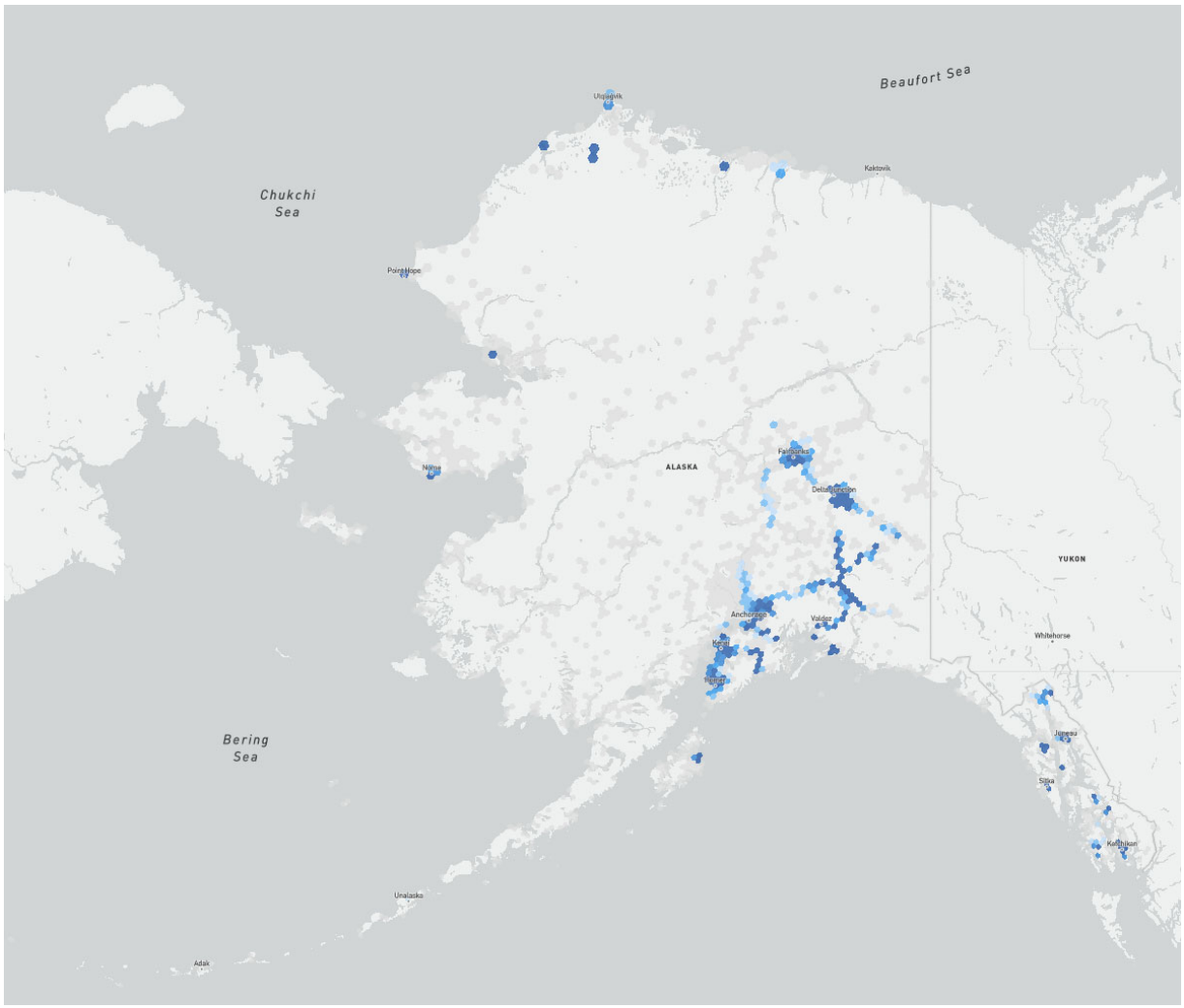
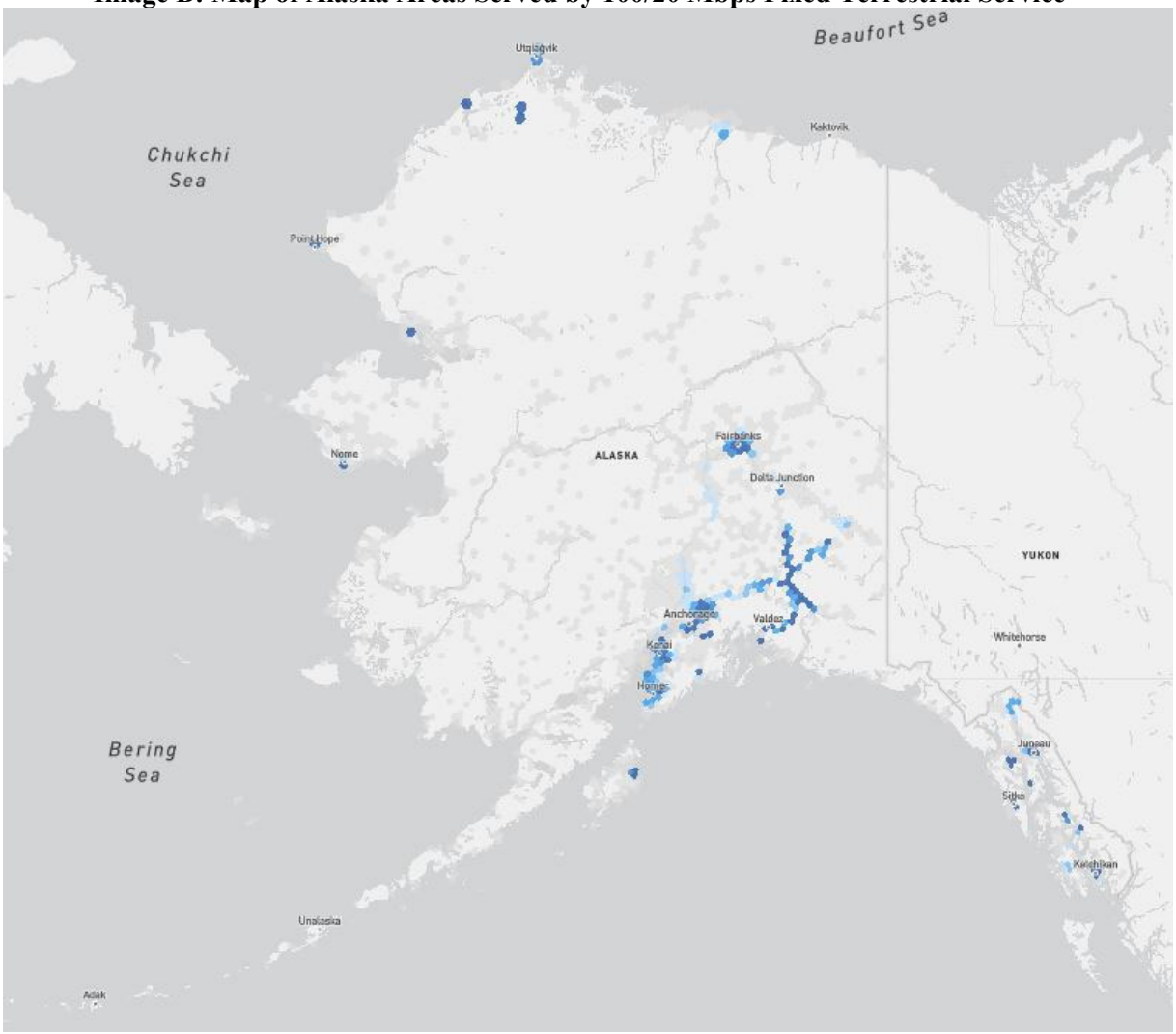

Beaufort Sea
Utqiagvik
Kaktovik
Chukchi Sea
Point Hope
Nome
ALASKA
Fairbanks
Delta Junction
YUKON
Anchorage
Valdez
Kenai
Homer
Whitehorse
Juneau
Sitka
Ketchikan
Bering Sea
Unalaska
Adak

Image B: Map of Alaska Areas Served by 100/20 Mbps Fixed Terrestrial Service[67]



21. We seek comment on how to determine areas and services that would be eligible for the Alaska Connect Fund. Particularly in light of the evolving competitive landscape, should the Alaska Connect Fund include the same or different eligible areas as the Alaska Plan? How does the National Broadband Map data generally inform the Commission regarding where to focus Alaska Connect Fund support? The Broadband DATA Act requires that the Commission use the BDC and the Fabric "to determine the areas in which terrestrial fixed, fixed wireless, mobile, and satellite broadband internet access service is and is not available, …when making any new award of funding with respect to the deployment of broadband internet access intended for use by residential and mobile customers."[68] This new data allows the Commission to better assess where fixed broadband service is—and is not—available in Alaska. Consistent with the Broadband DATA Act, this data will inform our determination of the eligible areas for the Alaska Connect Fund.

[67] Based on the National Broadband Map data as of December 31, 2022.

[68] *Id.* § 642(c)(2)(A)-(B).

22. Additionally, the BICA requires the FCC, USDA, and NTIA to "consider basing the distribution of funds for broadband deployment…on standardized data regarding broadband coverage," and the agencies meet regularly to ensure the most efficient allocation of federal broadband funding.[69] As noted above, the state was recently allocated more than $1 billion in BEAD funding and has begun planning for its use. The State of Alaska Broadband Office (ABO) was established to strategically consider how best to use this federal funding to connect residents of Alaska with advanced technology.[70] The ABO has published on its website maps and data related to the estimated costs to serve the remaining unserved and underserved areas of Alaska.[71] Additionally, several projects have already been established and are underway to build out broadband to Tribal and other areas of the state.[72]

23. We seek comment on how the funding received by and the decisions of the State of Alaska should inform our determination of the eligible areas for the Alaska Connect Fund. To the extent there are discrepancies between the National Broadband Map and ABO maps, our robust challenge process for the National Broadband map can be used to address these discrepancies, and we encourage the ABO and other state, local governments and communities in Alaska to use that existing process.[73]

24. Broadband serviceable locations on the National Broadband Map can generally be broken down into four categories: (1) those served by the ILEC only; (2) those served by both the ILEC and an unsubsidized provider; (3) those served by an unsubsidized provider only; and (4) those that are unserved. We seek comment on how the Alaska Connect Fund should treat eligibility for each of these types of locations? How should we define unserved? We seek comment on whether to establish a definition for underserved? Should we define those terms consistent with Enhanced A-CAM, or the BEAD program, or should we adopt another definition? Does the Alaska Broadband Office or other broadband support programs in Alaska use different definitions, and if so, what are the differences?

25. Additionally, one of the ways in which Alaska is unique is that while villages or communities may be far from urban areas, individuals or individual locations within those villages or communities may be relatively close together. Accordingly, we seek comment on determining eligibility at a village or community level instead of by individual location. How should we define village and community for this purpose? Would this approach better help address lack of service in unserved areas? If we adopt such an approach, how should we address geographically isolated individual locations? What is the most appropriate metric for identifying eligible locations and how should the Commission define eligible locations for this purpose? Is defining eligibility based on village or community level instead of location consistent with the Broadband Data Collection?

26. *Middle Mile*. Carriers have argued to the Commission that both lack of availability and the cost of middle mile is what prevents deployment of high-quality, affordable services to the most rural

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[69] Broadband Interagency Coordination Act of 2020, Pub. L. No. 116-260, § 904, 134 Stat. 1182, 3214 (codified at 47 U.S.C. § 1308 et seq.); 47 U.S. C. § 1308(b)(3)(C); *see also FCC BICA Report*.

[70] *See* The Great State of Alaska, Department of Commerce, Community and Economic Development, Alaska Broadband Office at https://www.commerce.alaska.gov/web/abo.

[71] *See* The Great State of Alaska, Department of Commerce, Community and Economic Development, Alaska Broadband Office, Economic Models, https://www.commerce.alaska.gov/web/abo/EconomicModels.aspx.

[72] *See, e.g., infra* para 11 (detailing Alaska State funding), notes 44-45 (identifying broadband projects in the Native and Tribal communities of Alaska). The Commission's Broadband Funding Map shows coverage and availability of various broadband funding. *See* Broadband Funding Map, https://fundingmap.fcc.gov/home (last visited Aug. 10, 2023).

[73] Consumers, state, local and Tribal government entities and other stakeholders can help verify the accuracy of the data in the National Broadband Map. *See* Broadband Data Collection Help Center, https://help.bdc.fcc.gov/hc/en-us (last visited Sept. 21, 2023) (providing information and guidance on the BDC and filing location and availability challenges). The map will next be updated in November 2023.

and remote Alaskan villages and populations.[74] Satellite networks made available after the start of the Alaska Plan are providing higher capacity and lower latency middle mile transport.[75] USF high-cost Alaska Plan support, like model-based support, may be used anywhere in the network, including middle-mile, as long as carriers are improving service.[76] In the *2016 Alaska Plan Order*, the Commission required recipients to report data on their use of middle-mile facilities.[77] We seek comment on how this data should inform the distribution of support in the Alaska Connect Fund.

27. We seek comment on whether and how the Commission might provide direct support for middle mile facilities and transport services under the Alaska Connect Fund, particularly in light of other federal programs directed at supporting middle mile.[78] What types of middle-mile expenses should be eligible for support? Should the Alaska Connect Fund support construction of new middle mile facilities, the cost of leased middle mile facilities, or both? Should support for middle-mile facilities or services be limited to a certain percentage of overall support received? Under Alaska Plan obligations, carriers are required to report to the Commission on whether new middle mile transport is commercially available in their service area and increase obligations accordingly.[79] Are there middle-mile services that are ubiquitous, reliable and affordable such that the Commission should condition support on their use prior to authorizing support? Does funding middle mile directly result in more affordable retail broadband prices?[80] Should the Commission allow support for redundant networks to enhance network resiliency?[81] ARCC filed a petition arguing for the adoption of its AMMES calculator to determine funding support amounts.[82] The method, as proposed, would have the Commission review carriers' accounting, which is

[74] *See* ATA Petition; ARCC Petition; NTTA Comments at 3; ATB Comments.

[75] *See* Letter from Kimberly M. Baum, Vice President, Spectrum Engineering & Strategy, WorldVu Satellites Limited d/b/a OneWeb, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-271, 10-90 (Jan. 19, 2023) (Jan. 2023 OneWeb *Ex Parte*) (discussing the status of its operations and stating it has provided commercial middle-mile backhaul service to providers, ISPs, Tribes and schools throughout Alaska since 2022); July 2023 ATA *Ex Parte* Letter.

[76] *Alaska Plan Order*, 31 FCC Rcd at 10150-51, para. 34.

[77] *Id*. at 10158, para 60. *See also Wireline Competition Bureau and Wireless Telecommunications Bureau Release Instructions for Filing Terrestrial Middle-Mile Network Maps*, WC Docket No. 16-271, Public Notice, 32 FCC Rcd 6863 (2017); *Extension of Deadline for Alaska Plan Carriers Filing Middle-Mile Fiber and Microwave Networks Maps Pursuant to Section 54.316(a)(6)*, WC Docket No. 16-271, 33 FCC Rcd 6242 (2018).

[78] *See Report on the Future of Universal Service*, WC Docket No. 22-67, Report, FCC 22-67 at 27, 51, paras. 47-48, 99 (Aug. 15, 2022) (*Future of USF Report*). *See also* Department of Commerce, NTIA, Middle Mile Grant Program, Notice of Funding Opportunity (2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/MIDDLE%20MILE%20NOFO.pdf (*Middle Mile NOFO*). *See also*, Press Release, NTIA, Biden-Harris Administration Launches $45 Billion "Internet for All" Initiative to Bring Affordable, Reliable High-Speed Internet to Everyone in America (May 13, 2021), https://broadbandusa.ntia.doc.gov/news/latest-news/biden-harris-administration-launches-45-billion-internet-all-initiative-bring.

[79] *See Alaska Plan Order*, 31 FCC Rcd at 10156, para. 52; 54 CFR § 54.313(l).

[80] *See* Jan. 2023 Pacific Dataport Comments at 2.

[81] *Id*.

[82] *See* ARCC Petition. *See also* Jan. 2023 Pacific Dataport Comments (identifying questions and points of clarification regarding the AMMES Petition and the AMMCAT calculator).

more akin to a cost-based mechanism.[83] We seek comment on using the AMMES plan calculator for determining middle mile funding support amounts or other methods that align with modernizing support.

28. *Direct-to-Home Satellite Services*. We seek comment on whether the Alaska Connect Fund should provide support to carriers that provide direct-to-home satellite service. Parties have commented that the remote and insular nature of some areas within Alaska make serving all areas of Alaska difficult with terrestrial-only solutions.[84] Indeed, customers are subscribing to direct-to-home satellite service available after the start of the Alaska Plan.[85] Although carriers are permitted to use satellite technology in their networks, the Alaska Plan does not provide support for carriers that provide direct-to-home satellite service. These satellite providers argue their service is no longer "expensive" or "performance-limiting," and just as reliable, if not more reliable than traditional fiber-based networks while also being ubiquitous.[86]

29. How should new satellite services factor into our subsidy determinations? In certain communities, will satellite service be a necessary component to providing internet for the foreseeable future? Should the Commission focus on limiting subsidies for satellite services to certain areas of Alaska, e.g. "extremely remote areas" or "areas with ultra-high costs"? How would we define those terms? What are the physical barriers to receiving satellite service or reliable service in Alaska? Are consumer services using satellite affordable for Alaskans? How do the costs of satellite services compare to services that use terrestrial solutions? Do direct-to-home satellite providers offer voice service? We seek comment on the need to provide support for voice-only providers in communities, even if there is an unsubsidized internet provider.

30. The BEAD program requires states to establish an "Extremely High Cost Per Location Threshold"[87] and allows states to fund alternative technologies, including technologies that do not meet the BEAD definition of "Reliable Broadband Service but otherwise satisfy the Program's technical requirements," in order to not exceed that threshold.[88] We seek comment on whether the Commission should take into account Alaska's Extremely High Cost Per Location Threshold determination in

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[83] The AMMES is paid monthly in arrears for prior year costs incurred and is provided to eligible recipients after the carrier can demonstrate documentation of "ultra-high" costs or costs exceeding $75/Mbps. *See* ARCC Petition at 2. *See also* ATB Comments; NTTA Comments, ARIC Comments.

[84] *See* Jan. 2023 Pacific Dataport Comments; Feb. 2023 Pacific Dataport Comments; ATB Comments (noting installation of hybrid LEO and GEO satellite terminals to support tribal last mile networks); ARIC Comments at 2 (noting increased transition to use of satellite services by Alaskans); Letter from Shawn Williams, VP of Government Affairs & Strategy, Pacific Dataport, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 16-271, RM-11942 (filed July 21, 2023) (July 2023 Pacific Dataport *Ex Parte* Letter); Letter from Harold Furtchgott-Roth, Advisor to Pacific Dataport, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-271 (July 26, 2023) (Harold Furchtgott-Roth *Ex Parte* Letter).

[85] *See* Zachariah Hughes, et al., *In Just a Few Months, Satellite Internet Has Reshaped Web Access in Rural Alaska*, Anchorage Daily News, Aug. 20, 2023, https://www.adn.com/alaska-news/rural-alaska/2023/08/20/in-just-a-few-months-satellite-internet-has-reshaped-web-access-in-rural-alaska/ (last visited Aug. 31, 2023) (Aug. 2023 Anchorage Daily News Article) (stating, "thousands of residents have signed up [for satellite internet] at a pace that's exceeding expectations…").

[86] Jan. 2023 Pacific Dataport Comments at 1-2; July 2023 Pacific Dataport *Ex Parte* Letter.

[87] *See* Department of Commerce, National Telecommunications and Information Administration, Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity (NOFO) at 13, n. 6 (May 13, 2022), https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf (last visited July 23, 2023) (BEAD NOFO).

[88] *See* BEAD NOFO at 38-39.

assessing an area's eligibility for the Alaska Connect Fund. How can we use Alaska's determination most appropriately in our process?

2. Eligible Carriers

31. Next, we seek comment on carriers eligible to participate in the Alaska Connect Fund support program. The Alaska Plan includes 13 rate-of-return carriers, while ACS, as a price cap carrier, receives frozen support.[89] The high-cost program also supports a small number of A-CAM carriers operating in Alaska.[90] Carriers and commenters have argued that the Commission should fold all high-cost Alaskan carriers into one support mechanism going forward.[91] ATA suggests that the Commission allow ACS and A-CAM carriers an opportunity to join that mechanism.[92] ATA and ARCC advocate that high-cost support for fixed services in Alaska continues to be limited to ILECs. However, the record supports, and we agree, that we should explore whether non-ILECs should be eligible.[93] While the ILECs do continue to serve the communities, others may be in a position to efficiently and effectively serve those same communities. Further, we seek comment on whether in some areas the ILEC is no longer the predominant broadband provider, which would make ILEC-only support inconsistent with broad service availability for consumers. We seek comment on whether any broadband carrier serving Alaska (or even those not currently serving Alaska) should be eligible to participate in the Alaska Connect Fund. Should there be existing minimum requirements for eligibility in the Alaska Connect Fund? Should both terrestrial and non-terrestrial providers be allowed to participate in the Alaska Connect Fund? Should the Commission allow partnerships or consortia to participate? Should Alaska A-CAM carriers that elect E-CAM support be able to choose, instead, to participate in The Alaska Connect Fund? Should carriers that have not met public interest obligations under the original Alaska Plan be precluded from participating in the Alaska Connect Fund or subject to enhanced compliance requirements?

32. *Eligible Telecommunications Carrier Status*. The Act requires that all recipients of USF high-cost support obtain Eligible Telecommunications Carrier (ETC) status.[94] It limits the Commission's authority to designate ETCs to situations when a carrier demonstrates that a state commission lacks jurisdiction over that carrier.[95] In Alaska, the Regulatory Commission of Alaska is the governing body

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[89] *See Alaska Plan Wireline Authorization Public Notice*; *see generally ACS Order*; July 2023 ACS *Ex Parte* Letter.

[90] *See Wireline Competition Bureau Authorized 186 Rate-of-Return Companies to Receive An Additional $65.7 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2780 (2019); The summary report for all carriers authorized to receive A-CAM support, including those subject to prior authorizations in December 2016, January 2017, July 2018, and April 29, 2019 is available at https://docs.fcc.gov/public/attachments/DOC-352788A1.xslx (listing two Alaska carriers); *see also* USAC Open Data, High Cost Funding Disbursement Search, https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi (filtered for "Alaska" and "ACAM") (last visited Aug. 7, 2023).

[91] *See* ATA Petition at 2, 21-22; ARCC Petition at 11, note 20, 16; July 2023 ACS *Ex Parte* Letter; Jan. 2023 Pacific Dataport Comments at 2-3, Letter from Shawn Williams, VP of Government Affairs & Strategy, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 16-271, Rm-11942 (filed Feb. 2, 2023) (Feb. 2023 Pacific Dataport *Ex Parte* Letter); *see also* Comments of Alaska Rural ISP Coalition (Jan. 3, 2023) (ARIC Comments) (noting concerns with the AMMES plan eligibility as proposed); Comments of the National Tribal Telecommunications Association (Jan. 5, 2023) (NTTA Comments) (encouraging the Commission include all carriers when providing support to Alaska).

[92] ATA Petition at 22.

[93] *See e.g.*, NTTA Comments at 2, 4; ARIC Comments; ATB Comments at 3.

[94] 47 U.S.C. §214(e); 47 U.S.C. §254(e); 47 CFR §54.201-207 (Carriers Eligible for Universal Service Support)

[95] 47 USC § 214(e)(6); 47 CFR §§ 54.201-203. *See In the Matter of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and*

(continued….)

that adjudicates that process and designates carriers as ETCs in their service territories.[96] As such, the Commission has limited authority to designate ETC status to a carrier operating in Alaska. We seek comment on the barriers to obtaining ETC status in Alaska.[97] Are there specific barriers for satellite technology in obtaining ETC status in Alaska? Should ILECs be eligible to receive support outside of their current ETC areas?[98] If we do so, what considerations do we need to make regarding the reliability of voice services in those areas?

3. Support Amount

33. We seek comment on how to determine the Alaska Connect Fund support amounts to best support service in Alaska. The Commission has used various mechanisms for determining support amounts in the past, including frozen support, adjusted frozen support, model-based support, and competitive processes. The Alaska Plan and ACS support are based on frozen support—meaning that current support amounts, which were originally determined through a cost-based mechanism, are the same as they were on a specific date.[99] However, as the Commission has reformed the high-cost program, it has aimed to base support amounts on a forward-looking cost model or a competitive process.[100] Additionally, Congress required states, including Alaska, to conduct competitive processes to distribute BEAD funding.[101] We seek comment on which of these mechanisms makes the most sense for the Alaska Connect Fund. Should the type of support mechanism be informed by whether an area is served by the ILEC only, ILEC and unsubsidized competitor, only unsubsidized competitor or is unserved?[102] If so, which would be the most efficient mechanism for reaching our universal service goals through the Alaska Connect Fund? For example, if there are one or more unsubsidized competitors in an area, does that mean a competitive process would be best? Should the Commission endeavor to award funding in a similar or different way than the BEAD program? In the recent *Enhanced A-CAM Order*, the Commission sought comment on issues related to providing support for served locations.[103] We

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Insular Areas, et al., WC Docket No. 96-45, Report and Order, 15 FCC Rcd 12208, 12265-69, paras. 115-127 (2000) (*2000 Tribal Order*) (establishing process for the Commission to designate ETC status for carriers serving Tribal lands).

[96] *See* Regulatory Commission of Alaska, Telephone, https://rca.alaska.gov/RCAWeb/ForConsumers/Telephone.aspx; *see also* 3 AAC §53.400.

[97] *See infra* para. 59 (inquiring more specifically about this question for those carriers serving Tribal Nations and Tribal Lands in Alaska).

[98] We note that if a carrier was awarded support in a new area, it would have to obtain ETC status in that area to receive support.

[99] Support under these programs is frozen based on 2011 support amounts. *See Alaska Plan Order*, 31 FCC Rcd at 10144-45, paras. 9-10; *see also* Letter from Karen Brinkman, Counsel to Alaska Communications Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Jan. 2, 2015) (ACS election to receive frozen support); Letter from Genevieve Morelli, Alaska Communications Systems, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed July 18, 2023) (2023 ACS *Ex Parte* Letter).

[100] *See, e.g.*, *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12194-95, paras. 47-49 (2020) (*5G Fund Order*) (establishing a multi-round descending clock auction for competitive bidding); *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 29 FCC Rcd 3964, 4029, para. 155 (2014) (*Connect America Phase II Cost Model Order*) ("we adopt the methodology for taking the results of the cost-to-serve module to determine support levels. We begin by discussing the methodology for calculating the average forward looking per-location cost of building voice and broadband-capable networks.").

[101] Infrastructure Act § 1702(e)(3)(A)(i)(IV).

[102] *See supra* para. 24.

[103] *See Enhanced A-CAM Order*, FCC 23-60 at 62-75, paras. 154-83.

incorporate those questions here and seek comment on their specific applicability to the Alaska Connect Fund.

34. *Alaska Cost Model*. The Commission has recognized the limitations of the Connect America Cost Model (CAM) for Alaska, which led to it establishing the Alaska Plan.[104] We seek comment on whether we should develop a cost model to help determine support amounts for the Alaska Connect Fund carriers. Would this be an efficient way to determine support amounts going forward? What inputs are required for a cost model? The ABO introduced a model that evaluates, at a high level, the math associated with the cost of operating in remote communities in Alaska, but it acknowledges that it does not claim the numbers in the model "match any real-world applications."[105] The ABO also introduced a technology neutral cost model that estimates the capital costs of new broadband projects in Alaska, along with supporting maps identifying unserved and underserved communities.[106] We seek comment on these models. Should the Commission consider using or leveraging these models for determining support amounts? Are there other already developed cost models that the Commission could utilize to establish support amounts?

35. *AMMES Cost Calculator*. The ARCC petitioned the Commission to adopt its AMMES plan directed at providing cost-based support to carriers with "ultra-high" middle-mile costs.[107] The plan takes into account both the capital and the operational middle-mile expenses associated with providing high-speed broadband service, using its Alaska Middle Mile Calculator Template (AMMCAT) to identify the locations that need support. We seek comment on the accuracy and effectiveness of this tool. Does it have broader applications in Alaska?

36. *Alaska Competitive Process*. We seek comment on whether to adopt a competitive process to award Alaska Connect Fund support either using a competitive process similar to the process in Puerto Rico and the US Virgin Islands under the Bringing Puerto Rico Together and the Connect USVI programs;[108] or using an auction mechanism similar to the Rural Digital Opportunity Fund. Is there enough competition in Alaska to make a competitive process meaningful? Is an Alaska-specific cost model a necessary safeguard for a competitive process? We again note that Congress required a competitive process for BEAD funding awardees, including Alaska.[109] We seek comment on whether there are any lessons that can be learned so far from the development of the BEAD process that the Commission should consider in developing the Alaska Connect Fund.

37. *Frozen Support*. The ATA Petition suggests the Commission maintain current frozen support amounts for each carrier (adjusted for inflation).[110] We seek comment on whether or under what circumstances this is the appropriate way to allocate support for recipients of the Alaska Connect Fund. How would we determine support amounts for ACS and any other new participants in the program?

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[104] *USF/ICC Transformation Order*, 26 FCC Rcd at 17737-38, para. 193; *Connect America Fund*, et al., WC Docket Nos. 10-90, 05-337, Report and Order, 29 FCC Rcd 3964 (*CAM Inputs Order*) (WCB 2014); *see generally Alaska Plan Order*.

[105] *See* Reverse Margin Operations and Maintenance Model, https://www.commerce.alaska.gov/web/abo/ (March 31, 2023).

[106] *See* Alaska Broadband Office, Economic Models, Capital Cost Model, https://www.commerce.alaska.gov/web/abo/EconomicModels.aspx (Feb. 2, 2023); Broadband Map (July 6, 2023).

[107] *See* ARCC Petition (proposing to provide support for locations based on carrier costs to serve).

[108] *Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, WC Docket Nos. 10-90, 18-143, 14-58, Report and Order, Order on Reconsideration, 34 FCC Rcd 9109, 9114-46, paras. 11-66 (2019) (discussing the competitive process for fixed providers).

[109] Infrastructure Act § 60102(h)(2).

[110] ATA Petition at 17-19.

Should we take the same overall support amount (adjusted for inflation), but reallocate those amounts among the current recipient, and if so how?

4. Budget

38. We seek comment on an appropriate budget for the Alaska Connect Fund. In considering the budget for the Alaska Connect Fund, we seek to balance the need to provide support that is sufficient to achieve the Commission's goals, while meeting the Commission's obligation not to unnecessarily burden American consumers. As the Commission has previously recognized, the cost of universal service is ultimately borne by American consumers and businesses.[111] Support that is greater than necessary therefore violates the Commission's obligation to be a good steward of the USF.[112] In this Notice, the Commission seeks comment on providing two types of funding: (1) support for areas that still require buildout; and (2) ongoing support for areas already built out.[113] We seek comment on the budget needed for each. The *2016 Alaska Plan Order* provided for $1.5 billion in frozen high-cost support over ten years.[114] The *ACS Order* provided for $200 million in frozen high-cost support over ten years.[115] The ATA Petition suggests, even with potentially more participants, that the budget is acceptable if adjusted for inflation,[116] and the ARCC Petition proposed $25 million for the first four years of its plan to support middle-mile costs only.[117] How should deployment progress and expenditures to date inform the budget for the Alaska Connect Fund? How should allowing new participants impact the budget?

39. Additionally, the State of Alaska and the ABO are currently engaged in the planning phase for BEAD funding, and there are several other broadband projects already underway.[118] The BEAD program overall has a goal of affordable high-speed internet for all residents in all 50 states, DC, and the territories by 2030, and Alaska has been allocated more than $1 billion in BEAD funding.[119] We seek comment on how Alaska's BEAD and other government funding should affect the budget for the Alaska Connect Fund. In the *Future of USF Report*, the Commission noted that preventing duplicative support was its primary goal in interagency coordination regarding broadband funding, particularly BEAD

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[111] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17682-83, para. 57.

[112] *See id.*

[113] *See the Future of USF Report*, FCC 22-67 at 23, paras. 44-45 (discussing ongoing support).

[114] *Alaska Plan Order*, 31 FCC Rcd at 10155, para. 47. In 2022, USAC disbursed nearly $128.3 million in Alaska Plan support. *See USAC High Cost Funding Disbursement Tool*, *available at* https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi (filter for funding year 2022 and Alaska Plan support).

[115] *ACS Order*, 31 FCC Rcd at 12092-93, paras. 22-24.

[116] ATA Petition at 17-19.

[117] ARCC Petition at 6.

[118] *See* July 2023 ATA *Ex Parte* Letter at 4 (noting that BEAD funds will not be appropriated to specific projects for at least another year or two); *see also* Letter from Michael Romano, Executive Vice President, NTCA to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 16-271, et al. (filed July 3, 2023) (July 2023 NTCA Comments) (encouraging compatible deployment schedules between BEAD and FCC programs). *See also* NTIA, Broadband USA, Funding programs, Broadband Equity Access and Deployment Program, Timeline, https://broadbandusa.ntia.doc.gov/funding-programs/broadband-equity-access-and-deployment-bead-program/timeline (last visited Aug. 15, 2023).

[119] *See* The White House, Statements and Releases, *Fact Sheet: Biden-Harris Administration Announces Over $40 Billion to Connect Everyone in America to Affordable, Reliable, High-Speed Internet* (June 26, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/26/fact-sheet-biden-harris administration-announces-over-40-billion-to-connect-everyone-in-america-to-affordable-reliable-high-speed-internet/.

funding.[120] Accordingly, we seek comment on determining a budget that meets the Commission's public interest obligations, complements BEAD and other sources of broadband funding, and avoids duplicate support.

40. The ATA Petition suggests that the existing Alaska Plan budget be adjusted for inflation and adjusted annually going forward.[121] The Commission has adjusted for inflation in various situations in the past. For example, in 2018, the Bureau set the budget and an annual increase for inflation for legacy rate-of-return carriers receiving CAF BLS support.[122] The Commission used an inflation adjustment factor based on the United States Department of Commerce's Gross Domestic Product-Chained Price Index (GDP-CPI) to determine the amount of adjustment.[123] The Commission has also used other tools for indexing for inflation, for example, the Consumer Price Index (CPI) from the Department of Labor, Bureau of Labor Statistics (BLS).[124] Recently, however, the Commission declined to adopt an annual inflation adjustment to Enhanced A-CAM support amounts.[125] We seek comment on whether the budget for the Alaska Connect Fund should be adjusted for inflation, and if so, by how much and how often. What is the appropriate method for adjusting for inflation? Do all carriers experience the same pressures of inflation? If the Alaska Connect Fund supports different carriers and services than the Alaska Plan, is an initial inflation adjustment necessary or already built in to the newly established budget? ATA suggests that the budget should be increased annually.[126] If the Commission decides to adjust the budget going forward based on inflation, is annually the right interval?

5. Public Interest Obligations

41. We seek comment on the public interest obligations for the Alaska Connect Fund—in particular, speed, latency, data usage, and reasonably comparable rates. Should those obligations differ based on the whether the location is: (1) served by the ILEC only; (2) served by both the ILEC and an unsubsidized provider; (3) served by an unsubsidized provider only; or (4) unserved?[127] Do we need to establish obligations for underserved locations? In addition, how should we account for the type of

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[120] *See Future of USF Report*, FCC 22-67 at 27-29, paras. 49-52.

[121] ATA Petition at 17-19; ARCC Petition at 4 (noting intention to join ATA's petition to extend Alaska Plan with adjustments for inflation). WTA – Advocates for Rural Broadband (WTA) noted their agreement for both. Comments of WTA – Advocates for Rural Broadband, WC Docket No. 16-271; RM-11942 at 3 (filed Feb. 22, 2023) (WTA Comments); Letter from Derrick B. Owens, Senior Vice President of Government and Industry Affairs, WTA – Advocates for Rural Broadband, to Marlene H. Dortch, Secretary, Federal Communications Commission at 1-2 (Aug. 11, 2023) (Aug. 2023 WTA Comments) (reiterating its support for ATA Petition and requests to adjust for inflation and update performance plans).

[122] *See Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11920-21 at paras. 88-89 (2018) (*2018 Rate-of-Return Reform Order and Notice*).

[123] *2018 Rate-of-Return Reform Order and Notice,* 33 FCC Rcd at 11920, para. 88. The Commission noted this was the most appropriate factor, because it measures price changes in goods and services purchased by consumers, businesses, and governments, and is the inflationary factor we have used for many years in other legacy support mechanisms. *Id*. at note 191. The GDP measures changes in the U.S. economy whereas the CPI measures price changes in consumer purchases. *Using Price Indexes,* Minnesota House of Representatives, Research Department, Information Brief (Nov. 2009), https://www.house.mn.gov/hrd/pubs/priceindex.pdf (last visited Aug. 7, 2023).

[124] *See Wireline Bureau Announces Update Lifeline Minimum Service Standards and Indexed Budget Amount*, WC Docket No. 11-42, Public Notice, DA 23-621 at 2 (July 21, 2023).

[125] *Connect America Fund, et al*., WC Docket No. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 23-60, at 28, para. 65 (rel. July 24, 2023).

[126] ATA Petition at 17-18.

[127] *See supra* para. 24.

middle mile being used to serve the location? If the Alaska Connect Fund provides support for middle mile infrastructure, how do we safeguard against opportunistic pricing?

42. *Performance Plan*. In the Alaska Plan, each carrier was required to submit a performance plan that was reviewed and approved by the Wireline Competition Bureau.[128] The plans were, and still are, subject to modification based on changed circumstances.[129] We seek comment on whether the Commission should continue to use this approach, particularly in light of the Infrastructure Act's use of specific speed, latency and other minimums.[130] If the Commission conducts a competitive process based on ability to meet certain requirements, is a performance plan still necessary?

43. *Speed*. The Commission prioritized 10/1 Mbps in both the *Alaska Plan* and the *ACS Order*, adopting 10/1 Mbps as the minimum broadband speed requirement, but it authorized approval of some *Alaska Plan* carrier performance plans that offered faster or slower speeds in certain instances.[131] Indeed, some Alaska Plan carriers have committed to speeds higher than 10/1 Mbps, including 100/5 Mbps and 1GB/100Mbps.[132] Similarly, carriers receiving A-CAM support were obligated to provide service at speeds of 25/3 Mbps, 10/1 Mbps or 4/1 Mbps depending on the housing unit density of the eligible areas in the offer.[133] Recently, the Commission adopted a speed requirement of 100/20 Mbps for Enhanced A-CAM recipients.[134]

44. A recent interested party explained that requiring 10/1 Mbps has been detrimental in areas that could benefit from support to improve their networks but still may not be able to reach 10/1 Mbps.[135] Others suggest the minimum speed requirements should be higher to encourage more advanced services.[136] The Infrastructure Act requires that its programs establish a minimum speed of 100/20

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[128] *Alaska Plan Order*, 31 FCC Rcd at 10144, para. 11.

[129] In the *Alaska Plan Order*, the Commission directed the Bureau to reassess the competitive landscape prior to the beginning of the Alaska Plan recipients' fifth year of support and consider whether any adjustments in the Alaska Plan recipients' performance plans should be made for the second half of the 10-year term. *Alaska Plan Order*, 31 FCC Rcd at 10158, para. 61; *see also*, *e.g.*, *Wireline Competition Bureau Approved Further Revised Alaska Plan Performance Plan for Arctic Slope Telephone Cooperative*, WC Docket No. 10-90, 16-271, DA 23-39, Public Notice (Jan. 17,2023) (*ASTAC Revised Performance Plan PN*); Wireline Competition Bureau Approves Revised Alaska Plan Performance Plan for Adak Telephone Utility, WC. Docket Nos. 10-90, 16-271, Public Notice, DA 22-1117 at 2 (Oct. 2022) (*Adak Revised Performance Plan PN*). For example, Arctic Slope Telephone Cooperative's (ASTAC) revised performance obligations considered that the carrier was able to negotiate access to middle mile capacity at a lower rate and therefore provide higher speeds and serve additional locations. *See ASTAC Revised Performance Plan PN* at 2.

[130] *See* Infrastructure Act § 1702(a)(1).

[131] *See Alaska Plan Order*, 31 FCC Rcd at 10145-46, paras. 14, 16-17.

[132] *See* USAC HUBB Compliance Dashboard as of 9-30-22 at 2, 7, available at https://www.usac.org/wp-content/uploads/high-cost/documents/Compliance/HUBB-Compliance-Dashboard-as-of-9-30-2022.pdf (last visited Aug. 11, 2023) (showing the greatest number of locations deployed for Alaska Plan in the 25/3+Mbps speed class); *FCC National Broadband Map*, Area Summary, Alaska https://broadbandmap.fcc.gov/area-summary (last visited Aug. 10, 2012) (map filtered for Alaska shows speeds of 25/3, 110/20, 250/25 and IGB/100Mbps)

[133] *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3094-3117, paras. 17-79. For aspects of the model tailored to the specific characteristics of rate-of-return areas, *see id*. at 3102-11, paras. 36-59.

[134] *See Enhanced A-CAM Order*.

[135] *See*, *e.g.*, July 2023 Pacific Dataport *Ex Parte* Letter (summarizing discussion with representative from Native Movement).

[136] ATB Comments; ARIC Comments.

Mbps.[137] We seek comment on what the appropriate minimum broadband speed requirement should be for the Alaska Connect Fund. What factors should the Commission consider to determine a minimum broadband speed requirement? Should the Commission allow exceptions to the minimum speed requirement, and if so, under what conditions? In light of new technologies, such as low Earth orbit satellites, are exceptions to the speed and latency requirements necessary?

45. *Latency.* The Alaska Plan, ACS, and A-CAM recipients are all currently subject to requirements to provide and certify the provision of service with roundtrip network latency of 100 milliseconds or less, subject to middle mile limitations.[138] Under Commission rules, this requires recipients to certify to offering "voice and broadband service with latency suitable for real-time applications…."[139] We seek comment on whether this requirement remains appropriate for the Alaska Connect Fund or whether modifications may be warranted.

46. *Data Usage.* Participants in the Alaska Plan are required to provide a usage allowance that evolves over time to remain reasonably comparable to usage by subscribers in urban areas, similar to the approach adopted for price cap carriers and other rate-of-return carriers.[140] ACS was allowed some flexibility to "offer a usage allowance consistent with the usage level of 80 percent of its own broadband subscribers, including those subscribers that live outside of Phase II-funded areas," although it does not offer plans with usage limits.[141] We seek comment on the minimum data allowance requirement and whether we need to tailor it in light of changes to the network due to availability in access to middle-mile.

47. *Satellite Backhaul Exception.* The Commission exempts from the speed, latency, and data usage standards (public interest obligations) those areas in which carriers rely exclusively on the use of satellite backhaul to deliver service.[142] The Commission made this decision based on reports from the Regulatory Commission of Alaska that there are areas of Alaska that can only be served by satellite, and the assertions that satellite backhaul is limited in its functionality compared with terrestrial backhaul.[143] Indeed, carriers seeking the exemption must certify that they lack the ability to obtain terrestrial backhaul

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[137] Infrastructure Act § 60102(h)(1)(A).

[138] *See Alaska Plan Order*, 31 FCC Rcd at 10146-47, paras. 19-20.

[139] *See*, *e.g*., 47 CFR 54.313 (Annual reporting requirements for high-cost recipients).

[140] *See Alaska Plan Oder*, 31 FCC Rcd at 10147, paras. 21-23. The Alaska Plan Order set this minimum allowance at 150 GB per month; however, that was updated in the *Reasonable Comparability Benchmarks for Alaska PN* to 160 GB per month. *Wireline Competition Bureau Announces Voice and Broadband Reasonable Comparability Benchmarks for Alaska Plan Rate-of Return Carriers and Alaska Communications Systems and Confirms Minimum Usage Allowance Requirements*, WC Docket Nos. 10-90, 16-271, Public Notice, 32 FCC Rcd 3003 at 3-4 (2017) (*Reasonable Comparability Benchmarks for Alaska PN*). The 2023 minimum monthly usage allowance is 600 GB. *See Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2023 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 Docket No. 10-90, Public Notice, DA 22-1338 at 3 (2023 Urban Rate Survey). We note that this usage allowance applies to Alaska carriers, except for those areas relying exclusively on satellite backhaul. *Id*. at 2, note 10.

[141] *ACS Order*, 31 FCC Rcd at 12091, para. 18.

[142] *Alaska Plan Order*, 31 FCC Rcd at 10147-48, para. 24; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101. We note that carriers using satellite backhaul still have to meet the high latency standard of 750 ms and are still subject to testing requirements. *See Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (*Performance Measures Order*); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 8081 (2019) (*Performance Measures Reconsideration Order*); Connect America Fund, WC Docket No. 10-90, Order, 35 FCC Rcd 14658, (2020) (*Performance Measures Clarification Order*).

[143] *USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101 (quoting Comments of the Regulatory Commission of Alaska, WC Docket No. 10-90 et al., at 22 (filed Apr. 18, 2011)).

and that they are unable to satisfy the broadband public interest obligations due to the limited functionality of satellite backhaul.[144] More recently, satellite companies have insisted that their services are fast, reliable, and affordable.[145] We recognize that there are remote areas of Alaska where satellite service may be the only solution for voice and broadband, and we seek information and data on satellite service speed and reliability. Should we adjust the benchmarks to account for advancements and availability in satellite backhaul technology?[146] Alternatively, should the Commission establish benchmarks for carriers serving locations with satellite and microwave middle-mile facilities in the Alaska Connect Fund?

48. *Affordability Requirement*. We seek comment on requiring the offering of a low-cost plan as a condition of receiving Alaska Connect Fund support. We propose to condition Alaska Connect Fund support on participation in the Affordable Connectivity Program (ACP) or substantially similar successor program.[147] The Commission recently adopted a similar requirement for *Enhanced A-CAM Order* recipients,[148] and affordability remains a considerable barrier for many Alaskan residents in gaining and broadband access.[149] The ACP plays an important role in helping low-income consumers obtain affordable Internet services. There are currently a number of carriers participating in the ACP that serve Alaska.[150] Would the same requirement be appropriate for all or some of the recipients of the Alaska Connect Fund? Additionally, we note that beyond the Commission, the Infrastructure Act requires subgrantees of the BEAD program to provide at least one "low-cost broadband service option."[151]

49. *Cybersecurity and Supply Chain Risk Requirements*. We seek comment on conditioning the receipt of Alaska Connect Fund support on the creation, implementation and maintenance of operational cybersecurity and supply chain risk management plans. Specifically, we seek comment on whether Alaska Connect Fund support recipients should be required to implement a cybersecurity risk management plan that reflects the latest version of the National Institutes of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity,[152] and that reflects an established set of cybersecurity best practices, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives[153]

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[144] 47 CFR § 54.313(f)(3) (requiring carriers using satellite backhaul to certify as to whether terrestrial backhaul or other satellite backhaul became commercially available in the previous calendar year), (g) (requiring carriers without access to terrestrial backhaul certify to speed of 1 Mbps/256kbps), (l)(1) (listing carrier obligations if backhaul becomes commercially available); *USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101.

[145] *See infra Satellite Service* at para. 28; *see also* Feb. 2023 Pacific Dataport Comments; July 2023 Pacific Dataport *Ex Parte* Letter; ATB Comments. *See also* Aug. 2023 Anchorage Daily News Article.

[146] *See infra* paras. 50-52 (discussing reasonably comparable benchmark).

[147] *See* Affordable Connectivity Program, https://www.fcc.gov/acp (last visited Sept. 5, 2023).

[148] *See Expanding Broadband Service Through the ACAM Program*, *et al.,* WC Docket Nos. 10-90 et al., Report and Order, Notice of Proposed Rulemaking, Notice of Inquiry, FCC 23-60 at paras. 55-58 (July 24, 2023) (*July 2023 Enhanced ACAM Report and Order*).

[149] *See* NTTA Comments at 3; ARIC Comments at 1.

[150] *See* Affordable Connectivity Program Providers, https://www.fcc.gov/affordable-connectivity-program-providers (last visited Sept. 5, 2023).

[151] *See* Infrastructure Act § 60102(h)(4)(B); BEAD Program NOFO at 66-67.

[152] NIST, Framework for Improving Critical Infrastructure Cybersecurity, v.1.1 (2018), https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.

[153] *See* Cybersecurity and Infrastructure Security Agency, *Cross-Sector Cybersecurity Performance Goals and Objectives*, https://www.cisa.gov/cpgs (last visited August 28, 2023).

or the Center for Internet Security Critical Security (CIS) Controls.[154] We also seek comment on whether these carriers should be required to implement supply chain risk management plans that incorporate the key practices discussed in NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management Observations from Industry,[155] and related supply chain risk management guidance from NIST 800-161.[156] Would it be appropriate for Alaska Connect Fund recipients to submit to USAC their updated cybersecurity and supply chain risk management plans within 30 days of making a substantive modification thereto, as E-ACAM recipients must?[157] In the *Enhanced A-CAM Order*, the Commission adopted these requirements for recipients of E-ACAM support, making conforming plans due by the start of the support term and imposing a reduction in monthly support of 25% for non-compliance.[158] We seek comment on adopting the same requirements for Alaska Connect Fund recipients. Do Alaska carriers have such plans already created and implemented? Is the same non-compliance withholding of 25% appropriate for Alaska Connect Fund recipients? What are the differences (if any) between Alaska Connect Fund recipients and E-ACAM recipients that might warrant different approaches to ensuring cybersecurity? Are there other security standards or flexibilities the Commission should consider for Alaska Connect Fund recipients?

50. *Reasonably Comparable Rates—Broadband and Voice.* We propose that carriers receiving Alaska Connect Fund support, like all other recipients of USF high-cost program support, will be required provide voice and broadband service at rates that are reasonably comparable to those offered in urban areas.[159] For broadband, an ETC has two options for demonstrating that its rates comply with this statutory requirement: certifying compliance with reasonable comparability benchmarks[160] or certifying that it offers the same or lower rates in rural areas as it does in urban areas.[161] Due to the unique challenges that remain in Alaska,[162] we propose that carriers receiving Alaska Connect Fund

[154] *See* Center for Internet Security, *Critical Security Controls Version 8,* https://www.cisecurity.org/controls (last visited August 28, 2023) (providing security controls grouped by priority and feasibility for different sizes and resources of businesses in Implementation Groups).

[155] NIST, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry (2021), https://csrc.nist.gov/publications/detail/nistir/8276/final (presenting the following as key practices: 1) integrating cyber supply chain risk management across the organization; 2) establishing a formal cybersecurity supply chain risk management program; 3) knowing and managing critical components and suppliers; 4) understanding the organization's supply chain; 5) collaborating closely with key suppliers; 6) including key suppliers in resilience and improvement activities; 7) assessing and monitoring throughout the supplier relationship; and 8) planning for the full life cycle).

[156] NIST, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations (2022), https://csrc.nist.gov/publications/detail/sp/800-161/rev-1/final (identifying critical success factors for cyber supply chain risk management).

[157] Defining a "substantive" modification to a cybersecurity or supply chain risk management plan as occurring when at least one among certain conditions apply. *See July 2023 Enhanced ACAM Report and Order*, FCC 23-60 at 48, para. 112.

[158] *See July 2023 Enhanced ACAM Report and Order*, FCC 23-60 at 47-49, para. 109-114.

[159] 47 U.S.C. § 254(b)(1),(b)(3),(g); 47 CFR § 54.308(a); *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 113.

[160] 47 CFR § 54.313(a)(12). The Bureau established the 2016 reasonable comparability benchmark was $71.17 for broadband service providing 10/1 Mbps with 150 GB usage allowance. *See 2016 Urban Rate Survey*, 31 FCC Rcd at 3394.

[161] 47 CFR § 54.313(a)(12).

[162] *See* ATA Apr. 25, 2016 *Ex Parte* Letter at 2 (noting that "[a]ll Alaskan providers must provide connections to the Internet via undersea cable to the Lower 48, and many must also traverse vast additional distances via microwave

(continued….)

support will still be subject to the Alaska-specific reasonable comparability broadband benchmarks established by the Bureau.[163] We seek comment on whether the Commission should revise how the Alaska-specific comparability benchmarks are calculated. How will support amounts affect carriers' ability to meet our broadband rate benchmarks?

51. For voice service, ETCs are required to make an annual certification that the rates for their voice service are in compliance with the same reasonable comparability benchmark as required for the other programs.[164] The current benchmark for voice services is $59.62 nationwide.[165] While we have seen no evidence that carriers are unable to comply with the voice benchmarks, we seek comment on whether our voice benchmark calculations are still appropriate for Alaska? Do we need to create an Alaska-specific voice benchmark?

52. Earlier this year, the Bureau sought comment on modifying the calculation method for determining broadband benchmarks and on other changes related to the benchmarks.[166] Are these inquiries also applicable to our considerations for the Alaska-specific benchmarks? In the *2023 Broadband Benchmarks Public Notice*, the Bureau stated that "[i]n addition to an increasing range of speeds, in the last few years the Bureau has also noted that Survey data show that some variables, such as upload speed and capacity allowances, have become less relevant to setting benchmark rates. For example, in some cases, we have found that inclusion of upload speed in rate calculations can result in anomalies where the benchmark rate rises as upload speed falls, likely because download speed is more significant to price levels. In addition, in some instances we have found that capacity allowances have little to no effect on the benchmark rate."[167] Does Alaska experience the same anomalies and impact related to upload speed and capacity allowances?[168] Is there similar confusion in Alaska regarding discounted and non-discounted pricing?[169] Should the Commission consider similar definitional updates related to census data?[170] We seek comment on whether there are any challenges for current Alaska A-

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and satellite links" which "creates great variability in cost and in many cases drives rates to exceed national urban benchmarks exponentially"); Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1, Attach. (filed May 12, 2016) (providing "information about pricing and usage which can be provided at various price points, all of which are driven by the cost of middle mile in the particular region of Alaska being served").

[163] Because of the historically higher costs of building infrastructure in Alaska, the Commission directed the Bureau to determine an Alaska-specific reasonable comparability benchmark for service. *See Connect America Fund; Universal Service Reform; Connect America Fund – Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10149, para. 28 (2016), and *Connect America Fund*, Order, 31 FCC Rcd 12086, 12092, para. 21 (2016). Thus, the Bureau adopted reasonable comparability voice and broadband benchmarks separately for Alaska Plan rate-of-return carriers and Alaska Communications Systems. Specifically, the Alaska-specific benchmark utilizes four rather than two standard deviations. *See Reasonable Comparability Benchmarks for Alaska PN*.

[164] 47 CFR § 54.313(a)(10). The Bureau established the 2016 reasonable comparability benchmark for voice services was $41.07. *See 2016 Urban Rate Survey*, 31 FCC Rcd at 3393.

[165] *See 2023 Urban Rate Survey* at 1.

[166] *Wireline Competition Bureau Seeks Comment on Modifying the Calculation of Broadband Benchmarks*, WC Docket No. 10-90, Public Notice, DA 23-274 (May 8, 2023) (Comments were due by June 23, 2023) (*2023 Broadband Benchmarks PN*).

[167] *2023 Broadband Benchmarks PN* at 3.

[168] *Id*. at 2-3.

[169] *Id*. at 3.

[170] *Id*.

CAM carriers in meeting the Alaska-specific benchmark should they be allowed to become Alaska Connect Fund recipients.

53. *Deployment Milestones*. We seek comment on what the deployment milestones should be for the Alaska Connect Fund. In the Alaska Plan, carriers were required to meet only two specific milestones; one by the end of the fifth year of support year and then by the end of the final year and report their progress annually.[171] This was done to provide flexibility for planning based on the shortened construction season and the carrier-submitted performance plans identifying the location obligation.[172] How does the term of support impact the interval of required milestones, e.g. should an intermediate milestone be required if the Commission adopts a support term of something less than ten years, and should more intermediate milestones be set if we adopt a support term of more than ten years? Are there other factors to consider in establishing deployment milestones, both intermediate and final?

6. Support Term and Timing

54. We seek comment on a support term for the Alaska Connect Fund. The Alaska Plan and ACS CAF II commitments, along with several other high-cost programs, have previously established ten-year support terms that require mid-point evaluations and milestone achievements. The ATA Petition asks the Commission to cut the original Alaska Plan program short and start the Alaska Connect Fund in 2024 rather than at the end of 2026, when the Alaska Plan term is over.[173] It also asks for the Alaska Connect Fund to run through 2034, and for that term to extend at one-year intervals thereafter absent some other decision by the Commission.[174] The AMMES plan proposes an eight-year term of support, but support amounts are reduced after year four.[175] Given the life expectancy of current technology, the rate of technological advancement, and the changing landscape of competition in Alaska, we seek comment on the appropriate support term for the Alaska Connect Fund. Does addressing high-cost support in Alaska more frequently allow the Commission to more precisely address competition and changes in the marketplace? Would a shorter support term improve planning and deployment? What impact does the shortened construction season have in considering a shorter term of support?

55. Given that Alaska, like other states, is still in the planning phase for BEAD funding, we seek comment on when the Commission should begin the Alaska Connect Fund support program. Would it be more prudent for us to wait to move forward with the Alaska Connect Fund until the conclusion of BEAD planning and the planning for other projects are complete, in order to better coordinate the Alaska Connect Fund with other federal programs? We seek comment on measures to avoid duplicative support if the Commission does not wait to initiate the Alaska Connect Fund.

7. Accountability and Oversight

56. The Commission relies on mandatory deployment, reporting, and testing requirements and oversight rules to reduce waste, fraud, and abuse of program support and to ensure that carriers are meeting their commitments to provide high-quality broadband services.[176] As we did with the Alaska

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[171] *Alaska Plan Order*, 31 FCC Rcd at 10149-50, paras 30-31.

[172] *Id.* at 10150, para. 31.

[173] ATA Petition at 15.

[174] ATA Petition at 15-16.

[175] AMMES Petition at 9-10, 12; *see also* Letter from Jeffry H. Smith, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 2 (filed November 18, 2022) (proposing to fund an eight year program, at $25 million annually for years 1-4, and reduced to $15 million annually for years 5-8).

[176] *See Connect America Fund*; *ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8967 (2014) (*Rural Broadband Experiments Order*); *2016 Rate-of-Return Reform Order*, 31 FCC at 3166, para. 214.

Plan, we propose to establish reporting, performance testing, document retention, and oversight requirements for the Alaska Connect Fund recipients. We propose to maintain the existing framework for potential reductions in support for failure to meet any of the Alaska Connect Fund obligations. Furthermore, as for all ETCs, we propose that all Alaska Connect Fund recipients will be subject to compliance audits and other investigations and enforcement measures as necessary. We seek comment on these proposals.

57. We seek comment on any reporting, performance testing, or accountability issues in the Alaska Plan that need to be refined for the Alaska Connect Fund.[177] Should the Alaska Connect Fund require new accountability or oversight procedures, and if so, what should those look like? Should the Commission require monitoring and reassessment in the Alaska Connect Fund as it has in the Tribal Nations and Tribal Lands in Alaska.

8. Tribal Nations and Tribal Lands in Alaska

58. The Commission is committed to working with Tribes and Tribal leaders.[178] We seek comment generally on considerations necessary for including Tribal governments, Tribal Nations, Tribal lands, and residents of Tribal Lands in the Alaska Connect Fund. What progress has been made with NTIA's Tribal Broadband Connectivity Program and other Tribal broadband program support received in Alaska? How has that changed who is providing service to the communities? Are the services being provided on Tribal Lands affordable for residents? Is there any need to revisit the definition of Tribal lands in Alaska – are there Tribal Nations, Tribal lands or Tribal entities in Alaska that do not fit into the current definition but should be included for the purpose of the Alaska Connect Fund?[179]

59. The Commission recently discussed with Tribal Nations in Alaska and their representatives issues related to obtaining ETC status for purposes of receiving high-cost and Alaska Plan program support.[180] The Commission allows carriers serving Tribal lands to seek ETC status directly from the Commission in certain situations.[181] We seek comment on whether there are still barriers for Tribal Nations in Alaska in obtaining ETC status. How can the Commission streamline the ETC process or other processes to increase Tribal Nation access to Alaska Connect Fund support?

60. Recognizing that engagement between Tribal Nations and service providers "is vitally important to the successful deployment and provision of service," the Commission implemented an annual obligation that requires carriers to demonstrate that they have meaningfully engaged Tribal

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[177] *See* 47 CFR §§ 54.313, 54.316, 54.320.

[178] State of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, Policy Statement 16 FCC Rcd 4078 (2000).

[179] In the *Enhanced A-CAM Order*, the Commission used the same definition of "Tribal lands" that we adopted for A-CAM II. *See Enhanced A-CAM Order* at para. 76, n. 218 (citing *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11911, para. 55 n.122 (defining Tribal Lands to "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 also* 47 CFR § 54.5.

[180] *See* July 2023 Pacific Dataport *Ex Parte* Letter (meeting with representatives from Alaska Public Interest Research Group, Native Movement, Alaska Tribal Broadband, Quill, LLC, OptimERA, and Pacific Dataport).

[181] *See 2000 Tribal Order* at 12265-69, paras. 115-127; *see also Telecommunications Carriers Eligible for Universal Support, Connect America Fund*, WC Docket Nos. 09-197, 10-90, Order, 35 FCC Rcd 4416 (2020) (*Fond Du Lac ETC Designation)* (designating Fond du Lac Communications, Inc. as ETC for specific types of USF support).

governments in their supported areas.[182] We seek comment on the experience of Tribal Nations and Tribal governments and providers in Alaska with the Commission's Tribal engagement requirement. Has this obligation led to the successful deployment and provision of service on Tribal lands in Alaska? We invite comment on whether the Commission's Tribal engagement requirements in Alaska need to be strengthened. How can the Commission help ensure that service providers meet their existing Tribal engagement requirement in Alaska? How can we better encourage the participation of Tribal governments in decisions regarding deployment of service on their lands. Are there unique considerations regarding engagement with Tribal governments in Alaska that we should take into account? We seek comment on the potential consequences of failing to meet this requirement and whether those outcomes have been sufficient to ensure that service providers meet the Tribal engagement requirement in Alaska ?[183] Should the receipt of Alaska Connect Fund support be conditioned on obtaining Tribal consent to provide broadband service for carriers serving Tribal Nations and Tribal Lands in Alaska?[184] Or should the Commission adopt a Tribal consent framework similar to the BEAD program?[185] Is there another framework that could better benefit the Tribal Nations, Tribal Lands, and Tribal residents of Alaska?

9. Transitional and Phased Down Support

61. As previously discussed, carriers are receiving high-cost support for Alaska through several different mechanisms, and the term for each is set to conclude in a different year: Alaska Plan support and A-CAM I will end in 2026, ACS CAF II frozen support will end at the end of December 2025.[186] Historically, where a carrier's support term has ended before the next phase of support begins, the Commission has approved an extension of support to bridge this gap. For example, recently the Commission approved transitional support for mobile wireless service in Puerto Rico and USVI. The support term begins the month after a carrier's final program disbursement and is there to bridge the gap until the Commission adopts a long-term support mechanism.[187] If the Alaska Connect Fund begins in

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[182] *USF/ICC Transformation Order,* 26 FCC Rcd at 17868, para. 637. The ETC Tribal engagement obligation is reported in the annual certification and summary of carrier compliance (FCC Form 481). *USF/ICC Transformation Order*, 26 FCC Rcd at 17868, para. 637; 47 CFR § 54.313(a)(5), (j) (to the extent the recipient serves Tribal lands, the filing must incorporate documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included: (1) needs assessment and deployment planning; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights-of-way processes, land-use permitting, facilities siting, environmental and cultural preservation and review processes; and (5) compliance with Tribal business and licensing requirements).

[183] Carriers failing to satisfy the Tribal government engagement obligation would be subject to financial consequences, including potential reduction in support should they fail to fulfill their engagement obligation. *USF/ICC Transformation Order,* 26 FCC Rcd at 17868, para. 637.

[184] *See Enhanced A-CAM Order*, FCC 23-60 at paras. 103-104 (requiring carriers receiving Enhanced A-CAM support to initiate engagement with any relevant Tribal governments within 90 days of the Bureau extending an Enhanced A-CAM offer).

[185] *See Enhanced A-CAM Order*, FCC 23-60 at paras. 103-104, note 297. For the BEAD program, if the locations are on a Tribal consortium's Tribal land, the service provider cannot be authorized to receive support for Tribal locations unless and until each relevant Tribal government adopts a resolution of consent. For consent in Alaska, this includes "gain[ing] consent (by Tribal resolution) of 51 percent or more of the federally recognized [T]ribal governments in the Alaska Native Region in which the infrastructure will be deployed," except for deployments within the Metlakatla Reservation which "will require only the consent (via Tribal resolution) of the Metlakatla Reservation's Tribal Government." *See* BEAD Program NOFO at 48 n.70.

[186] *ACS Order*, 31 FCC Rcd at 12092-93, para. 24.

[187] *See Wireline Competition Bureau Authorizes Transitional Mobile Support for Certain Providers Participating in the Bringing Puerto Rico Together Fund and the Connect USVI Fund*, WC Docket Nos. 18-143-10-90, Public

(continued….)

2027, ACS will have at least a year of gap between its last disbursement and the initiation of the Alaska Connect Fund disbursements.[188] If Alaska Connect Fund support has not been established by 2027, there will be a gap in disbursements for Alaska Plan participants as well. We seek comment on whether and how the Commission continue to provide support so that carriers do not experience a gap in support before the start of the Alaska Connect Fund.

62. In addition, the Commission has phased down support for providers when changes in the program result in changes in support. For example, the Commission established a phase down period for ILEC fixed support carriers receiving high-cost support in Puerto Rico following the competitive process.[189] We seek comment on phasing down support for the ILEC in any areas in which it is not authorized to receive Alaska Connect Fund support.

III. THE ALASKA CONNECT FUND FOR MOBILE WIRELESS CARRIERS

63. The mobile wireless portion of the Alaska Plan—like the fixed portion—is scheduled to end on December 31, 2026.[190] While progress has been made toward mobile deployment to remote areas in Alaska in the first half of the Alaska Plan, we note that much still needs to be done to ensure that Alaskans in remote areas have access to reliable, advanced mobile service, as more than 70,000 Alaskans in eligible Alaska Plan areas are still without at least 4G LTE at 5/1 Mbps.[191] In this section, we seek comment on what a new phase of the Alaska Plan should look like for mobile service providers. As we consider how to address the realities of mobile deployment in Alaska, as well as the changes that have occurred since the original Alaska Plan was adopted, we draw on our experience from the existing Alaska Plan for mobile support, as well as the submissions and comments of stakeholders.

Image C: Map of Alaska Areas with at least 4G LTE at 5/1 Mbps as of December 31, 2022[192]

Notice, DA 23-510 (June 14, 2023); *The Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket Nos. 18-143, 10-90, Report and Order and Order on Review, FCC 23-32, at 13, paras. 35-36 (Apr. 19, 2023) (*PR-USVI Transitional Support Order*).

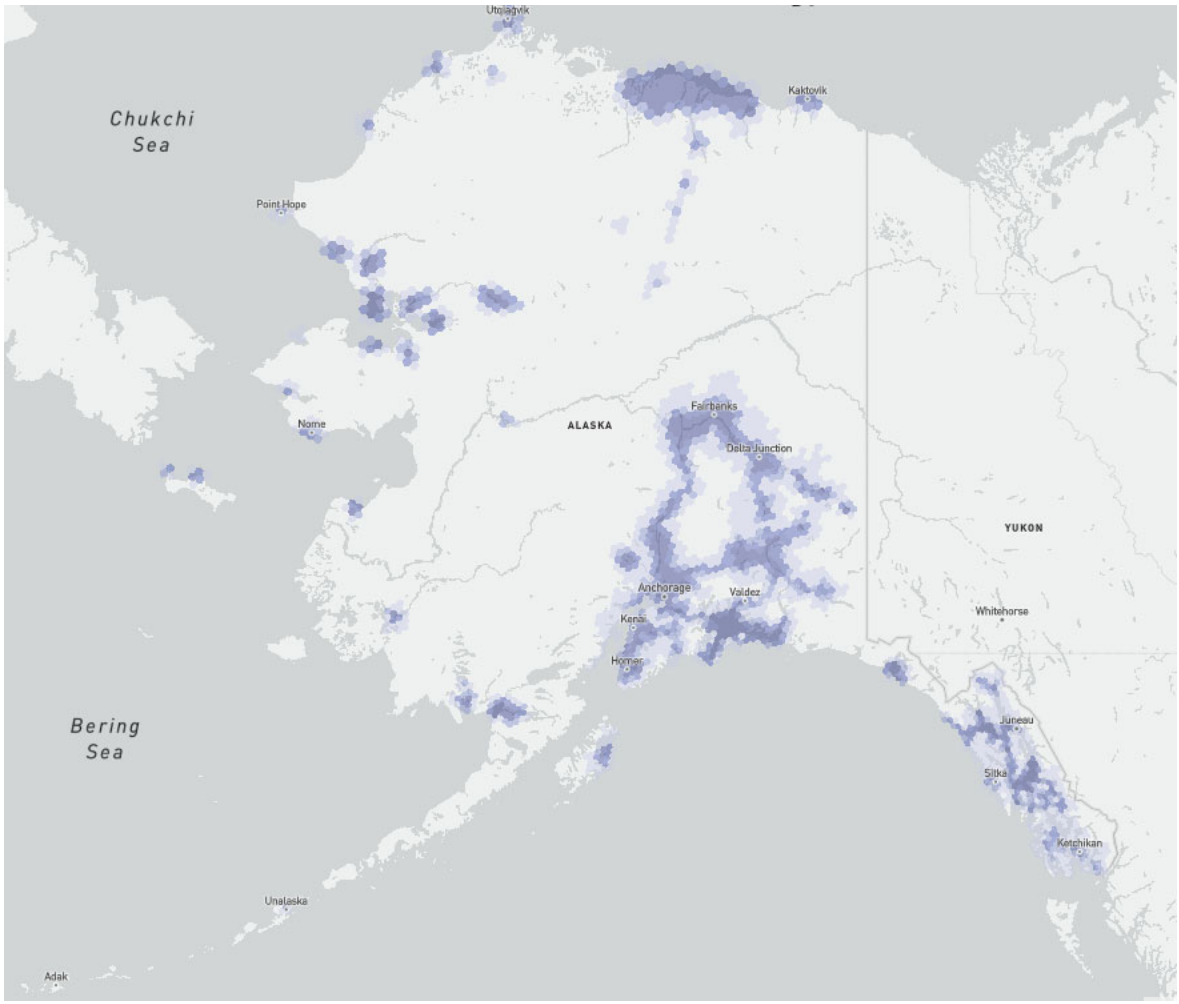
[188] *See* July 2023 ACS *Ex Parte* Letter.

[189] *See Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, WC Docket Nos. 10-90, 18-143, 14-58, Report and Order, Order on Reconsideration, 34 FCC Rcd 9109, 9155-9158, paras. 87-91 (2019) (phasing down support for carriers receiving frozen support). *See also*, *e.g.*, *Wireline Competition Bureau Announces Beginning of Phase Down of Legacy Support for Price Cap Carriers and Fixed Competitive Eligible Telecommunications Carriers After Authorization of Connect America Fund Phase II Auction Support*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 3173 (2019) (phasing down support for legacy high-cost price cap carriers once CAF Phase II auction support was authorized).

[190] *See* 47 CFR § 54.317(d); *Alaska Plan Order*, 31 FCC Rcd at 10159, para. 66; *Wireless Telecommunications Bureau Approves Performance Plans of the Eight Wireless Providers That Elected to Participate in the Alaska Plan*, WC Docket No. 16-271, Public Notice, 31 FCC Rcd 13317, 13318, Appx. (WTB 2016) (*Wireless Commitments Notice*) (accepting all eight mobile provider performance plans and directing the Universal Service Administrative Company (USAC) to obligate and disburse frozen support as provided under the *Alaska Plan Order*, starting January 1, 2017, to each of these CETCs, subject to a timely certification by December 29, 2016, by an officer of each carrier); *see also, e.g.*, *Connect America Fund—Alaska Plan; Establishing the Digital Opportunity Data Act*, WC Docket Nos. 16-271, 19-195, Order, DA 23-699 at 4, para. 7 (WTB/OEA 2023) (*Alaska Continued Form 477 Order)* (noting the end of the Alaska Plan is December 31, 2026).

[191] There are 149,610 Alaskans in eligible areas of the Alaska Plan, based on the Alaska Population Distribution Model, which uses 2010 Census data. According to data from the Broadband Data Collection, using 2010 Census data, 79,340 lived in areas with at least 5/1 Mbps 4G LTE capability.

[192] This map includes both eligible and ineligible mobile providers throughout Alaska.



A. BACKGROUND

1. 2016 *Alaska Plan Order* for Mobile Services

64. As with fixed services, the *2016 Alaska Plan Order* sought to upgrade and extend mobile service in remote Alaska,[193] building on ATA's proposal as it related to mobile providers.[194] The mobile portion of the Alaska Plan established a mechanism to continue the high-cost support that competitive ETCs providing mobile service to remote areas of Alaska were receiving, frozen at December 2014 levels,[195] for a ten-year period, totaling approximately $739 million in mobile high-cost, frozen support.[196]

[193] *See Alaska Plan Order*, 31 FCC Rcd at 10159-74, paras. 66-106.

[194] *See id.* at 10140, 10159, 10162, paras. 1, 66, 72 (adopting the mobile portion of ATA's proposal, subject to certain conditions and modifications); *see also, e.g.*, Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. at 2-3 (filed Feb. 20, 2015) (ATA Feb. 20, 2015 *Ex Parte* Letter); Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. (filed June 16, 2016).

[195] *Alaska Plan Order*, 31 FCC Rcd at 10159, 10164, paras. 66, 75. The December 31, 2014 support levels were frozen in 2011 in the *USF/ICC Transformation Order*. *See id*. at 10160, para. 68; *see also* ATA Petition at 17.

[196] *See Alaska Plan Order*, 31 FCC Rcd at 10164, para. 75.

Mobile providers that were already receiving high-cost support in Alaska for remote areas[197] could elect to participate in the Alaska Plan in exchange for commitments to offer improved mobile broadband service to a specified number of Alaskans,[198] subject to approved exceptions.[199] On December 21, 2016, the Wireless Telecommunications Bureau (WTB) approved the performance plans of the eight mobile providers that were eligible to participate.[200]

65. In addition, under the *2016 Alaska Plan Order*, high-cost support that had previously been given to mobile competitive ETCs in nonremote portions of Alaska was reallocated to a reverse auction fund that would be used to bring mobile broadband to unserved areas of Alaska.[201] Based on the reallocation of nonremote and other phase-down and removed support, this fund would have $162 million by the end of the ten-year period.[202]

2. Material Changes Since Plan Adoption in 2016

66. Since the Alaska Plan was adopted in 2016, several material changes have occurred that affect mobile deployment and plan administration in Alaska. First, nationwide providers have shifted toward deployment of 5G-NR throughout the country, and as such, the Commission has taken steps to ensure consumers benefit from 5G-NR technology, which is the latest generation mobile service, in high-cost areas.[203] While WTB counts 5G-NR deployments toward satisfaction of 4G LTE commitments,[204] the stated goal of the *2016 Alaska Plan Order* was to ensure that 4G LTE was deployed throughout

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[197] *See id.* at 10170-71, paras. 96-98.

[198] *See id.* at 10171, para. 97.

[199] *Id*. at 10167, para. 86.

[200] *Wireless Commitments Public Notice*, 31 FCC Rcd at 13318. WTB subsequently approved revised performance plans for ASTAC and GCI. *See Wireless Telecommunications Bureau Approves ASTAC's and GCI's Revised Performance Plans Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 34 FCC Rcd 12183, 12184 (WTB 2019) (approving ASTAC's operative performance plan) (*ASTAC Revised Performance Plan Public Notice); Wireless Telecommunications Bureau Approves GCI's Revised Performance Plan Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 35 FCC Rcd 9539, 9540 (WTB 2020) (*GCI Second Revised Performance Plan Public Notice*) (approving the current operative plan for GCI).

[201] *See Alaska Plan Order*, 31 FCC Rcd at 10173-74, para. 106.

[202] *See Alaska Plan Order*, 31 FCC Rcd at 10173-74, para. 106. The $162 million figure was determined by staff analysis based on the amount of funds that would be in the reverse auction fund for "unserved areas" by December 31, 2026. The *Alaska Plan Order* redistributed funds that were going to nonremote areas and ineligible providers and, after shoring up some of the funding to fixed providers under the Alaska Plan, reallocated those funds for use in unserved areas with distribution via reverse auction rules. *See id.* at 10174, para. 106. Nonremote support to competitive ETCs and AT&T/Dobson funds were annually phased out and, correspondingly, annually phased in to the reverse auction fund. *See id.* at 10171, 10173, paras. 99, 106. Funds that were being allocated to Matanuska Wireless were not phased out, making its full funds annually distributed to the reverse auction fund. *See id.* at 10174, para. 106 n.205 & 207. The "unserved areas" that were to be eligible for the reverse auction were defined by the *Alaska Plan Order* as "those census blocks where less than 15% of the population within the census block was within any mobile carrier's coverage area." *Id.* at 10174, para. 106.

[203] *See, e.g.*, *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12178, para. 10 (2020); *Uniendo a Puerto Rico Fund and the Connect USVI Fund*, WC Docket Nos. 18-143, 14-58, and 10-90, Report and Order and Order on Reconsideration, 34 FCC Rcd 9109, 9172, para. 124 (2019) (*PR-USVI Stage 2 Order*) (discussing the minimum service requirements for the portion of support directed to the deployment of 5G-NR networks).

[204] *See, e.g.*, *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order and Request for Comment, 37 FCC Rcd 5882, 5901, para. 37 (WTB 2022) (*Alaska Drive Test Order*).

remote areas of Alaska.[205] Second, nationwide providers have shut down their respective 3G networks,[206] but current operative Alaska Plan commitments still allow buildout of—and high-cost support for—both 2G and 3G networks.[207] Third, the data available to measure population in Alaska has changed since the *2016 Alaska Plan Order*. To control variables related to population growth, the 2016 Alaska Plan relies on 2010 census data,[208] even though more recent 2020 census data are available to provide more current population counts per census block. And fourth, the Commission has materially revamped its collection of mobile broadband availability data, moving away from FCC Form 477—which was sunset in 2022[209]—to the BDC.[210] As noted above, the Broadband Data Act requires the Commission to use the maps developed under the BDC "to determine the areas in which terrestrial fixed, fixed wireless, mobile, and satellite broadband internet access service is and is not available . . . when making any new award of funding with respect to the deployment of broadband internet access intended for use by residential and mobile customers."[211] Mobile providers' commitments under the Alaska Plan, however, were based on their FCC Form 477 coverage data, and WTB still relies on those data for determining compliance with those providers' commitments.[212]

67. The differences between the FCC Form 477 and the BDC are significant. For example, FCC Form 477 allowed mobile-broadband providers to submit polygons depicting mobile coverage based on mobile providers' respective propagation models. Mobile service providers were required to submit nationwide polygons for each mobile broadband transmission technology at the minimum advertised upload and download data speeds where users should expect to receive those advertised speeds;[213] and separate polygons were required for each mobile technology and minimum speed.[214] For mobile voice,

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[205] *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 86.

[206] FCC, *Plan Ahead for Phase Out of 3G Cellular Networks and Service*, Consumer Guide (Oct. 7, 2022), https://www.fcc.gov/sites/default/files/plan_ahead_for_3g_shutoff_consumer_guide.pdf.

[207] *See Wireless Commitments Public Notice*, 31 FCC Rcd at 13320-21, 13322-23, Appx. (providing the currently operative plans for two mobile providers with 3G or 2G commitments: TelAlaska and Windy City Cellular); *GCI Second Revised Performance Plan Public Notice*, 35 FCC Rcd at 9541 (providing the operative plan for GCI).

[208] *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, 35 FCC Rcd 10373, 10377, 10378, paras. 11 n.28, 15 (WTB 2020) (*Alaska Population Distribution Order*).

[209] *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Order, FCC 22-93, at 1, 4-6, paras. 1, 10-13 (Dec. 9, 2022) (*Form 477 Sunset Order*) (discussing the effort to replace Form 477 deployment data with Broadband Data Collection data).

[210] *See Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7474-83, paras. 32-51 (2020) (*BDC Second Report and Order and Third Further Notice*) (outlining FCC's requirements in new coverage maps); *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195 and 11-10, Third Report and Order, 36 FCC Rcd 1126, 1146-51, 1164-75, paras. 50-60, 97-125 (2021) (*BDC Third Report and Order*) (creating new practices to verify accuracy of provider coverage maps and a mechanism to accept consumer challenges due to lack of service or poor service quality).

[211] 47 U.S.C. § 642(c)(2)(A)-(B).

[212] *See Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103; *Alaska Continued Form 477 Order*, DA 23-699 at 1, 3, paras. 1, 5; *see also Alaska Plan Order*, 31 FCC Rcd at 10169-70, paras. 92, 94 (describing Commission's use of FCC Form 477 to determine overlap of 4G LTE coverage).

[213] FCC Form 477, Instructions for Filings as of December 31, 2019-June 30, 2022, at 25, https://us-fcc.app.box.com/v/Form477InstThruJune2022.

[214] *Id*.

facilities-based mobile providers were required to submit polygons where they provided voice service and to submit a separate polygon for each mobile technology.[215]

68. In contrast the BDC specifies certain parameter values that providers must use in their propagation models. This change was intended to generate new, granular, and improved maps and more consistent depictions of mobile coverage across different mobile providers.[216] For example, as mandated by the Broadband DATA Act,[217] the BDC requires providers to represent 4G LTE coverage where mobile wireless should expect to receive minimum user speeds of 5/1 Mbps at the cell edge, with a cell edge probability of not less than 90% and a cell loading of not less than 50%.[218] In other words, the BDC standardizes many of the parameters that previously were within a provider's discretion and, as a result, can lead to different mobile coverage maps as compared to carriers' submissions via the FCC Form 477. The BDC also requires the submission of mobile coverage maps based on two different environments—outdoor stationary coverage and in-vehicle mobile.[219]

69. For all submitted coverage data, the Broadband DATA Act also requires that the BDC have challenge, verification, and audit processes, which provide mechanisms to evaluate and improve the accuracy of a provider's coverage data.[220] As part of these processes, the BDC requires mobile providers to submit either on-the-ground test data or, in certain instances, infrastructure data.[221] When providers submit infrastructure data in response to a verification inquiry, Commission staff can make their own propagation models of mobile providers' coverage.[222] In addition, the BDC requires the Commission to conduct audits of providers' BDC data, which can involve the submission of providers' infrastructure data to help evaluate the accuracy of a provider's coverage data.[223]

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[215] FCC Form 477, Instructions for Filings as of December 31, 2019-June 30, 2022, at 26-27, https://us-fcc.app.box.com/v/Form477InstThruJune2022.

[216] *BDC Second Report and Order and Third Further Notice*, 35 FCC Rcd at 7461, para. 2.

[217] 47 U.S.C. § 642(b)(2)(B)(ii)(I). The Commission also adopted standardized parameters for other technologies, such as 5G-NR. *See* 47 CFR § 1.7004(c)(3)(ii)-(v). *Compare* FCC Form 477, Instructions for Filings as of December 31, 2019-June 30, 2022, at 24-25, 31, https://us-fcc.app.box.com/v/Form477InstThruJune2022; FCC Form 477, Instructions For Filings Through June 30, 2019, at 23-24, 30, https://us-fcc.app.box.com/v/Form477InstThruJune19 *with* FCC, Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data at 49-72 (Mar. 30, 2023) (listing all of the data that must be provided for the mobile data availability data collection in the BDC), https://us-fcc.app.box.com/v/bdc-availability-spec.

[218] 47 CFR § 1.7004(c)(3)(i), (ii); *BDC Second Report and Order and Third Further Notice*, 35 FCC Rcd at 7479, para. 44.

[219] *See* FCC, *Broadband Data Collection, Data Specifications for Biannual Submission of Subscription, Availability, and Supporting Data* (Mar. 30, 2023) at 49 ("The map for each particular service, technology, and speed must report coverage for two modeled environments: one modeled for outdoor stationary service and a second modeled for in-vehicle mobile service"), https://us-fcc.app.box.com/v/bdc-availability-spec.

[220] 47 U.S.C. § 642(b)(4)-(5); *BDC Third Report and Order*, 36 FCC Rcd at 1146-51, 1164-75, paras. 50-60, 97-125.

[221] *Establishing the Digital Opportunity Data Collection*, WC Docket No. 19-195, Order, 37 FCC Rcd 3007, 3062, 3063-64, paras. 99, 104 (WTB/OEA/OET 2022) (*BDC Mobile Technical Requirements Order*).

[222] *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3065, para. 107.

[223] 47 U.S.C. § 644(a); *BDC Second Order and Third Further Notice*, 35 FCC Rcd at 7486, para. 60.

70. The mobile providers' commitments in the Alaska Plan were created pursuant to FCC Form 477 coverage map assumptions.[224] Each mobile provider committed to cover a specified number of Alaskans by technology and minimum speed, subject to the type of middle mile technology available.[225] Because the BDC specifies the minimum speeds per technology and the parameters that providers must use in their propagation models, the BDC mapping requirements can result in significantly different coverage maps compared to those submitted under the FCC Form 477 rules. As a result, the change in mapping requirements does not allow like comparisons between FCC Form 477 and BDC coverage maps, making BDC data incompatible with the Alaska Plan.[226]

71. While implementing the BDC, the Commission delegated authority to WTB and OEA to instruct Alaska Plan mobile participants how to submit coverage data specific to Alaska after the use of FCC Form 477 had been sunset.[227] On August 15, 2023, WTB and OEA released an order requiring mobile providers in the Alaska Plan to continue to file deployment data consistent with FCC Form 477 annually until March 1, 2028, in order to continue having like comparisons of mobile coverage maps throughout the scheduled duration of the Alaska Plan.[228]

3. ATA's Petition and Other Stakeholder Filings Affecting Mobile Services

72. As noted in the "Fixed Carrier" section above,[229] ATA filed a petition for rulemaking on January 4, 2023, asking the Commission to update and extend the Alaska Plan program through 2034.[230] With respect to mobile services, ATA argues that the Commission should "reset" the Alaska Plan because it currently focuses on expanding 4G, 3G, and 2G/voice services while the rest of the country moves toward 5G.[231] ATA asserts that such changes should be made as soon as possible to allow carriers to begin to plan deployments and upgrades beyond the expiration of their current support,[232] and that the "necessary mobile progress will [not] be funded by BEAD, ReConnect, or any other program other than the Alaska Plan."[233]

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[224] *See Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103; *Wireless Commitments Public Notice*, 31 FCC Rcd at 13320-21, 13322-23, Appx. (providing technology commitments using 2016 FCC Form 477 technology codes); *ASTAC Revised Performance Plan Public Notice*, 34 FCC Rcd at 12185-86, Appx.; *GCI Second Revised Performance Plan Public Notice*, 35 FCC Rcd at 9541, Appx.

[225] *See Alaska Plan Order*, 31 FCC Rcd at 10166, 10171, paras. 85, 97.

[226] *See, e.g.*, *Alaska Continued Form 477 Order*, DA 23-699 at 1, para. 1 (explaining that relying solely on data obtained through the BDC would not "allow for like comparisons to the previous deployment data on which these providers based their performance commitments"). The *Alaska Plan Order* specified that the Commission would "rely on participating carriers' Form 477 submissions in determining whether each carrier's five-year and 10-year milestones have been met." *See Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103. The Commission has previously acknowledged that BDC coverage data does not allow for like-coverage comparisons with previous FCC Form 477 coverage filings. *See Form 477 Sunset Order* at 6, para. 14 & n.40.

[227] *Form 477 Sunset Order* at 6, para. 14.

[228] *Alaska Continued Form 477 Order* at 3, para. 5.

[229] *See supra* paras. 12-14.

[230] ATA Petition at 2, 15. ATA also states that "[t]o avoid uncertainty going forward, the Alaska Plan should thereafter be extended automatically at one-year intervals unless the Commission takes action otherwise." *Id*. at 15.

[231] ATA Petition at 14.

[232] *Id*. at 13, 16.

[233] *Id.* at 25.

73. In particular, ATA argues that extending the Alaska Plan's term through December 31, 2034, would provide the certainty and predictability carriers need to make network upgrades,[234] and that an inflationary adjustment would help keep pace with rising inflation—especially given that mobile participants' support was frozen at levels set in 2011.[235] ATA also argues that the Alaska Plan's mobile participants should have an opportunity to update their respective performance plans based on their unique situations,[236] and that updating the Alaska Plan provides the Commission with an opportunity to consolidate the high-cost universal support mechanisms in Alaska into a single, unified mechanism.[237]

74. Other stakeholders have also submitted filings in recent months that could affect the next version of the Alaska Plan for mobile providers. ARCC represents six of the eight mobile providers currently participating in the Alaska Plan and advocates for the AMMES plan, which proposes to recover only the operating expenses related to ultra-high middle mile transport costs and would affect both fixed and mobile last-mile service quality and pricing.[238] The Alaska Rural ISP Coalition (ARIC) represents "non-ETC . . . Internet Service Providers . . . who currently serve broadband customers in rural Alaska Native villages," including OptimERA, Alaska Tribal Spectrum, Alaska Tribal Broadband, and Microcom.[239] ARIC supports ARCC's AMMES plan with a few caveats, including that the new program should not be limited to ETCs and should be technology neutral.[240]

B. DISCUSSION

75. The Commission has previously recognized that Alaska is unique and that mobility support mechanisms in Alaska need to be flexible enough to account for Alaska's "remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season."[241] The mobile portion of the Alaska Plan aims to provide Alaskans in remote areas with advanced mobile communications services at rates that are reasonably comparable to those in urban areas.[242] Based on data from FCC Form 477 filings, the 2016 Alaska Plan increased the number of Alaskans served with 4G LTE from 33,133 to 85,865,[243] out of 149,610 Alaskans in eligible areas[244] of the

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[234] *Id.* at 15-16.

[235] *Id.* at 17-19.

[236] *Id.* at 19-21.

[237] *Id.* at 21-22. Some filers expressed support for the ATA Petition. *See, e.g.*, Letter from Mike Dunleavy, Governor, Alaska, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 16-271, 10-90 (filed Feb. 21, 2023); Letter from Bryce Edgmon, State House Representative, Alaska, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 16-271, 10-90 (filed Feb. 21, 2023).

[238] *See* ARCC Petition at 8, 10.

[239] Letter from Alexander Schumann et al., Director of Satellite Broadband, Microcom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1 (filed Jan. 3, 2023) (ARIC Jan. 3, 2023 *Ex Parte* Letter), https://www.fcc.gov/ecfs/document/1010475893154/1.

[240] ARIC Jan. 3, 2023 *Ex Parte* Letter at 1-2.

[241] *USF/ICC Transformation Order*, 26 FCC Rcd at 17829, para. 508.

[242] *Alaska Plan Order*, 31 FCC Rcd at 10164-65, para. 78.

[243] Based on staff analysis of December 2016 FCC Form 477 data and December 2021 FCC Form 477 data, respectively.

[244] *See Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, 35 FCC Rcd 10373, 10378, para. 15 (2020) citing Letter from Julie A. Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Nov. 29, 2016) (GCI Nov. 29, 2016 *Ex Parte* Letter), Attach.

Alaska Plan.[245] According to data from the Broadband Data Collection, 79,340 Alaskans in eligible areas were served by 5/1 Mbps 4G LTE as of December 31, 2022.[246] We seek comment on what actions the Commission should take to ensure that Alaskans in remote areas, particularly unserved and underserved areas, can access and continue to receive reliable and secure mobile service at reasonable prices.

76. We seek comment on whether the Alaska Plan's frozen support continues to be the right mechanism to address concerns with mobile service in Alaska going forward, or whether other types of programs or subsidies would be better suited to address concerns. We note that several mobile providers have exhibited varying levels of noncompliance with their interim commitments in the Alaska Plan. Examples of noncompliance include insufficient buildout to meet commitments to Alaskans;[247] inaccurate data filings; failure to demonstrate rates and services that are reasonably comparable with Anchorage;[248] and failure to update performance plans as required.[249] In light of this, how can we better ensure that high-cost support in Alaska is helping to bring advanced mobile communications services to remote areas in the state? We seek comment on all matters related to the next version of the Alaska Plan, particularly the ways in which the original Alaska Plan could be improved upon to deliver more reliable and secure mobile service, as well as how the Alaska Connect Fund should account for other support mechanisms or funding programs in Alaska.

1. Eligible Areas And Services

77. We seek comment on how to determine eligible areas and services for the mobile portion of the Alaska Connect Fund. An area had to satisfy two criteria to be considered an eligible area for mobile services under the *2016 Alaska Plan Order*. First, it had to be a "remote area[] in Alaska," which the Commission defined as all of Alaska except most of Anchorage, Juneau, Fairbanks, Chugiak, and Eagle River.[250] Second, eligible areas "include[d] only those census blocks where, as of December 31, 2014, less than 85% of the population was covered by the 4G LTE service of providers that [were] either currently unsubsidized by the high-cost mechanism or subject to a phase down of all current mobile support in the relevant cell block."[251]

78. We seek comment on how to define eligible areas for the next version of the plan. What, if any, changes should we make to the eligible areas criteria that the Commission used in the *2016 Alaska Plan Order*? Under the BDC, the Commission displays mobile coverage availability data based on both stationary/pedestrian coverage and in-vehicle coverage. Which coverage data should the Commission use to determine the eligible areas for the Alaska Connect Fund?

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[245] Based on 2010 census population data of eligible blocks.

[246] This is FCC staff analysis based on of December 31, 2022 Broadband Data Collection mobile availability data and 2010 Census population data.

[247] 47 CFR § 54.320(d).

[248] 47 CFR § 54.308(d).

[249] 47 CFR § 54.317(f).

[250] 47 CFR § 54.307(e)(3)(i).

[251] *Alaska Plan Order*, 31 FCC Rcd at 10168, para. 90; *accord id.* at 10167, para. 87. After eliminating ineligible census blocks based on these criteria, a list of eligible census block in the Alaska Plan was created. *See Alaska Population Distribution Order*, 35 FCC Rcd at 10378, para. 15; *see also* Letter from Julie A. Veach, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271 (filed Nov. 29, 2016) (GCI Nov. 29, 2016 *Ex Parte* Letter), Attach. (providing a list of remote census blocks in Alaska, with column C indicating whether census block is eligible due to state of LTE coverage by ineligible provider); *Wireless Telecommunications Bureau Seeks Comment on Population Distribution Model and Eligible Census Block List to be Applied in the Alaska Plan*, WC Docket No. 16-271, Public Notice, 35 FCC Rcd 1520, 1524, para. 12 (WTB 2020).

79. As an initial matter for determining eligible areas, we seek comment on how to define a base geographic unit for purposes of determining eligible areas.[252] Instead of census blocks, which were used in the Alaska Plan, we propose to use the H3 hexagonal geospatial indexing system (H3 system),[253] consistent with the BDC,[254] to identify the areas eligible for high-cost support similar to the approach the Commission is considering for the 5G Fund? WTB, OEA, and OET adopted the H3 system to identify geographic areas where a challenge to a provider's mobile BDC availability data can be created based on the locations of on-the-ground challenger speed tests, and the system has been integrated into the BDC verification process.[255] The H3 system is useful because it provides a canonical way to reference, index, and compare wireless coverage using boundaries that are of a nearly uniform size. In addition, the nested nature of the hexes allows aggregation of like-sized areas to like-sized areas, unlike scaling up from blocks to block groups to tracts since these geographic areas can be of widely divergent sizes. The H3 system is used to divide the National Broadband Map into specific geographic areas, and the Map shows the percentage of a hexagon that is "covered" (i.e., where a provider has claimed it can make broadband available) at different resolutions and levels of granularity as a user zooms in or out on the map.[256] Mobile broadband coverage is displayed down to the resolution-9 hexagon level (hex-9) on the map, and data on such coverage is made available for download based on hex-9s. Because of its nested structure, using the H3 system allows the Commission to categorize geographic areas at multiple levels of granularity.[257]

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[252] This would be the generally applicable unit for analysis. The first version of the Alaska Plan was a census block-based plan. This base geographic unit did not change, but the locations of populations within those blocks were subject to the Alaska Population Distribution Model. *See, e.g.*, *Alaska Population Distribution Order*, 35 FCC Rcd at 10375-77, paras. 6, 10 n.25, 12.

[253] H3 is an open-source GIS dataset developed by Uber Technologies, Inc., that overlays the globe with hexagonal cells of different sizes at various resolutions, from zero to 15. *See* Isaac Brodsky, *H3: Uber's Hexagonal Hierarchical Spatial Index*, (June 27, 2018), https://www.uber.com/blog/h3/. The smallest hexagonal cells are at resolution 15, in which the average hexagonal cell has an area of approximately 0.9 square meters, and the largest are at resolution 0, in which the average hexagonal cell has an area of approximately 4.25 million square kilometers. *See id.* The H3 system is designed with a nested structure wherein a lower resolution cell (the "parent" hexagon) contains approximately seven hexagonal cells at the next higher resolution (its "children" where each "child" is a smaller, nested hexagon), which fit approximately within the "parent" hexagon. *See id.* ("H3 supports sixteen resolutions. Each finer resolution has cells with one seventh the area of the coarser resolution. Hexagons cannot be perfectly subdivided into seven hexagons, so the finer cells [i.e., the 'children'] are approximately contained within a parent cell. The identifiers for these child cells can be easily truncated to find their ancestor cell at a coarser resolution, enabling efficient indexing."). *See also BDC Mobile Technical Requirements* Order, 37 FCC Rcd at 3012, 3031-32, paras. 12, 41, nn.169-72.

[254] *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3012, 3031-32, paras. 12, 41, nn.169-72.

[255] *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3012, 3031-32, paras. 12, 41, nn.169-72. In cases where a test's starting and ending locations are in different hexagons because the testing device was in motion, the Commission associates the test with the hexagon containing the midpoint of the reported start and end coordinates for each test component. *Id*. at 3034, para. 47.

[256] *See generally* FCC, National Broadband Map, https://broadbandmap.fcc.gov/home (last visited Sept. 26, 2023).

[257] *See* ESRI, *Why Hexagons?*, https://pro.arcgis.com/en/pro-app/latest/tool-reference/spatial-statistics/h-whyhexagons.htm (last visited Aug. 16, 2023) ("Hexagons reduce sampling bias due to edge effects of the grid shape, this is related to the low perimeter-to-area ratio of the shape of the hexagon. A circle has the lowest ratio but cannot tessellate to form a continuous grid. Hexagons are the most circular-shaped polygon that can tessellate to form an evenly spaced grid."). Tessellations (i.e., the arrangement of shapes closely fitted together, such as polygons in a repeated pattern without gaps or overlapping) with large hexagons "suffer less distortion due to the curvature of the [E]arth." *Id*. The orientation of a hexagon matters less as compared with squares and rectangles. *Id.*

80. If we were to use hexagons as the base geographic unit to identify the areas eligible for high-cost support, we seek comment on which hexagonal resolution level—e.g., hex-8, hex-9—in the H3 hierarchy should be used.[258] Should we determine the eligible areas based on the H3 hexagonal units, specifically as hexagons at resolution 9? Hex-9s are nearly uniform and standardized and can be clearly identified and referenced. Because hex-9s are relatively small, with an average area of approximately 0.1 square kilometer,[259] any reduction in map resolution when converting from raw propagation model output (as filed by providers) to hex-9s is minimal. Hex-9s can be aggregated when focusing on an area, such as all of the hex-9s that overlap a census geography. However, the small size of a hex-9 could also lead to an increase in administrative burden, as it takes more of them for a full assessment of an area, given their small size. We seek comment on using the hex-9 and hex-8 resolutions , as the basis for identifying specific geographic areas that are eligible for high-cost support under the next version of the Alaska Plan. In the *5G Fund Further Notice*, the Commission proposed that the eligible area would be smaller than a census tract and larger than a census block group,[260] and we could aggregate hex-9s that overlap any desired census boundary. Given that some census blocks are very large in Alaska, would a combination of census blocks and hex-9s that contain locations indicated by the Fabricand road segments be more suitable for Alaska?[261] Would hex-9s be too small for this purpose in Alaska, and if so, why and what size hexagon should be used?

81. We seek comment on how to define remote areas for the Alaska Connect Fund. Under the Alaska Plan, eligible areas were limited to remote areas of Alaska.[262] The definition of "'remote areas in Alaska' includes all of Alaska except: (A) the ACS-Anchorage incumbent study area; (B) the ACS-Juneau incumbent study area; (C) the fairbankszone1 disaggregation zone in the ACS-Fairbanks incumbent study area; and (D) the Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matanuska Telephone Association incumbent study area."[263] Should we still use the definition of "remote areas in Alaska" as defined in section 54.307(e)(3)(i) of the Commission's rules? If not, what changes should we make to the definition for the purposes of the Alaska Connect Fund? For example, should the Commission publish a list of ineligible hex-9s and make that the operative definition of nonremote areas in Alaska? We seek comment on this approach as well as other approaches in how best to define eligible areas.

82. We also seek comment on what, if any, changes we should make to the requirement in the Alaska Plan that to be eligible, a remote census block needed to have less than 85% of the population covered by the 4G LTE service of providers that were either unsubsidized or not eligible for frozen support in Alaska as of December 31, 2014.[264] Under the Alaska Connect Fund, should areas be re-evaluated for eligibility based on coverage by an unsubsidized provider or a provider that is deemed

[258] *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Further Notice of Proposed Rulemaking, FCC 23-74, at 16, 21, 22, paras. 20-21, 34, 39 (Sept. 22, 2023) (*5G Fund Further Notice*); *Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12176, para. 4 (2020) (*5G Fund Order*) (adopting proposal to use Broadband Data Collection data to determine eligible areas).

[259] *See* H3, *Table of Cell Areas for H3 Resolutions*, https://h3geo.org/docs/core-library/restable/ (last visited Aug. 16, 2023).

[260] *5G Fund Further Notice*, FCC 23-74, at 22, para. 39.

[261] *5G Fund Further Notice*, FCC 23-74, at 15-16, 21-23, paras. 19, 36-38, 40-43.

[262] *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 87.

[263] 47 CFR § 54.307(e)(3)(i).

[264] *Alaska Plan Order*, 31 FCC Rcd at 10167, 10170, paras. 87, 90.

ineligible to participate in the plan?[265] If we were to use hex-9s as the base geographic unit for defining eligible areas, should we aggregate the hex-9s to a larger geographic area and then measure the percentage of that area that lacks covered hex-9s? If so, which larger geographic area should be used to aggregate hex-9s to determine eligibility? Should a larger-resolution H3 hexagon, such as a "parent" hex-8 or hex-7, or a larger Census-defined boundary such as a census block, block group, or tract be used? Further, what should that percentage be? For example, should census blocks that have 85% or greater coverage of hex-9s with 4G LTE or better coverage by an unsubsidized or ineligible provider, based on the latest BDC coverage data, be excluded from eligibility in the next version of the plan? Alternatively, if less than 85% of a hex-8 or hex-7 lacks unsubsidized 4G or better coverage based on the hex-9s within it, should that hex-8 or hex-7 geographic unit be considered eligible? If a boundary other than a larger "parent" hexagon is used to aggregate hex-9s, we will need to determine how to assign and aggregate hex-9s to the larger boundary. Should we analyze whether the centroid, or a particular areas percentage, of the hex-9 falls within the other boundary? If an unsubsidized or ineligible mobile provider is offering 4G LTE or 5G-NR service in a geographic area based on BDC data where another provider is receiving universal service support, should the Commission continue to provide universal service support in those geographic areas? Should areas with multiple providers, even if both are subsidized, be eligible? In the *5G Fund Further Notice*, the Commission proposed making ineligible those areas served with 5G-NR at speeds of at least 7/1 Mbps by an unsubsidized provider.[266] We seek comment on this proposal for the Alaska Connect Fund.

83. *Middle Mile*. We seek comment on ways to improve access to middle mile for mobile providers in the next version of the plan. The *2016 Alaska Plan Order* created three solutions to address the limitations presented by scarce middle mile in Alaska.[267] First, the *2016 Alaska Plan Order* explicitly clarified that frozen support may be used to build and upgrade middle mile, even outside of the eligible areas, when needed to meet commitments within the eligible areas.[268] Second, to better understand the extent of middle mile scarcity, the *2016 Alaska Plan Order* required all Alaska Plan participants to file maps of their fiber and microwave networks and update these maps if they deployed middle mile in the previous calendar year, with a format for these maps to be decided by the Bureaus.[269] Third, as this was a

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[265] *See, e.g.*, *infra* Sec.III.B.2 (describing how eligibility was determined in the first Alaska Plan and seeking comment on how to determine eligibility for the next phase of the plan); *see also* 47 CFR § 54.317(b) (outlining eligibility rules for the Alaska Plan).

[266] *5G Fund Further Notice*, FCC 23-74, at 15, para. 17.

[267] During the course of Alaska Plan, some improvements to middle mile occurred indirectly. Quintillion—a fiber backhaul company that neither participated, nor was eligible to participate, in the Alaska Plan—completed Stage 1 of its fiber project off of the north and northwest coast of Alaska, bringing fiber transit to mobile providers serving those coastal communities in 2017. *See, e.g.*, Winston Qiu, Quintillion Activates Arctic Subsea Cable, Submarine Cable Networks (Dec. 13, 2017), https://www.submarinenetworks.com/en/systems/asia-europe-africa/arctic-fiber/quintillion-activates-arctic-subsea-cable. Similarly, GCI completed its 3300 mile TERRA ring in 2017, which cut through the middle of the state, just as the Alaska Plan was just getting started. *See, e.g.*, Press Release, Telecompetitor, GCI Completes Construction of 3,300 mile Broadband Network in Rural Alaska, (Aug. 22, 2017), https://www.telecompetitor.com/gci-completes-construction-3300-mile-broadband-network-rural-alaska/.

[268] 47 CFR § 54.317(e).

[269] *Alaska Plan Order*, 31 FCC Rcd at 10158, 10172-73, paras. 60, 102. The middle mile requirements were the same for the fixed and mobile providers, as middle mile is often a shared infrastructure for those services. *See Wireline Competition Bureau and Wireless Telecommunications Bureau Release Instructions for Filing Terrestrial Middle-Mile Network Maps*, WC Docket No. 16-271, Public Notice, 32 FCC Rcd 6863, 6867, Appx. (WTB, WCB 2017) (*Alaska Network-Map Instructions Public Notice*); *Connect America Fund–Alaska Plan*, Order on Reconsideration, 33 FCC Rcd 2068, 2076, para. 21 n.73 (WCB, WTB 2018) (*Alaska Network-Maps Order on Reconsideration*) ("In order to ease the filing burden, we permit, but do not require, a rate-of-return carrier to file on behalf of its mobile affiliate").

ten-year plan, if a provider did not commit to provide 4G LTE at 10/1 Mbps to an area and new middle-mile services became commercially available to that area, the provider needed to submit a new performance plan incorporating the new middle mile.[270] Moreover, several providers throughout the course of the Alaska Plan have noted that middle-mile transport can be prohibitively expensive when paying a third-party, especially in areas where there is little or no comparable competitive providers.[271]

84. We seek comment on how to address middle mile concerns for mobile providers in an Alaska Connect Fund. Based on the fiber and microwave network maps and middle mile updates that the original eight mobile providers submitted,[272] it appears that several of the mobile-provider participants could reach areas with multiple transport providers—which are areas most likely to offer transport at competitive prices—but mobile-provider participants either need to add microwave towers or fiber to reach those areas or to link up their own network so that all of their service areas can benefit from the areas with multiple transport providers.[273] For such situations, how can the Commission best proceed in the next version of the plan to ensure that mobile provider service areas are connected to areas with multiple transport providers? The Alaska Plan explicitly allows funds to be spent on building out middle mile, but should the Commission set aside funds, as part of the Alaska Plan, to cover capital costs of middle mile that can have an outsized impact on the last-mile service to an area? If so, how should the Commission make such a determination? Do additional conversations need to occur with individual mobile providers so that a plan is tailored for them to build the necessary infrastructure to reach areas with multiple transport providers?

85. In an Alaska Connect Fund, should we dedicate some portion of support to middle mile buildout? If so, how should we allocate such support, and where should that funding come from? We seek comment, for example, on whether some portion of the $162 million being allocated for unserved areas[274] could be used to support middle mile buildout. If so, how should we allocate those funds? For

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[270] 47 CFR § 54.313(l); *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102.

[271] *See, e.g.*, ARCC Petition; Letter from Chris Barron, Regulatory Director, Alexicon Telecommunications Consultants on behalf of OTZ Telephone Cooperative, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1 (filed Oct. 15, 2021) (OTZ Oct. 15, 2021 *Ex Parte* Letter) ("OTZ responded that the microwave-based middle mile service—TERRA, offered by GCI and currently available in five of the ten villages—is prohibitively expensive and would render OTZ's fixed broadband internet access service unaffordable to its customers."), https://www.fcc.gov/ecfs/document/101510061879/1.

[272] *See Alaska Plan Order*, 31 FCC Rcd at 10172-73, para. 102; *see also Alaska Network Map Instructions Public Notice*, 32 FCC Rcd at 6863; *Alaska Network-Maps Order on Reconsideration*, 33 FCC Rcd at 2078, para. 21; *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, 34 FCC Rcd 1045, 1045, para. 2 (WTB, WCB 2019); *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Memorandum Opinion and Order, 35 FCC Rcd 3101, 3101-02, para. 2 (2020).

[273] *See* OTZ Oct. 15, 2021 *Ex Parte* Letter at 1 ("The Bureau inquired as to the availability of microwave-based middle mile service in the ten villages portion of OTZ's study area, and whether, if available, OTZ's Alaska Plan performance commitments should reflect such availability. OTZ responded that the microwave-based middle mile service—TERRA, offered by GCI and currently available in five of the ten villages—is prohibitively expensive and would render OTZ's fixed broadband internet access service unaffordable to its customers. As a result, OTZ procured satellite-based middle mile service until it can build its own microwave-based middle mile network to serve the entire ten villages portion of its service area. To this end, OTZ is in the final stages of obtaining a $30 million loan from the USDA—Rural Utilities Service (RUS), which will allow construction to commence soon."); *see also, e.g.*, ARIC Jan. 3, 2023 *Ex Parte* Letter at 1 ("We agree with the Alaska Remote Carrier Coalition's (ARCC) statements regarding the "ultra-high cost" of backhaul transport in rural Alaska. Recently, an Alaska carrier stated publicly that middle mile represented 83% of their costs to provide broadband service. One economic effect driving these high prices is scarcity, which will continue until more middle mile networks have been built throughout Alaska and market competition drives prices lower.").

[274] *See infra* para. 103.

example, could some portion of the $162 million be reallocated to a fund dedicated to ensure middle mile is being constructed to areas with multiple transport providers or Internet gateways, where a last-mile provider's traffic would have transport pricing subject to more competitive pressures? If the Commission were to reallocate a portion of the $162 million fund, how could this reallocation occur so as to still serve those 5,000 unserved Alaskans who were to benefit from that funding? Could some type of reimbursement program—where an Alaska Plan provider submits to the Commission its costs for constructing infrastructure to areas with lower transport costs—be included as part of the Alaska Connect Fund? If the Commission were to make such a fund a part of the Alaska Connect Fund, how could it do so without interfering with other infrastructure programs, such as BEAD? What impact will other infrastructure funding programs, including BEAD, have on mobile providers' access to middle mile? In its petition, ARCC requests that the $162 million that is being accumulated for the reverse auction[275] be reallocated to support operating costs of middle mile transport where transport costs are above $75 per Mbps.[276] Should such a system that provides additional support for high-cost transport be integrated into the Alaska Connect Fund? If so, how could we implement such a system without creating undesirable incentives for providers to incur higher transport costs in order to trigger receipt of this particular universal service support (i.e., how could we encourage carriers to seek the lowest cost, most-efficient middle mile access under ARCC's proposal)? In particular, how would such a system impact mobile service in Alaska, and are there considerations regarding this issue specifically for mobile services?

86. If we do provide funding opportunities specifically for middle mile construction, what requirements should we impose on providers that receive such funding? Should providers receiving support for the construction of middle-mile facilities be required to share capacity with other carriers on certain terms and conditions, and if so, what should those terms and conditions be? Should the appropriate standard for offering such middle-mile capacity be just and reasonable, commercially available, or something else? Should providers receiving support for the construction of middle-mile facilities be required to commit to not raising rivals' costs or charging monopoly prices? What wholesale and nondiscrimination requirements should apply to providers receiving middle mile funding? What sort of evidence should be provided to demonstrate noncompliance with such conditions, and what kinds of penalties should incur where noncompliance is found? For example, if an Alaska Plan provider is charging lower transport rates in areas with multiple transport providers than areas where it has an effective monopoly, can it have its last-mile support withheld until it lowers its middle-mile rates? Could there be some other form of cap on transport prices by Alaska Plan participants?

87. We also seek comment on the best approach for determining whether the availability of new middle mile service should result in changes to Alaska Plan mobile providers' performance plans. Should the Commission conclude that middle mile is not commercially available if the Alaska Plan participant must pay a particular price per Mbps?[277] If so, what price per Mbps makes middle-mile effectively not commercially available to mobile-provider participants so that they could not provide rates and services that are reasonably comparable to urban areas, such as Anchorage? If new middle mile becomes available, but an Alaska mobile provider claims it is too expensive to be commercially available, should we adopt a process whereby WTB provides notice to the mobile provider on whether it is required to submit a new performance plan after reviewing the costs and terms associated with the new middle mile service? Should providers that are providing fixed services at speeds above their mobile services commitments be deemed to have sufficient middle mile available to it or are there reasons to believe that

[275] ARCC Petition at 12 n. 22, https://www.fcc.gov/ecfs/document/1130479802393/1.

[276] *Id*. at 7, https://www.fcc.gov/ecfs/document/1130479802393/1.

[277] *See, e.g.*, ARCC Petition at 7 (proposing that middle mile costs over $75 per Mbps should unlock additional funding).

middle mile is constrained for the mobile provider, even if its wireline affiliate is meeting its commitments in an area?

88. Has the evolution of satellite networks and hybrid satellite-terrestrial networks restrained middle mile prices at sufficient service quality levels that can be integrated into considerations of middle mile being commercially available to an area? We seek comment more broadly on how the evolution of satellites, particularly the hybrid satellite-terrestrial networks, would impact services offered under the Alaska Plan.

89. *Areas Receiving Duplicative Support*. The Commission has sought to eliminate duplicative support—the provision of support to more than one competitive ETC in the same area—in the high-cost program.[278] To address the potential for duplicative support over time in the Alaska Plan, the Commission indicated that it would implement a process in the second half of the Plan to eliminate such support in areas where Alaska Plan support was going to two or more subsidized 4G LTE providers as of December 31, 2020, as reflected in the March 31, 2021 FCC Form 477 data.[279] The *Alaska Plan Order* also included a Further Notice of Proposed Rulemaking to address the logistics of how to handle situations where the Commission addresses areas receiving duplicative support with 4G LTE under the Alaska Plan.[280]

90. It is generally not the policy of the Universal Service Fund to subsidize competition.[281] Under the Alaska Plan, however, in some areas as many as three mobile-provider participants are receiving support and serving the same eligible area.[282] In a filing before its petition for rulemaking, ATA indicated that the Commission should not address duplication before BDC data became available.[283] In a more recent filing, ATA indicated that reducing support would threaten the financial stability of carriers and impact their ability to meet their commitments.[284] How should the Commission address situations

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[278] *Alaska Plan Order*, 31 FCC Rcd at 10169, para. 92; *USF/ICC Transformation Order*, 26 FCC Rcd at 17827, 17829, paras. 503, 507.

[279] *Alaska Plan Order*, 31 FCC Rcd at 10170, para. 94.

[280] *Alaska Plan Order/Further Notice*, 31 FCC Rcd at 10174-75, paras. 107-12.

[281] *See, e.g.*, 47 CFR § 54.319; *USF/ICC Transformation Order*, 26 FCC Rcd at 17780, paras. 148 n.238, 319; *Connect America Fund; Universal Service Reform—Mobility Fund*, WC Docket No. 10-90, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2156, para. 10 (2017) (*Mobility Fund Phase II Report and Order*) (stating unnecessary subsidies "may deter investment by unsubsidized competitors from increasing competition in those areas"); *see also* 47 U.S.C. § 254(k) (prohibiting telecommunications carriers from using uncompetitive services "to subsidize services subject to competition").

[282] Kotzebue, Alaska, for example, has three Alaska Plan mobile participants that are providing 4G LTE of at least 5/1 Mbps. Unalaska has two Alaska Plan providers and an unsubsidized non-ETC, OptimERA, providing mobile broadband. Valdez is served by two Alaska Plan providers offering 4G LTE at 5/1 Mbps and an unsubsidized provider offering 5G-NR at 35/3 Mbps. *See* FCC, National Broadband Map, https://broadbandmap.fcc.gov/home (last visited Sept. 26, 2023).

[283] *See* Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1 (filed Oct. 12, 2021), https://www.fcc.gov/ecfs/document/101278196550/1.

[284] ATA Jul. 28, 2023 *Ex Parte* Letter at 5 ("Regarding the potential for duplicative support, one factor to consider in Alaska is the critical nature of mobile service. Many villages do not have Public Safety Answering Points—emergency calls do not go to 911, but to neighbors. Having more than one provider in a remote Alaska area is not the same as having more than one provider in a rural Lower 48 community. More broadly, if the Commission's objective is to provide robust mobile service to all Alaskans, cutting support is certainly not the way to go about it. Instead, the focus should be on how to encourage the deployment of 5G to Alaskans. Reducing support, particularly if done after providers have made their commitments, threatens the ability of Alaska Plan mobile carriers to meet their commitments and maintain service, even outside of any overlapped areas. The threat of reduced support goes

(continued….)

where two or more prospective participants of the Alaska Connect Fund cover the same geographic area? Now that BDC data are available for use, what is the best way to determine which areas are receiving duplicative support?[285] For example, would requiring a provider's performance plan to specify each hex-9 that it is serving help to identify duplication?

91. Should the Commission continue to provide universal service support to two or more providers in the same geographic area? If there are multiple subsidized providers serving the same area, should we allow only one subsidized provider to continue receiving support in that area? Should the level of service being provided be a factor in determining the approach? For example, if two providers are offering 2G or one is offering 2G and another 3G, should that be treated differently than if two providers are offering 4G LTE? Alternatively, does the fact that multiple providers are covering the same area indicate that the area should be deemed ineligible for support? If an unsubsidized provider enters an area for which another provider is receiving support under the Alaska Connect Fund, should that provider continue to receive support for that area?

92. In areas where multiple subsidized providers serve the same area, would a reverse auction be the most appropriate method to determine which provider should receive the funding for those areas and how much funding should be awarded? If the Commission were to distribute future funding consistent with a reverse auction format or other competitive allocation mechanism, would that be sufficient to address concerns about duplicative support going to an area? For example, could an area-specific reverse auction determine the provider that is willing to meet the public interest requirements for the area at the lowest cost? If the Commission were to address duplicative support via a reverse auction, what barriers to auction participation, if any, would smaller providers face? What actions could the Commission take to reduce those barriers, and what would the costs and benefits of doing so be? For example, should the Commission offer bidding credits to smaller providers that seek to compete in such an auction? Alternatively, would a competitive process similar to the Bringing Puerto Rico Together and the Connect USVI programs be an appropriate mechanism for determining which mobile providers in Alaska receive support?[286] We seek comment on the evaluation criteria consistent with this approach that would best determine which provider should receive support.

93. If the Commission does not use a reverse-auction or competitive process format, how can the Commission address duplicative support going forward in Alaska? If the Alaska Connect Fund continues under a similar structure as the Alaska Plan, could the Commission prevent duplicative support at the front end by simply not awarding support to more than one mobile carrier per eligible area? For example, should the Commission immediately redistribute support where there are multiple mobile

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exactly against what the Alaska Plan was meant to do—create a steady, reliable stream of support to allow carriers to make long-term plans for specific investments with the understanding that if they make those investments, their support amounts will not be reduced. An overhanging threat of support reductions will stifle investment and cause providers to be far more conservative in their mobile deployment plans and even to balance the risk of not meeting their commitments against the risk of not having sufficient support to maintain the service they have deployed. Moreover, a reduction in support for providers that have made enforceable commitments and are actively improving their networks is impossible to reconcile with the continued support that competitive eligible telecommunications carriers in the lower 48 have received for nearly 10 years at 60% levels, without specific commitments or investment obligations.") (footnotes omitted). We note that the Commission sought to phase out legacy funding in the Mobility Fund Phase II and more recently via 5G fund reverse auctions. *5G Fund Order*, 35 FCC Rcd at 12221-28, paras. 116-30; *Mobility Fund Phase II Report and Order*, 32 FCC Rcd at 2162, 2182-86, paras. 23, 68-79.

[285] Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 3-4 (filed Oct. 12, 2021), https://www.fcc.gov/ecfs/document/101278196550/1.

[286] *Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, WC Docket Nos. 10-90, 18-143, 14-58, Report and Order, Order on Reconsideration, 34 FCC Rcd 9109, 9114-46, paras. 11-66 (2019) (discussing the PR/USVI program competitive process for fixed providers).

providers serving the same area? If so, how would we determine which provider should continue receiving support if we do not use a reverse auction?

94. How should the Commission redistribute the duplicative funds that were going to be awarded to such areas? Could this redistribution be done by calculating the support that eligible providers are receiving per hexagon across all of that provider's service areas and subtracting the support that the provider receives per hexagon in a particular service area? Should this redistributed funding go into a middle-mile fund, unserved-areas fund, or something else?[287] Alternatively, where such duplication is found, should we allow the providers that would no longer receive support for that particular area to submit new hex-9s (where there is no duplication), in order to retain the same level of support? We seek comment on how to address duplicative support in remote Alaska, as well as ATA's concerns with addressing any such duplication.

2. Eligible Mobile Providers

95. Eligibility to participate in the Alaska Plan was limited to competitive ETCs that were serving remote areas in Alaska and certified that they served covered locations in remote areas in Alaska in their September 30, 2011 filing of line counts.[288] Eligible providers interested in participating in the Alaska Plan were required to submit a performance plan[289] and to have that performance plan approved by WTB.[290] We seek comment on how to determine mobile provider eligibility for the next version of the plan. Should we limit potential participants to the eight mobile providers that participate in the Alaska Plan? Should we determine eligibility using the same criteria as before or apply different criteria?

96. The Alaska Plan provided a one-time option for eligible carriers to elect to participate and barred the participation of any entrants after that point. This structure did not allow for new entrants to receive support, even if they fulfilled needs in eligible areas consistent with the deployment standard of the Alaska Plan. The Bringing Puerto Rico Together and Connect USVI Funds had similar structures for support in Puerto Rico and the U.S. Virgin Islands, respectively.[291] What lessons can be learned from these plans about not allowing new entrants to opt-in during the term of support? If the Commission relies on performance plans in the Alaska Connect Fund, could we accept later entrants after the plan has initiated? Should we use the same structure for determining the participants in the Alaska Connect Fund? Or, should we allow new entrants to opt-in during the term? How can the Commission ensure that new mobile providers in Alaska, including those that are not ETCs or other potential entrants that are not eligible for the Alaska Connect Fund, are not disadvantaged or discouraged from offering improved mobile services in an eligible area due to the existence of the Alaska Connect Fund support?

97. As mentioned above, some providers failed to meet their five-year commitments under the Alaska Plan. Should we limit a mobile-provider participant's eligibility to participate in the next version of the plan if it failed to meet its commitments above a certain percentage at the Alaska Plan's interim or final milestone? If so, what should that non-compliance threshold be? Alternatively, should

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[287] *See, e.g.*, Letter from Julie Kitka, Alaska Federation of Natives, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 1 (filed Jan. 4, 2017) ("Should the commission curtail duplicative funding, I suggest that funding be reallocated to new, un-funded facilities, connecting rural Alaska to urban Alaska with adequate, affordable, competitive high-speed broadband capabilities."), https://www.fcc.gov/ecfs/document/1010504588839/1.

[288] *See* 47 CFR § 54.317(b); *Alaska Plan Order*, 31 FCC Rcd at 10170-71, para. 96. AT&T/Dobson was serving the remote area of Alaska, but was not eligible to participate in the Alaska Plan from these criteria. *See Alaska Plan Order*, 31 FCC Rcd at 10168, 10171, paras. 89 n.180, 99.

[289] 47 CFR § 54.317(b).

[290] *Alaska Plan Order*, 31 FCC Rcd at 10171, para. 97.

[291] *See* 47 CFR 54.1509(b).

we make full compliance with interim commitments of the Alaska Plan a prerequisite for a current participant's eligibility to participate in the Alaska Connect Fund? Likewise, should we limit a mobile provider's eligibility if it failed to comply with the public interest obligations under the plan, such as the requirement to offer a similar plan, at a reasonably comparable rate, to one offered in Anchorage, Alaska?[292]

3. Support Amounts and Budget

98. We seek comment on how the Commission should allocate support among the participants of the Alaska Connect Fund. For mobile services, $739 million of frozen support was allocated to eight mobile providers over the ten-year period of the Alaska Plan.[293] ATA requests that we continue the current support that its members are receiving, adjusted for inflation.[294] We seek comment on that approach. The support amounts for the Alaska Plan were set by freezing the "identical support" amounts, which were originally based on wireline costs, not mobile costs.[295] As part of universal service reform in 2011, the Commission eliminated the identical support rule because this rule did not ensure efficient levels of funding for wireless carriers.[296] Although the Commission intended to phase down the identical support in Alaska as well,[297] the Commission, in order to avoid a flash cut in support to areas serving remote Alaska, including Alaska Native villages, allowed a delayed phase down of identical support in remote areas of Alaska, which was to begin in 2014 or upon the implementation of Mobility Fund Phase II and Tribal Mobility Fund Phase II, whichever was later.[298]

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[292] *See, e.g.*, 47 CFR § 54.308(d); *see also* 47 U.S.C. § 254(b)(3).

[293] *See Alaska Plan Order*, 31 FCC Rcd at 10164, para. 75 ("If the eight eligible competitive ETCs participate . . . this would result in approximately $74 million being dispersed annual for each of the 10 years that the plan is in effect").

[294] ATA Petition at 18-19.

[295] *USF/ICC Transformation Order*, 26 FCC Rcd at 17827-28, paras. 502-04; 47 C.F.R. § 54.307(e).

[296] *USF/ICC Transformation Order*, 26 FCC Rcd at 17827-29, paras. 502-07. The wireline-cost based support of the identical support rule created inefficiencies when this same support was awarded to mobile providers. *USF/ICC Transformation Order*, 26 FCC Rcd at 17827-28, paras. 502-04; *see also High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337; CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467, 1471-72, para. 10 (2008) (*CETC Support Reform Notice*) ("In addition, the identical support rule fails to create efficient investment incentives for competitive ETCs. Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas. Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks."), https://docs.fcc.gov/public/attachments/FCC-08-4A1.pdf; *CETC Support Reform Notice*, 23 FCC Rcd at 1474, paras. 13-14 (seeking comment regarding seeking cost data from competitive ETCs). The identical support rule was also resulting in exploding costs due to duplicative support of multiple mobile providers in the same service area, such as at least three competitive ETCs serving Anchorage, Fairbanks, and Juneau, respectively. *Alaska Plan Order*, 31 FCC Rcd at 10169, n.185; *USF/ICC Transformation Order*, 26 FCC Rcd at 17828, 17834, paras. 505 n.837, 526 & n.872.

[297] *USF/ICC Transformation Order*, 26 FCC Rcd at 17829, paras. 507-08.

[298] 47 CFR § 54.307(e)(3)(iv); *USF/ICC Transformation Order*, 26 FCC Rcd at 17835-36, para. 529; *Alaska Plan Order*, 31 FCC Rcd at 10160, para. 68. The *USF/ICC Transformation Order* acknowledged additional challenges in Alaska, but sought to address this via expedited waiver. *USF/ICC Transformation Order*, 26 FCC Rcd at 17829, para. 508.

99. In 2014, as Mobility Fund Phase II was still being developed,[299] the Commission sought comment on the possibility of freezing Alaskan competitive ETCs' phase down support and asked whether remote areas in Alaska should be subject to exceptions or other conditions for phase down in frozen support.[300] ATA responded by proposing a plan, which would retain its members' respective support frozen at identical-support levels, but members would commit to "operate, extend, and upgrade existing broadband networks and operate and deploy wireless service in remote Alaska."[301] Support previously going to nonremote areas of Alaska would be reallocated to a reverse auction fund that would target unserved areas.[302] The Commission adopted ATA's plan for mobile support in Alaska, with some modification, and continued the support levels that were frozen from the identical support rule.[303] We seek comment on how these frozen support amounts, set over a decade ago, are relevant to mobile service in Alaska today. Are there other ways to allocate funding support in a more prudent and efficient way? Would a reverse auction format, which is to be used in the Alaska unserved areas[304] and the 5G Fund,[305] work for all eligible areas of the Alaska Connect Fund? Are there other methods for competitively allocating support?

100. As the Commission has reformed the high-cost program, it has aimed to base support amounts on a forward-looking cost model or a competitive process.[306] We seek comment on using these mechanisms going forward for mobile support in eligible areas of Alaska. Under the current funding structure, one provider receives $56 per committed-to person per year while another provider receives over $1,500 per committed-to person per year.[307] This vast difference in ranges does not seem to

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[299] *Alaska Plan Order*, 31 FCC Rcd at 10159-60, paras. 66 n.128, 68.

[300] *Connect America Fund et al*., Report and Order et al., 29 FCC Rcd 7051, 7134, para. 257 (2014) (*April 2014 Connect America Order and/or Further Notice*). Additionally, the *Further Notice* proposed to "freeze the total amount provided to each competitive ETC service remote areas in Alaska . . . [to] simplify support calculations for the [USF] Administrator, while not disturbing existing support levels for existing competitive ETCs." *Id.* at 7133, para. 256. The baseline for support, under that proposal, "would be set as of a date certain, such as December 31, 2014, or the effective date of the rule, whichever is later." *Id*. at 7133-34, para. 256.

[301] *Alaska Plan Order*, 31 FCC Rcd at 10161-62, para. 70 (*quoting* Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. at 3 (filed Feb. 20, 2015) (ATA Feb. 20, 2015 *Ex Parte* Letter).

[302] *Alaska Plan Order*, 31 FCC Rcd at 10173-74, para. 106.

[303] *Id.* at 10140, 10159, 10162 paras. 1, 66, 72.

[304] *Id.* at 10173-74, para. 106.

[305] *5G Fund Further Notice* at 3, 18-19, paras. 4, 27-29.

[306] *See, e.g.*, *5G Fund Order*, 35 FCC Rcd at 12194-95, paras. 47-49 (establishing a multi-round descending clock auction for competitive bidding); *Connect America Fund; High-Cost Universal Service Support*, WC Docket Nos. 10-90, 05-337, Report and Order, 29 FCC Rcd 3964, 4029, para. 155 (WCB 2014) (*Connect America Phase II Cost Model Order*) ("[W]e adopt the methodology for taking the results of the cost-to-serve module to determine support levels. We begin by discussing the methodology for calculating the average forward looking per-location cost of building voice and broadband-capable networks.").

[307] Based on staff analysis of commitments at the ten-year milestone and amount received by each mobile provider. *See Wireless Commitments Public Notice*, 31 FCC Rcd at 13320-21, 13322-23, Appx. (providing the operative performance plans for six of the eight mobile providers); *ASTAC Revised Performance Plan Public Notice*, 34 FCC Rcd at 12185-86, Appx. (providing ASTAC's operative performance plan); *GCI Second Revised Performance Plan Public Notice*, 35 FCC Rcd at 9541, Appx. (providing the operative performance plan for GCI); *see also, e.g*., Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WT Docket No. 10-208, at 5-6 (filed July 20, 2016) (providing the frozen support amounts in Schedules 4, [9 for Windy City Cellular] with GCI entities and ACS Wireless support going to GCI), https://www.fcc.gov/ecfs/document/1072063341591/1.

accurately reflect current needs or costs of providing mobile service. Is there a more equitable and/or efficient way to allocate the funding for the benefit of Alaskans, such as designating a particular dollar amount per person served, subject to possible exceptions? If so, should such funding be based on the number of Alaskans served, adjusted using 2020 census data and the population distribution model? What, if any, exceptions should apply? Should we use Fabric data to determine this funding amount?[308] Should a dollar amount be determined by the number of locations served, consistent with the BDC Fabric, and hex-9s with road segments? If the Commission set an upper bound on the amount of support that can be received per person or location committed to, should it redistribute excess funds to those getting the least amount of money per person/location or use some other method of support distribution that can better serve Alaskans? How should the Commission weight population-less hex-9s that have road segments?

101. The Alaska Plan is a ten-year plan that froze support to the eight mobile-provider participants specified at the beginning of the plan.[309] If new entrants are able to join the Alaska Connect Fund after the plan has begun, what conditions should be met to allow late entry and from what pool of funds should we consider providing support to new entrants in the market? Should any future universal service support allow for additional or alternative competitive ETCs to receive support?

102. As we consider appropriate support amounts, we seek comment generally on an appropriate budget for the Alaska Connect Fund for mobile service. We seek comment on how to provide sufficient support amounts to achieve the goals of encouraging secure mobile service deployment, while ensuring prudent use of universal service funds. In what ways should the progress made and challenges encountered during the Alaska Plan inform the budget for the Alaska Connect Fund?

103. *Unserved Area Funds*. When the Commission adopted the *2016 Alaska Plan Order*, the Commission collected funds that were previously going to areas that the Alaska Plan deemed ineligible or to providers that were deemed ineligible and reallocated those funds to help bring service to unserved areas.[310] The *2016 Alaska Plan Order* defined "unserved areas" as "those census blocks where less than 15% of the population within the census block was within any mobile carrier's coverage area."[311] Commission staff estimated that, based on 2010 Census data, these areas contained about 5,000 Alaskans.[312] For these unserved areas, the Commission planned to conduct a reverse auction to distribute the reallocated funds,[313] which staff estimates will total $162 million by December 31, 2026.

104. The Commission has not yet created the reverse auction contemplated in the *2016 Alaska Plan Order* to bring service to unserved areas. To the extent that areas that were unserved in 2016 are now being served by mobile providers, how can we best bring service to unserved areas? Should we continue on a path towards completing a reverse auction using these funds? If not, what other alternatives could we consider? For example, could a reverse auction similar to that used by the Commission in the CAF-II and RDOF auctions be used to determine which areas will receive support given the budget, and how much support those areas will receive, with support going to no more than one bidder per area? Would it be problematic if some of the most costly areas were not to be supported through the auction? Should we consider a process similar to the competitive process similar to the Bringing Puerto Rico

[308] *See infra* para. 112 (discussing use of Fabric locations to determine where populations are within a census block versus the Alaska Population Distribution Model); *see also supra* para. 8 (discussing the Fabric generally).

[309] *See Alaska Plan Order*, 31 FCC Rcd at 10140, 10143, paras. 1, 9.

[310] *Alaska Plan Order*, 31 FCC Rcd at 10174, paras. 89, 106 & n.205.

[311] *Id.* at 10174, para. 106.

[312] This number was based on staff analysis of 2010 census data of unserved census blocks. *See, e.g.*, GCI Nov. 29, 2016 *Ex Parte* Letter, at 1, Attach. (providing a list of unserved census blocks).

[313] *See Alaska Plan Order*, 31 FCC Rcd at 10174, para. 106.

Together and the Connect USVI Funds?[314] Does waiting on a reverse auction create an incentive not to serve these areas out of fear that it would cause a provider willing to serve that area to lose potential funding? If $162 million is not the appropriate amount of funding to serve these areas, as it could exceed the per line cap amount,[315] how should the amount be determined, and if there are unused funds, how should the funds be redistributed for the benefit of Alaskans?

4. Public Interest Obligations

105. *Deployment Standard*. In the *2016 Alaska Plan Order*, the Commission stated that it expected that Alaska Plan participants would work to extend 4G LTE throughout remote Alaska.[316] Recognizing the limitations in some areas of remote Alaska, however, the Commission authorized WTB to approve lesser commitments where middle mile was limited,[317] but where new-generation satellite or terrestrial-based middle mile became commercially available over the course of the ten-year Alaska Plan, providers were required to submit new performance plans, factoring in the new backhaul.[318] In addition, mobile providers that could not commit to providing 4G LTE at a minimum of 10/1 Mbps were subject to additional requirements.[319] Since the adoption of the *2016 Alaska Plan Order*, however, the Commission has moved towards supporting 5G-NR as the standard for high-cost mobile-wireless deployment.[320]

106. We seek comment on the level of service that we should expect from mobile providers that receive support under the Alaska Connect Fund. More than seven years have passed since we set the standard at 4G LTE at 10/1 Mbps. During this time, mobile wireless technologies have advanced

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[314] *Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.*, WC Docket Nos. 10-90, 18-143, 14-58, Report and Order, Order on Reconsideration, 34 FCC Rcd 9109, 9114-46, paras. 11-66 (2019) (discussing the competitive process for fixed providers).

[315] Assuming 5,000 Alaskans are in the unserved areas and the $162 million were paid out over a ten-year period, this would amount to $3,240 per year per Alaskan, exceeding the $3,000 per year cap amount set forth in the Commission's rules. *See* 47 CFR § 54.307(e)(1), (3)(v). If the $162 million is paid out over a shorter time period, the amount per line per year would be higher.

[316] *Alaska Plan Order*, 31 FCC Rcd at 10167, para. 86. While this was the deployment standard to bring broadband to remote Alaska, this was impractical for many remote areas, and consequently, providers were allowed to commit to lesser commitments with approval from WTB. *Id.* at 10162-63, 10166-67, paras. 72, 86. At a minimum, mobile-provider participants of the Alaska Plan had to "provide a stand-alone voice service and, at a minimum, offer to maintain the level of data service they were providing as of the respective dates their individual plans are adopted by [WTB] and to improve service consistent with their approved performance plans." *Id.* at 10164, para. 77. 5G-NR is a more recent generation technology than 4G LTE and became the standard for deployment in universal service after the *Alaska Plan Order* was adopted. *See 5G Fund Order*, 35 FCC Rcd at 12176, para. 1; *see also PR-USVI Stage 2 Order*, 34 FCC Rcd at 9172, para. 124. For the Alaska Plan, 5G-NR deployments are counted toward satisfaction of 4G LTE commitments. *Alaska Drive Test Order*, 37 FCC Rcd at 5926, Appx. B ("As no commitments were made for 5G-NR service, any 5G-NR coverage would be included within the LTE frame.").

[317] *Alaska Plan Order*, 31 FCC Rcd at 10162-63, 10166-67, paras. 72, 85-86.

[318] *Id.* at 10172-73, para. 102. The *Alaska Plan Order* uses "backhaul" and "middle mile" interchangeably. *See Alaska Network-Maps Order on Reconsideration*, 33 FCC Rcd at 2069-70, 2072-74, paras. 3, 8-14.

[319] *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102 ("[W]e require those Alaska Plan providers that have not already committed to providing 4G LTE at 10/1 Mbps speeds to the population served by the newly available backhaul by the end of the plan term to submit revised performance commitments factoring in the availability of the new backhaul option no later than the due date of the Form 481 in which they have certified that such backhaul became commercially available.").

[320] FCC, *5G Fund*, https://www.fcc.gov/5g-fund; *see generally Establishing a 5G Fund for Rural America*, GN Docket No. 20-32, Report and Order, 35 FCC Rcd 12174, 12175-76, paras. 1-4 (2020) (expressing FCC's desire to "ensure all Americans benefit from the country's 5G future, no matter where they live"), https://docs.fcc.gov/public/attachments/FCC-20-150A1_Rcd.pdf.

significantly. What minimum speeds should we expect mobile participants to achieve, especially when support may be used to deploy advanced technologies such as 5G-NR? The Alaska Plan supports 2G, 3G, and 4G LTE. For the Alaska Connect Fund, should we continue to support 2G and 3G technologies when most consumers in the U.S. are receiving 4G LTE and 5G services?[321] Should we require a minimum, universal level of technology of 4G LTE, or should we require 5G-NR? If 5G-NR is the new standard of deployment, we seek comment about also making 7/1 Mbps or 35/3 Mbps the universal standard for the purposes of the Alaska Connect Fund. If we make the standard of deployment less than 5G-NR at 35/3 Mbps or 7/1 Mbps, is the Commission adequately pursuing the statutory universal service principle that consumers in rural and high-cost areas "should have access to" advanced communications "that are reasonably comparable to those services provided in urban areas"?[322] If we require a minimum of 4G LTE at the beginning of the Alaska Connect Fund, should we have a mechanism to transition to a 5G-NR technology requirement during the term of the plan? On a related note, if over the course of the Alaska Connect Fund a new technology generation—i.e., 6G—begins receiving support from other high-cost programs, should the Alaska Connect Fund have a mechanism to make that the deployment standard during the plan?

107. *Performance Plans*. In the Alaska Plan, eligible mobile-provider participants were required to have a performance plan approved by WTB before they could participate in the Alaska Plan, and they were required to update these performance plans periodically for the duration of the Alaska Plan.[323] Participating mobile providers were required to identify in their performance plans: 1) the types of middle mile used on that carrier's network; 2) the level of technology (2G, 3G, 4G LTE, etc.) that carrier provides service at for each type of middle mile used; 3) the delineated eligible populations served, at each technology level by each type of middle mile as they stand currently and at years 5 and 10 of the support term; and 4) the minimum download and upload speeds at each technology level by each type of middle mile as they stood at the beginning of the plan and at years 5 and 10 of the support term.[324] Alaska Plan participants that indicated in their approved performance plans that they were "rely[ing] exclusively on performance-limiting satellite backhaul for a certain portion of the population in their service area" were required to certify when new backhaul with "technical characteristics comparable to at least microwave backhaul" became "commercially available."[325] Mobile-provider participants that had not "already committed to providing 4G LTE at 10/1 Mbps to the population served by the newly available backhaul by the end of the plan term" were required to submit revised performance plans factoring in the availability of the new backhaul options when it became commercially available.[326]

108. Given the complexities involved with the administration of Alaska Plan funds, should we continue to require each mobile provider to comply with specific performance obligations under a provider-specific performance plan with management of such obligations delegated to WTB? If we retain this approach, what changes should we adopt to ensure that universal service funds are being used to provide Alaskans with advanced mobile service and providers are meeting their build-out obligations? We seek comment on what, if any, changes we should make to the performance plan requirements in the

[321] For example, since the adoption of the *2016 Alaska Plan Order*, nationwide mobile providers have sunset their 3G networks. *See* FCC, *Plan Ahead for Phase Out of 3G Cellular Networks and Service*, Consumer Guide (last rev. Oct. 7, 2022), https://www.fcc.gov/sites/default/files/plan_ahead_for_3g_shutoff_consumer_guide.pdf.

[322] *See* 47 U.S.C. § 254(b)(3).

[323] 47 CFR § 54.317(f); *Alaska Plan Order*, 31 FCC Rcd at 10166-67, 10172, paras. 85, 102.

[324] *Alaska Plan Order*, 31 FCC Rcd at 10166, para. 85. All mobile-provider participants' initial performance plans were accepted by WTB in a Public Notice on December 21, 2016. *Wireless Commitments Public Notice*, 31 FCC Rcd at 13318-23, Appx.

[325] *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102; 47 CFR § 54.313(l).

[326] 47 CFR § 54.313(l)(1)(iv); *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102.

next version of the plan, particularly in light of technological advances since the 2016 Alaska Plan and changes to how providers must submit their coverage data to the Commission. Should we consider adding a latency requirement[327] and, if so, should it be the same as the latency requirements for fixed carriers of the Alaska Connect Fund? Should there be a data usage minimum as part of the deployment standard?

109. The BDC has greatly improved mobile coverage maps, but the BDC specifications and requirements are significantly different than the FCC Form 477 coverage maps on which the Alaska Plan commitments were based.[328] Assuming that we require provider-specific performance plans in the Alaska Connect Fund, we seek comment on what changes we should make to the performance plan requirements in light of the BDC specifications and reporting requirements. For example, in the original Alaska Plan, FCC Form 477 allowed providers the option of selecting what minimum mobile broadband speeds users could expect to receive, such as 4/1 Mbps from 4G LTE technology, and the provider could submit a coverage polygon for 4G LTE at 4/1 Mbps, accordingly.[329] However, the BDC does not allow 4G LTE coverage polygons to be submitted at speeds less than 5/1 Mbps.[330] We intend to use BDC maps in the next version of the plan to the maximum extent possible. In light of this, we seek comment on what the appropriate floor should be for speed commitments, and how we should capture these data using the BDC. If commitments are set at speeds higher than the minimum levels required by the BDC (e.g., 5/1 Mbps 4G LTE; 7/1 Mbps 5G-NR; and 35/3 Mbps 5G-NR), can we require providers to submit their BDC data at these higher speeds? If commitments can be set lower than the BDC floor, how should we capture that data consistent with the Broadband DATA Act's requirement to base new funding on the Broadband Data Collection?[331]

110. The BDC requires mobile providers to submit mobile availability coverage maps for both outdoor stationary and in-vehicle mobile environments.[332] An outdoor stationary environment typically results in a larger coverage footprint than an in-vehicle mobile environment.[333] Which maps should the Commission require for creation of performance plans? Depending on the BDC maps that we choose to rely on for a provider's commitments, what impacts would this have on providers' obligations and the funding that we provide? For example, would the choice of outdoor stationary environment preclude all in-vehicle mobile testing?

111. Under the Alaska Plan, mobile providers were permitted to offer lesser commitments than 10/1 Mbps 4G LTE if they were constrained by middle mile but were subject to additional

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[327] *PR-USVI Stage 2 Order*, 34 FCC Rcd at 9171, para. 122 (requiring latency of 100 ms or less for mobile services in Puerto Rico and the US Virgin Islands).

[328] *See Alaska Continued Form 477 Order*, DA 23-699, at 1, 3, paras. 1, 5.

[329] *See id.* at 2, para. 2; *see also Wireless Commitments Public Notice*, 31 FCC Rcd at 13318-23, Appx. (accepting performance plans from OTZ and TelAlaska with 4G LTE—technology code 83—commitments with less than 5/1 Mbps speeds).

[330] *See* FCC, Broadband Data Collection: Data Specifictions for Biannual Submission of Subscription, Availability, and Supporting Data 49 (Mar. 30, 2023), https://us-fcc.app.box.com/v/bdc-availability-spec.

[331] *See* Broadband Deployment Accuracy and Technology Availability Act, Pub. L. No. 116-130, § 802(c)(2)(a), 134 Stat. 228, 236 (2020) ("(2) after creating the maps under paragraph (1), use such maps (A) to determine the areas in which terrestrial fixed, fixed wireless, mobile, and satellite broadband internet access service is and is not available; and (B) when making any new award of funding with respect to the deployment of broadband internet access service intended for use by residential and mobile customers."), https://www.congress.gov/116/plaws/publ130/PLAW-116publ130.pdf.

[332] 47 CFR § 1.7004(c)(5).

[333] *5G Fund Further Notice*, FCC 23-74, at 15, para. 18.

requirements. For example, if new middle mile became commercially available in an area where a mobile provider committed to provide less than 10/1 Mbps 4G LTE, the mobile provider had to submit a new performance plan.[334] Under an the Alaska Connect Fund, should we continue to permit lesser commitments if providers are constrained by middle mile? Have technological advances, such as the development of new satellite capacity, particularly low-earth orbital satellites, lessened middle mile constraints? If we do allow providers to offer lesser commitments, what information should be provided to demonstrate that an area is middle-mile constrained? The Alaska Plan required providers to categorize their performance plan commitments by the particular type of available middle mile.[335] This categorization ensured that commitments were commensurate with the middle-mile capability available. If we forgo discrete middle-mile technology rows in the performance plans, should it affect the commitments that providers would make? If we do not require information about middle mile technology, are there other ways to address concerns about providers offering lesser commitments based on middle mile limitations? For example, could we address concerns about lesser commitments by imposing requirements similar to the extra requirements imposed in the *2016 Alaska Plan Order* for providers that commit to less than 10/1 Mbps 4G LTE (e.g., submitting an updated plan when new middle mile becomes available)? If a provider commits to less than 35/3 Mbps, should we require the mobile provider to identify all such areas, based on the chosen base geographical unit, where it is not committing to 35/3 Mbps, so if new middle mile becomes commercially available to those areas, it will trigger a new performance plan filing?

112. We also seek comment on what changes, if any, we should make to coverage commitment requirements. In the Alaska Plan, the mobile provider performance plans committed to cover a specified number of people.[336] To determine the covered population of each provider, WTB and OEA adopted the *Alaska Population Distribution Order*, which distributed the population of a census block to areas where the population is most likely to reside.[337] Where an exception was granted for the Alaska Population Distribution Model, it was often due to having more specific data on where housing was located.[338] Now that the BDC has developed a location Fabric,[339] should the Fabric be used to determine where populations are likely to be located, instead of the Alaska Population Distribution Model[340] for the Alaska Connect Fund? Should we somehow translate Fabric locations to population, and if so, how should that work? If not, should we do it based on coverage of the hex-9 centroid or another method? What implications would this approach have for mobile service in Alaska? Would commitments based on population from the Fabric lead to some unpopulated roads or travel routes remaining unserved, even though mobile service is needed along those routes? If so, how could we address such a situation? Should we consider a hybrid approach that uses both Fabric data and a population methodology or Fabric data and uncovered-roads methodology? Alternatively, should we move to a geographic coverage requirement or some other type of coverage commitment? For example, instead of committing to cover population, should the provider commit to cover the eligible hex-9 (or

[334] *Alaska Plan Order*, 31 FCC Rcd at 10172-73, para. 102.

[335] *Alaska Plan Order*, 31 FCC Rcd at 10166, para. 85.

[336] *Id.* at 10166, para. 85; *see also, e.g.*, *Wireless Telecommunications Bureau Approves Performance Plans of the Eight Wireless Providers That Elected to Participate in the Alaska Plan*, WC Docket No. 16-271, Public Notice, 31 FCC Rcd 13317, Appx. (WTB 2016) (*Wireless Commitments Notice*).

[337] *See Alaska Population Distribution Order*, 35 FCC Rcd 10373, 10374-76, paras. 4-5, 9.

[338] *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, 35 FCC Rcd 10373, 10375, 10377, paras. 6, 12 (WTB 2020) (*Alaska Population Distribution Order*).

[339] *See supra* para. 8 (discussing the Fabric generally).

[340] *Connect America Fund—Alaska Plan*, WC Docket No. 16-271, Order, 35 FCC Rcd 10373, 10374-76, paras. 4-5, 9 (WTB 2020) (*Alaska Population Distribution Order*).

whatever base geographic unit we use) to account for the need to cover unpopulated road areas (e.g., roads that connect populated areas)? What type of coverage commitments will lead to the best coverage in remote Alaska?

113. *Updating Performance Plans*. Participants were required to update their performance plans during the course of the Alaska Plan under three circumstances: (1) at the four-year mark of the Alaska Plan—December 31, 2020—for the second half of the ten-year term of the Plan;[341] (2) if the provider committed to provide less than 4G LTE at 10/1 Mbps and new terrestrial backhaul or next-generation satellite became commercially available to an area;[342] or (3) if WTB determined that the filing of revised commitments was justified by developments that occurred after the approval of the initial commitments.[343] During the course of the Alaska Plan so far, only two providers submitted additional performance plans that were accepted by WTB,[344] and both were submitted due to the introduction of new middle mile capacity becoming commercially available to an area. Several additional providers were instructed to provide updated performance plans, based on developments that occurred after the initial commitments, but failed to provide updates that reflected the developments. We seek comment on what, if any, changes we should make to the requirements to update performance plans during the course of the Alaska Connect Fund term to ensure funds are used the most effectively for the benefit of Alaskans. In particular, we seek comment on how to determine when new commitments would be triggered, how new commitments should be determined, and what penalties we should consider for failure to comply with requirements to submit updated commitments.

114. *Additional Public Interest Obligations*. Alaska Plan mobile participants have additional public interest obligations. First, providers had to maintain at least the level of service that they had been providing as of the date their individual plans were adopted by WTB and to offer a stand-alone voice service.[345] Second, providers had to certify in their annual compliance filings that their rates were reasonably comparable to rates for comparable offerings in urban areas. Each mobile provider must also demonstrate compliance with this requirement at the end of the five-year and 10-year milestones and may do this by showing that its required stand-alone voice plan, and one service plan that offers broadband data services, if it offers such plans, were substantially similar to those offered by at least one mobile service provider in the cellular market area for Anchorage and offered at the same or lower rate.[346] Were these additional public interest obligations, in addition to the other obligations of the Alaska Plan, sufficient to ensure that the public interest was being met in extending mobile services in remote areas of Alaska? We seek comment on what, if any, changes we should make to these public interest obligations. With respect to the reasonably comparable rate requirement, should we adjust the requirement in any way? In the Alaska Plan, some mobile providers have committed to provide 2G and 3G data services. If we allow providers to continue to receive funds for these older generations of technology, how should we compare the 2G and 3G plans to plans in the Anchorage area, which do not appear to have available data plans using these older technologies? Should a provider need to meet the section 54.308(d) requirement

[341] 47 CFR § 54.317(f).

[342] 47 CFR § 54.313(l)(1)(iv); *Alaska Plan Order*, 31 FCC Rcd at 10172, para. 102.

[343] 47 CFR § 54.317(f).

[344] GCI and ASTAC updated their performance plans after new middle mile became commercially available to them. *Wireless Telecommunications Bureau Approves ASTAC's and GCI's Revised Performance Plans Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 34 FCC Rcd 12183, 12184, 12186, Appx. (WTB 2019) (accepting ASTAC's operative performance plan); *Wireless Telecommunications Bureau Approves GCI's Revised Performance Plan Pursuant to the Alaska Plan Order*, WC Docket No. 16-271, Public Notice, 35 FCC Rcd 9539, 9539-41, Appx. (2020) (accepting GCI's second-revised performance plan).

[345] *Alaska Plan Order*, 31 FCC Rcd at 10164, para. 77.

[346] 47 CFR § 54.308(d); *Alaska Plan Order*, 31 FCC Rcd at 10164, para. 78.

in every area it provides service?[347] How can the Commission best advance in Alaska section 254(b)(3) of the Communications Act, which seeks to ensure that advanced telecommunications and information services in rural areas "are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."[348]

5. Support Term and Timing

115. The Alaska Plan is set to end on December 31, 2026.[349] The Commission has not determined how support will be allocated to mobile providers in eligible areas after this date. ATA asks the Commission to start a new version of the plan by January 2024, or as soon as possible thereafter, citing the need for advanced planning for future deployments.[350] We seek comment on when to start the Alaska Connect Fund. Should the Alaska Connect Fund begin as soon as possible, with new commitments? Or should we start it after the Alaska Plan ends? Alternatively, if necessary, should we extend existing funding until after BEAD support has been allocated, as this may affect the type, availability, and cost of middle mile access for mobile services? To the extent that funding stability is needed beyond the end of the Alaska Plan, as ATA suggests,[351] would this also be an issue at the end of an Alaska Connect Fund; and if so, how can providers be held to their final commitments? We also seek comment on how to ensure that final commitments to Alaskans in the Alaska Plan are honored if a new plan were to start before the final commitments are required to be fulfilled.

116. If the Commission has not made a decision about an alternate plan by the end of the Alaska Plan—December 31, 2026—should current participants have their support continue indefinitely until the effective date of the new plan or some other potential end date, such as the date on which the Commission approves participants for the new plan or the start of disbursements under the new plan? Should the Alaska Plan support be subject to phase down, consistent with the original identical support phase down?[352] Also, should participants of the Alaska Plan that choose to opt out of or are deemed ineligible for the Alaska Connect Fund stop receiving support on December 31, 2026, consistent with the Alaska Plan? Or should their support phase out on an updated schedule similar to section 54.307(e)(3)(iv)?[353]

117. We seek comment on how other funding programs should influence the timing of an the Alaska Connect Fund for mobile providers. In light of the fact that Alaska will receive more than $1 billion in funding for broadband deployments under the BEAD program,[354] which has yet to be allocated to specific projects, and that one provider will separately receive approximately $89 million in federal

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[347] 47 CFR § 54.308(d).

[348] 47 U.S.C. § 254(b)(3).

[349] *See* 47 CFR § 54.317(d); *Wireless Commitments Notice*, 31 FCC Rcd at 13318 (noting start date of January 1, 2017).

[350] ATA Petition at 3, 9-15; *see also* ATA July 28, 2023 *Ex Parte* Letter at 2.

[351] ATA Petition at 3, 9-15.

[352] The support for mobile-provider participants in the Alaska Plan was frozen from the identical support rule, which was otherwise eliminated by the Commission in 2011. *See supra* Sec. III.B.3 (discussing support amounts).

[353] 47 CFR § 54.307(e)(3)(iv) (establishing a delayed phase down schedule for competitive ETCs in remote Alaska, reducing support by 20% each year for five years until support amounts reach zero).

[354] Press Release, NTIA, Biden-Harris Administration Announces State Allocations for $42.45 Billion High-Speed Internet Grant Program as Part of Investing in America Agenda (Jun. 26, 2023), https://www.ntia.gov/press-release/2023/biden-harris-administration-announces-state-allocations-4245-billion-high-speed (announcing that Alaska will receive $1,017,139,672.42 in BEAD Funding).

funding to deploy middle mile in Alaska,[355] should we wait to start the Alaska Connect Fund until after we have more information about these deployment projects, so that we can ensure the most efficient and effective use of high-cost funds? What impact will these and other broadband infrastructure programs have on mobile service in Alaska, and how can we avoid overlap? ATA suggests that the BEAD program is a reason to act quickly to ensure funding is stable beyond 2026, as "project bidders must provide evidence that they are able to provide sustained operation and committed service of a BEAD-funded network."[356] ATA notes that if improved middle mile becomes commercially available in an area served due to the BEAD program, new commitments could be triggered in the Alaska Connect Fund.[357] While this approach is similar to the Alaska Plan, which requires providers to submit updated performance commitments when new middle mile becomes commercially available, we note that the failure of some providers to update performance plans when required was a problem in the Alaska Plan.[358] We seek comment on ATA's recommendation that we begin an the Alaska Connect Fund before BEAD funding is allocated. In addition, we seek comment generally on how best to maximize Alaska Plan support and administration for mobile services in light of BEAD and other broadband infrastructure programs.

118. We also seek comment on the term of the Alaska Connect Fund. Given the pace of technology advancements in mobile services, we seek comment on whether extending the Alaska Plan through 2034, as ATA suggests, would create an appropriate support term.[359] Would a shorter term promote flexibility and encourage technology advances? Or, alternatively, would a shorter term limit the ability of mobile providers to plan for future deployments and upgrades? Would a longer term have any benefits? We also seek comment on ATA's proposal that we allow for automatic extensions of a new plan in one-year intervals at the end of the term unless the Commission acts otherwise.[360]

6. Accountability and Oversight

119. We seek comment on how to ensure accountability and oversight of an the Alaska Connect Fund. The Alaska Plan employs carrier self-reporting[361] and drive tests to determine whether providers are meeting their commitments to Alaskans. Mobile-provider participants in the Alaska Plan also were required to file voice and broadband coverage data, consistent with FCC Form 477, which the Commission uses to evaluate whether providers were covering the number of Alaskans with the minimum

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[355] *See* NTIA, BroadbandUSA, Funding Recipients, Enabling Middle Mile Infrastructure, QSH Parent Holdco, LCC, https://broadbandusa.ntia.gov/funding-programs/enabling-middle-mile-broadband-infrastructure-program/funding-recipients; *Quintillion Receives $88.8M Grant to Invest in Broadband Infrastructure for Rural Alaska*, EINPresswire (Jun. 19, 2023), https://www.einpresswire.com/article/640347318/quintillion-receives-88-8m-grant-to-invest-in-broadband-infrastructure-for-rural-alaska. QSH Parent Holdco is the parent company of Quintillion. *See, e.g.*, Streamlined Submarine Cable Landing License Application, Accepted for Filing, Public Notice, Report No. SCL-00407S (May 19, 2023), https://docs.fcc.gov/public/attachments/DOC-393522A1.pdf.

[356] Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 2 (filed July 28, 2023) (ATA Jul. 28, 2023 *Ex Parte* Letter) (*citing* Notice of Funding Opportunity, Broadband Equity, Access, and Deployment Program, NTIA, Dep't of Com., 73 (2022); *see also* ATA Jul. 28, 2023 *Ex Parte* Letter at 3-4; Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-271, at 2 (filed Feb. 3, 2023), https://www.fcc.gov/ecfs/document/1020334323778/1.

[357] ATA Jul. 28, 2023, *Ex Parte* Letter at 4 (suggesting that "if a new BEAD project will deliver service where an Alaska Plan provider had planned to make upgrades to fulfill its commitments, that could trigger a review of the provider's commitments"); *see also Alaska Plan Order*, 31 FCC Rcd at 10172-73, para. 102; *see also* 47 CFR § 54.317(f).

[358] *See* 47 CFR § 54.317(f).

[359] ATA Petition at 2.

[360] *Id*. at 15.

[361] *See Alaska Plan Order*, 31 FCC Rcd at 10172-73, paras. 101-02.

speeds and technology they were promised.[362] The *2016 Alaska Plan Order* required use of the FCC Form 477 for the Commission's evaluation of coverage,[363] and though the Commission now uses coverage maps from the BDC, WTB and OEA have issued an order requiring continued filing of data pursuant to FCC Form 477 rules in order to have like comparisons throughout the duration of the Alaska Plan.[364] Providers were also required to certify that they had met their commitments at the five-year and ten-year milestones.[365] As noted above, several mobile providers had to re-file their Form 477 data based on inaccuracies in their initial filing. What additional accountability measures can we employ to ensure that providers are filing accurate coverage data? We also seek comment on additional accountability and oversight measures. Under the *2016 Alaska Plan Order*, mobile-provider participants receiving more than $5 million annually—GCI and Copper Valley Wireless—had to conduct drive testing with a statistically significant number of tests in the vicinity of residences being covered.[366] This required WTB and OEA to construct a drive test model and provide GCI and Copper Valley Wireless a sampling of grid cells in order for GCI and Copper Valley Wireless to meet this requirement.[367]

120. For providers receiving $5 million or less annually,[368] USAC hired a third-party drive tester to measure performance on some of those providers' networks to verify their coverage. What, if any, changes should we make to the on-the-ground testing requirements under a new plan? If we used the BDC outdoor stationary coverage maps to measure compliance with providers' performance plans, would on-the-ground testing be limited to outdoor, stationary tests and there would be no in-motion testing? Should USAC administer all on-the-ground testing, even for those providers receiving more than $5 million annually, to ensure uniformity? Should providers receiving more than $5 million annually from Alaska Plan funding either conduct the tests themselves or cover the costs of USAC-administered on-the-ground testing as a condition of participating in a universal service fund? Should we impose any additional accountability measures, such as requiring mobile providers to submit infrastructure data for the areas they receive support that meet the infrastructure specifications that mobile providers would submit through the BDC challenge and verification processes[369] or otherwise expand on the audit provision of the prior plan?

121. Should we consider using the methodologies adopted in the BDC mobile verification process as the basis for substantiating coverage and demonstrating compliance?[370] Specifically, we seek comment on whether to require providers to submit either on-the-ground test data or infrastructure data, or a combination of the two, to substantiate their coverage in the areas for which they receive Alaska Plan high-cost support. In particular, should providers be required to submit on-the-ground test data for areas that are accessible and infrastructure data for areas that are inaccessible? Should they submit infrastructure data sufficient to generate a "core coverage area," as defined in the BDC mobile

[362] *Id.* at 10173, para. 103; *Alaska Continued Form 477 Order*, DA 23-699, at 1, para. 1.

[363] *Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103.

[364] *Alaska Continued Form 477 Order*, DA 23-699, at 1, para. 1.

[365] 47 CFR § 54.321.

[366] *See Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103.

[367] *Alaska Drive Test Order*, 37 FCC Rcd at 5883, 5924-30, para. 1, Appx. B.

[368] *See Alaska Plan Order*, 31 FCC Rcd at 10173, para. 103.

[369] FCC, Broadband Data Collection, *Data Specifications for Provider Infrastructure Data in the Mobile Challenge and Mobile Verification Process* (Mar. 7, 2023) (*BDC Data Specifications*), https://us-fcc.app.box.com/v/bdc-infrastructure-spec.

[370] *See BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3054-68, paras. 86-113.

verification process,[371] and on-the-ground test data for areas outside of such a core coverage area? Alternatively, should providers be allowed to submit either type of data regardless of the type of area in which they are deploying service? For performance-plan commitments made pursuant to outdoor stationary maps in the BDC, would in-motion audit testing be appropriate for testing that mobile service, and if so, what sort of in-motion testing would be appropriate? For performance-plan commitments made pursuant to in-vehicle BDC coverage, would a minimum in-motion speed of 15 mph be appropriate for drive testing?[372]

122. How can we best ensure a coverage commitment that is enforceable? For example, should the Commission require mobile providers to identify all of the specific hex-9s they commit to serve? Should commitment information be made public? In addition to requiring providers to submit coverage area information to ensure they have met their commitments, should we also require that they submit infrastructure data and/or on-the-ground speed test data for the supported areas, as contemplated in the *5G Fund Further Notice*?[373]

123. If a provider chooses to submit on-the-ground test data in response to a BDC mobile verification request, it must provide such data based on a sample of on-the-ground tests that is statistically appropriate for the area tested.[374] In the BDC, the sampled area is based on H3 resolution-8 hexagonal areas, and the provider must submit the results of at least two tests within each hexagon, and the time of the tests must be at least four hours apart, irrespective of date.[375] The tests are then evaluated to confirm, using a one-sided 95% statistical confidence interval, that the cell coverage has at least a 90% probability of meeting the minimum speed requirements at the cell edge.[376] Should we apply this BDC mobile verification process to the Alaska Plan, at a hex-9 resolution, instead of a hex-8, and require mobile providers to submit on-the-ground test data based on a *sample* of supported areas ? We seek comment on this approach. Do commenters believe that more tests or fewer tests should be required within a hexagonal area? Should the tests be spaced further than four hours apart or closer together?

124. If a provider chooses to submit infrastructure data in response to a BDC mobile verification request, it must submit additional information beyond what is submitted as part of its biannual BDC availability data (propagation modeling details, as well as link budget and clutter data), including cell-site and antenna data for the targeted area.[377] Should we require the same additional infrastructure data that is required in the mobile verification process when a provider chooses to submit

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[371] *Id.* at 3064, para. 104.

[372] *Connect America Fund—Alaska Plan; GCI Communications Corp. Petition for Limited, Expedited Waiver in the Alaska Plan for Drive-Test Data Collection*, WC Docket No. 16-271, Order, DA 23-648, at 4, para. 6 (rel. Jul. 31, 2023); *see also* Letter from Garnet Hanly, Chief, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI (June 2, 2023), *attached to* Email from Matthew Warner, Attorney Advisor, Competition and Infrastructure Policy Division, Wireless Telecommunications Bureau, FCC, to Chris Nierman, Vice President & Senior Counsel, Federal Affairs, GCI (June 2, 2023, 11:38 ET).

[373] *See 5G Fund Further Notice* at 24-25, paras. 45-47.

[374] *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3060-62, paras. 97-99.

[375] 47 CFR § 1.7006(c). The BDC rules provide that a provider must submit the results of at least two tests "unless, for any sampled hexagon, the provider has and submits alongside its speed tests actual cell loading data for the cell(s) covering the hexagon sufficient to establish that median loading, measured in 15-minute intervals, did not exceed the modeled loading factor for the one-week period prior to the verification inquiry, in which case the provider is required to submit only a single test for the sampled hexagon. 47 CFR § 1.7006(c).

[376] 47 CFR § 1.7006(c); *BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3061-62, 3121, para. 98, Tech. Appx.

[377] *See BDC Mobile Technical Requirements Order*, 37 FCC Rcd at 3063-64, para. 104.

infrastructure data to substantiate coverage in areas supported by the Alaska Plan? We seek comment on this approach.

125. In the *Alaska Plan Order*, the interim milestone commitments were due December 31, 2021. This initial assessment resulted in several noncompliance letters and occasional confusion regarding what the mobile-provider participant had committed to. Should the next version of the plan have more than just one interim-commitment milestone dates to ensure that each provider is making steady progress toward its final commitments, as well as ensure that the provider has more opportunities to comply where it may have a misunderstanding of its obligations? Would having multiple interim milestones within the Alaska Connect Fund term raise concerns? Could compliance issues also be improved through annual progress meetings? Should the Commission impose stricter requirements on providers that had a higher percentage of non-compliance, such as annual on-the-ground testing requirements or quarterly submission of infrastructure data based on the BDC infrastructure data specifications[378] or a combination of both? What safeguards can we adopt to improve compliance?

7. Tribal Nations and Tribal Lands in Alaska

126. As noted above, the Commission is committed to working with Tribes and Tribal leaders.[379] We seek comment on issues related to Tribal Nations and Tribal Lands in Alaska as we consider the Alaska Connect Fund for mobile providers. Are there any Tribal concerns that arise from or could be addressed by the Alaska Connect Fund that are specific to mobile service, and if so, how should those issues best be addressed?

8. Additional Considerations

127. *Cybersecurity*. Are there any cybersecurity concerns that arise from or could be addressed by an Alaska Plan that are specific to mobile service, and if so, how should those issues best be addressed? The Supply Chain Reimbursement Program proceedings, for example, have required three mobile-provider participants in the Alaska Plan to remove equipment from untrusted suppliers and, as a practical matter, allowed for network upgrades in the process.[380] Are there security advantages from that proceeding that other providers should integrate? Should mobile-provider participants in the Alaska Plan be required to use the NIST Framework for Improving Critical Infrastructure Cybersecurity to manage cybersecurity risks and certify accordingly?[381] Specifically, we seek comment on whether Alaska Connect Fund support recipients should be required to implement a cybersecurity risk management plan that reflects the latest version of the NIST Framework for Improving Critical Infrastructure

[378] *See* 47 CFR § 1.7006(c).

[379] *See supra* Sec. II.B.8; *see also Wireless Telecommunications Bureau and Office of Native Affairs and Policy Seek Comment on Tribal Nation and Native Hawaiian Access to Spectrum and Related Data*, GN Docket No. 23-265, Public Notice, DA 23-660 (WTB/ONAP rel. Aug. 4, 2023); *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078 (2000), https://docs.fcc.gov/public/attachments/FCC-00-207A1.pdf.

[380] *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Third Report and Order, 36 FCC Rcd 11958, 11992, para. 86 (2021) ("The Commission further acknowledged, however, that replacing older technology inevitably involves a certain amount of technology upgrade and as a result expressly allowed for the replacement of older mobile wireless networks with 4G LTE equipment or service that is 5G ready."); *id*. at 11993, para. 88 ("As a policy matter, we encourage providers to upgrade their networks and to transition to efficient, scalable, and secure technology, thereby providing more choices and capabilities to end users.").

[381] *See* CTIA Comments, WC Docket No. 10-90 et al., at 2 (rec. Jul. 18, 2022), https://www.fcc.gov/ecfs/document/1071841764670/1.

Cybersecurity,[382] that reflects an established set of cybersecurity best practices, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives[383] or the Center for Internet Security (CIS) Critical Security Controls[384] as these elements pertain to mobile service. We also seek comment on whether these carriers should be required to implement supply chain risk management plans that incorporate the key practices discussed in NISTIR 8276, Key practices in the Cyber Supply Chain Risk Management Observations from Industry,[385] and related supply chain risk management guidance from NIST 800-161.[386] Would it be appropriate for Alaska Connect Fund recipients to submit to USAC their updated cybersecurity and supply chain risk management plans within 30 days of making a substantive modification thereto, as E-ACAM recipients must? The Commission proposes providers receiving support under the Alaska Connect Fund should adopt the same cybersecurity reporting requirements that were recently adopted in the E-ACAM Notice for both mobile and fixed carriers. We seek comment on this proposal. What reasons, if any, would support differences in cybersecurity requirements between the mobile and fixed carriers under the Alaska Connect Fund?

128. *Open RAN.* We seek comment on whether we should use the Alaska Connect Fund to encourage the deployment of Open RAN, and if so, how.[387] In its March 2021 *Open RAN NOI*, the Commission sought input on "whether, and if so, how, deployment of Open RAN-compliant networks could further the Commission's policy goals and statutory obligations, advance legislative priorities, and benefit American consumers by making state-of-the-art wireless broadband available faster and to more people in additional parts of the country."[388] Soon after the *Open RAN NOI* was adopted, the President signed Executive Order 14036, which encouraged the Commission to "consider . . . providing support for the continued development and adoption of 5G Open Radio Access Network . . . protocols and

[382] NIST, *Framework for Improving Critical Infrastructure Cybersecurity, v.1.1* (2018), https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf .

[383] *See* Cybersecurity and Infrastructure Security Agency, *Cross-Sector Cybersecurity Performance Goals and Objectives*, https://www.cisa.gov/cpgs (last visited August 28, 2023).

[384] *See* Center for Internet Security, *Critical Security Controls Version 8,* https://www.cisecurity.org/controls (last visited August 28, 2023) (providing security controls grouped by priority and feasibility for different sizes and resources of businesses in Implementation Groups).

[385] NIST, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry at iv (2021), https://csrc.nist.gov/publications/detail/nistir/8276/final (presenting the following as key practices: 1) integrating cyber supply chain risk management across the organization; 2) establishing a formal cybersecurity supply chain risk management program; 3) knowing and managing critical components and suppliers; 4) understanding the organization's supply chain; 5) collaborating closely with key suppliers; 6) including key suppliers in resilience and improvement activities; 7) assessing and monitoring throughout the supplier relationship; and 8) planning for the full life cycle).

[386] NIST, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations at 4 (2022), https://csrc.nist.gov/publications/detail/sp/800-161/rev-1/final (identifying critical success factors for cyber supply chain risk management).

[387] The Radio Access Network (RAN) is the portion of the wireless telecommunication system that connects user devices (e.g., mobile phones) with the core network that performs routing or delivery of content. Open RAN is a term that describes a general disaggregation of RAN functionality built using open interface specifications between elements instead of proprietary specifications. Open RAN can be implemented in vendor-neutral hardware and software-defined technology based on open interfaces and community-developed standards providing a flexible and interoperable deployment architecture across multiple vendors.

[388] *Promoting the Deployment of 5G Open Radio Access Networks*, GN Docket No. 21-63, Notice of Inquiry, 36 FCC Rcd 5947, 5948, para. 3 (2021) (*Open RAN NOI*).

software."[389] The Commission has since sought comment in the *5G Fund Further Notice* on whether and how we should factor the use of Open RAN technologies into the 5G Fund,[390] noting that "Open RAN has the potential to allow carriers to promote the security of their networks while driving innovation, in particular in next-generation technologies like 5G, lowering costs, increasing vendor diversity, and enabling more flexible network architecture."[391] Should the next version of the Alaska Plan encourage Open RAN? If so, how should it do this? In addressing these questions, commenters should identify with particularity industry-accepted Open RAN specifications, standards, or technical requirements that would represent suitable evaluative criteria for mobile providers in remote Alaska.[392]

129. *Renewable Energy*. Fuel costs are expensive in Alaska.[393] And some of this directly affects communications infrastructure operation, such as microwave towers that may be isolated from other infrastructure and require diesel fuel to be brought to the site via helicopter to remote sites.[394] Can

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[389] Promoting Competition in the American Economy, Exec. Order No. 14036 § 5(l)(iii), 86 Fed. Reg. 36987, 36994, (July 9, 2021). Even prior to the issuance of Executive Order 14036, the Commission recognized the potential benefits of Open RAN by including it in the list of the categories of suggested replacements for communications equipment that must be removed by eligible telecommunications carriers (ETCs) that receive USF funds, pursuant to the *Supply Chain Second Report and Order*. *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14284, 14366, para. 202 (2020).

[390] *5G Fund Further Notice*, FCC 23-74, at 28-30, paras. 53-54.

[391] *Id.* at 29, para. 53 (citing *Partitioning, Disaggregation, and Leasing of Spectrum*, WT Docket No. 19-38, Further Notice of Proposed Rulemaking, 36 FCC Rcd 16956, 16977, para. 63 (2021). We note that other federal agencies are also working to encourage the expansion of Open RAN technologies. For example, the National Telecommunications and Information Administration (NTIA) recently released the first of a series of Notices of Funding Opportunity for the purpose of funding "efforts that accelerate the development, deployment, and adoption of open and interoperable radio access networks . . . through a competitive grant program." National Telecommunications and Information Administration, *Public Wireless Supply Chain Innovation Fund Grant Program—Expanding Testing and Evaluation*, Notice of Funding Opportunity, at 2 (2023), https://ntia.gov/sites/default/files/publications/pwscif_final_nofo.pdf. NTIA also released an in-depth report on security issues related to Open RAN, stating that "[c]ompared to non-disaggregated, non-virtualized RAN, Open RAN has potential security advantages, incl. openly specified, verifiable security controls and capabilities associated to virtualization and cloudification that can help to improve operational security tasks." NTIA, *Open RAN Security Report: Outcome From Quad Critical and Emerging Technology Working Group* at 7 (May 2023) (*NTIA Open RAN Security Report*), https://ntia.gov/sites/default/files/publications/open_ran_security_report_full_report_0.pdf. The report also found that Open RAN could be expected to provide other benefits, such as "[i]mprovement of the performance and reducing the cost of equipment by stimulating competition in the base station market; [m]itigating supply chain risks (diversifying suppliers) according to the multi-vender configuration; [o]ptimizing energy efficiency through intelligence (Energy saving); [and] [i]mprovement of monitoring and maintenance functions by [Service Management and Orchestration]." *NTIA Open RAN Security Report* at 8. We recognize, however, that there is some debate about whether Open RAN is ready for full network deployment, as well as concern that Open RAN may, in fact, create additional security risks. *See, e.g.,* T-Mobile Comments, GN Docket No. 21-63, at 11-12 (rec. Apr. 28, 2021); *see also* Verizon Comments, GN Docket No. 21-63, at 4 (rec. Apr. 28, 2021) (stating that there are "many unspecified and non-standardized functionalities that Open RAN will need to support for network operators who provide customers with advanced wireless capabilities at scale").

[392] *See* Open RAN Alliance, O-RAN Alliance Specifications, https://orandownloadsweb.azurewebsites.net/specifications (last visited Sept. 13, 2023).

[393] ATA Petition at 23-24, n.77.

[394] *See, e.g.*, ATA Jul. 28, 2023 *Ex Parte* Letter at 3 ("Providers must cover the high costs of fuel and electricity in Alaska, as well as the costs of weather-dependent small boats, barge service, and small charter aircrafts to carry fuel, technical staff, materials, and equipment into remote villages. Subscriber revenues alone will not be sufficient to cover these costs.") (footnote omitted).

the Commission require or create incentives for the use of renewable energy—such as a combination of wind, solar, and batteries—to be used at microwave tower or other communications infrastructure sites, which could lower operational expenditures around fuel costs, as well as be more environmentally friendly?

IV. DIGITAL EQUITY

130. To the extent not already addressed, the Commission, as part of its continuing effort to advance digital equity for all,[395] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations[396] and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our inquiries may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

V. REPORT AND ORDER ADOPTING HIGH-COST PROGRAM ADMINISTRATIVE IMPROVEMENTS

A. BACKGROUND

131. In this Order, we make, in general, minor changes to the following rules and procedures: requirements relating to annual reporting and certification obligations; the process governing mergers between rate-of-return local exchange carriers (LECs); allocation of support for exchanges acquired by a Connect America Fund Broadband Loop Support (CAF BLS) recipient; the process governing mergers involving commonly-owned study areas; the schedule for CAF BLS recipients to file optional quarterly line counts; and the process to relinquish a high-cost support recipient's status an Eligible Telecommunications Carrier (ETC).

B. DISCUSSION

1. Annual Reporting and Certification Requirements for High-Cost Support Recipients

132. In this section, we adopt several changes to the Commission's rules that will improve or streamline annual reporting and certification requirements for high-cost support recipients.[397]

133. *First*, we adopt our proposal to revise section 54.313(i) of the Commission's rules to streamline the process for submitting annual high-cost information and certifications by requiring that such filings be made only with the universal service program administrator, i.e., the Universal Service Administrative Company (USAC).[398] Currently, this rule requires high-cost support recipients to file this

[395] Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

[396] The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

[397] *See* 47 CFR §§ 54.313, 54.314, 54.316 (requiring annual report and certification for high-cost support recipients).

[398] *Administrative Notice*, FCC 22-35, at 23, para. 62; 47 CFR § 54.313(i).

information with the Commission, with USAC, and with the relevant state commission or relevant authority in a U.S. Territory, or Tribal government, as appropriate, resulting in redundant and unnecessary administrative burdens on high-cost support recipients.[399] In addition to relieving recipients of these burdens, this rule change is warranted because we can takes advantage of technological advances to make this information more readily available to all interested parties by using the benefits of a centralized, online collection of information and improving access and records management.[400] Several commenters support this change,[401] and the Nebraska Public Service Commission asks the Commission to ensure that states retain full access to the annual reports.[402] We agree that states should retain full access to the annual reports and we direct USAC to continue to provide access to this information to the States, U.S. Territories, and Tribal governments electronically via links to the data on USAC's website.[403] Accordingly, we find that modifying section 54.313(i) of the Commission's rules to limit submission of the annual high-cost report to USAC is well warranted.

134. *Second*, we similarly adopt our proposal to revise section 54.314 of the Commission's rules to require states that desire ETCs to receive high-cost support and ETCs not subject to state jurisdiction to file annual reports with USAC only, rather than both USAC and the Commission's Office of the Secretary.[404] Several commenters support this modification,[405] and none opposes. We note that Commission staff coordinates routinely with USAC, so this modification should have no impact on the Commission's ability to review and monitor these filings as part of its program oversight.[406] WISPA supports this modification but only if reports are made publicly available so that funding recipients can

[399] 47 CFR § 54.313(i) ("All reports pursuant to this section shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, with the Administrator, and with the relevant state commissions or relevant authority in a U.S. Territory, or Tribal governments, as appropriate.").

[400] *Cf. Connect America Fund*; *ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order, 32 FCC Rcd 5944, 5948, para. 15 (2017) (determining that the filing of duplicate copies of FCC Form 481 with states, U.S. territories, and/or Tribal governments would reduce unnecessary administrative burdens while ensuring that these entities continue to have ready access to the information in a centralized system at USAC).

[401] *See* Comments of CTIA, WC Docket No. 10-90, et al., at 2-3 (rec. July 18, 2022) (CTIA Comments); Comments of NTCA – The Rural Broadband Association, WC Docket No. 10-90 et al., at 41-42 (rec. July 18, 2022) (NTCA Comments); Comments of Vantage Point Solutions, WC Docket No. 10-90, et al., at 11 (rec. July 18, 2022) (Vantage Point Comments); Reply Comments of WISPA – *Broadband Without Boundaries*, WC Docket No. 10-90, et al., at 3 (rec. Aug. 1, 2022) (WISPA Reply).

[402] Comments of the Nebraska Public Service Commission, WC Docket No. 10-90, et al., at 7 (rec. July 13, 2022) (Nebraska Public Services Commission Comments).

[403] *See Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, WC Docket No.10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3168-69, para. 222 (2016) (*2016 Rate-of-Return Reform Order*) (providing that "[e]ntities, such as states and Tribal governments, which already have access to confidentially filed information for ETCs[] within their jurisdiction, will continue to have access to such information through the online database"); Universal Service Administrative Company E-file portal, https://forms.universalservice.org/portal/login. For information concerning the availability of the most recent Form 481 data, *see* Universal Service Administrative Company, Announcements, Form 481 and Broadband Deployment Data Now Available to Tribal Officials (July 20, 2023), https://www.usac.org/high-cost/resources/announcements/; Universal Service Administrative Company, Announcements, Form 481 and Broadband Deployment Data Now Available to State Officials (July 20, 2023), https://www.usac.org/high-cost/resources/announcements/.

[404] 47 CFR § 54.314(a), (b), (c), (d).

[405] *See* CTIA Comments at 3; NTCA Comments at 42; Vantage Point Comments at 11.

[406] *See* NTCA Comments at 42 (asserting that the proposed modification will "have no adverse effect on the Commission's oversight of the programs").

ensure that the certification has been received and can demonstrate this to third parties, such as potential investors.[407] We find that WISPA's request is reasonable. We thus modify our rules to require the submission of annual certifications under section 54.314 of the Commission's rules with USAC only and commit to making this information publicly available.

135. *Third*, we adopt our proposal to more closely align support reductions with an ETC's failure to certify by the deadlines established in the Commission's rules.[408] Current rules provide that support reductions do not occur until January of the year following the year when the ETC misses a reporting deadline.[409] The revised rules we adopt today will instead reduce support in the month immediately following the notice of support reduction to the eligible telecommunications carrier from USAC or as soon as feasible thereafter. Because support reductions are based on the number of days late, and payments usually occur mid-month, in situations where a filing is not received in time for USAC to calculate the requisite support reduction for the next month's payment, USAC will implement the support reduction as soon as feasible. No commenter opposes this change and CTIA agrees that requiring USAC to implement late filing support reductions more promptly by reducing support in the month immediately following the issuance of a notice of support reduction or as soon as feasible immediately thereafter avoids confusion and improves accountability.[410]

136. *Fourth*, we modify the reporting requirements for performance testing to require all high-cost support recipients serving fixed locations to report and certify performance testing results on a quarterly basis, rather than annually. High-cost support recipients must perform broadband performance testing one week out of each quarter.[411] All high-cost support recipients, including those that are in compliance with speed and latency requirements, will be required to report and certify the results of the performance tests quarterly rather than annually. This modification will allow the Commission to better assess whether carriers are on track to meeting the Commission's performance measures requirements and to determine whether there are significant problems with a carrier's network that may interfere with consumer service. The Wireline Competition Bureau (Bureau) will continue to assess compliance with program requirements based on the annual testing results (i.e., annual calculations), and carriers found not compliant will have support withheld until the carrier achieves a full quarter of compliance.[412] No commenter opposes this modification, and NTCA supports quarterly certification of performance test results for all high-cost support recipients, stating that reporting and certifying a carrier's performance testing results on a quarterly basis so the burden is minimal while also ensuring access to results enhances the Commission's oversight.[413]

137. Carriers are required to report and certify locations in the High Cost Universal Broadband portal (HUBB) by March 1st annually but some carriers may not have reported locations when scheduled

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[407] WISPA Reply at 3.

[408] 47 CFR §§ 54.316(c)(4), 54.313(j)(1), 54.314(d)(1)(iii). While the *Administrative Notice* makes a brief reference to "failing to certify locations," *see Administrative Notice*, FCC 22-35, at 24, para. 64, the proposal incorporated deadlines for the FCC 481 and the Certification of support for eligible telecommunications carriers.

[409] *See, e.g., id.* § 54.316(c) (stating that the support recipient will "continue to receive support for the following calendar year" which has led Commission staff to direct USAC to impose reductions in January of the following year).

[410] CTIA Comments at 3.

[411] *See Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6520, para. 29 (WCB 2018) (*Performance Measures Order*); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10128-29, paras. 50-52 (2019) (*Performance Measures Reconsideration Order*).

[412] *First Performance Measures Order*, 33 FCC Rcd at 6532, para. 63.

[413] NTCA Comments at 47.

to begin performance pre-testing or testing. As a result, we recognize that certification of HUBB locations on March 1st may impede the carrier's ability to complete some of its testing. In these circumstances, the Bureau may exercise discretion when assessing the scope of a carrier's compliance or when implementing support withholdings.

138. Currently, the Commission requires quarterly reporting of carriers' pre-testing data, reflecting the results of tests conducted prior to the commencement of the official test period.[414] Those quarterly testing results must be reported and certified within one week after the end of the quarter in which the tests are conducted, to provide insight into carriers' experience with the testing process. We adopt a similar schedule of quarterly reporting filings for all high-cost carriers' testing. Once effective, all high-cost carriers will be required to report and certify their quarterly performance testing results within two weeks, rather than within one week, after the end of the quarter in which the tests are conducted. We provide two weeks to offset the fact that, for administrative ease, we decline to adopt any grace period: first quarter testing results will be due April 15th, second quarter results will be due July 15th, third quarter results will be due October 15th, and fourth quarter results will be due January 15th. We direct the Bureau to announce when quarterly reporting and certification will go into effect.[415]

139. We believe that establishing a specific reporting schedule will provide certainty, promote accountability, and conform with timelines for other testing protocols to minimize confusion. Given that carriers will be certifying locations quarterly, support withholding for non-compliance may be implemented sooner than when reports were due by July 1st annually. This will ensure that the withholding is closer in time to the determination of noncompliance and encourage the non-compliant carrier to improve its performance so that it can regain the withheld support.

140. Under this new quarterly certification schedule, we implement support reductions for late performance measures reporting based on the current framework under section 54.313(j) that reduces support based on the number of days late, but factoring in that we are requiring quarterly filing certifications.[416] Support reductions due to late filings will be assessed at the end of the fourth quarter and will be based on total number of days late divided by four, then rounded to the nearest whole number. When that number is between 1 and 7, a carrier will have its support reduced an amount equivalent to seven days in support; when that number is 8 or higher, a carrier will have its support reduced on a pro-rata basis equivalent to the period of non-compliance (i.e. the number of days), plus the minimum seven-day reduction.[417]

141. *Fifth*, we decline to relieve privately held rate-of-return carriers that receive Alternative Connect America Model (A-CAM) support or Alaska Plan support of the requirement to file annually a

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[414] *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139, para. 78.

[415] Carriers subject to Mean Opinion Score (MOS) testing will be required to certify results by the deadline for the quarter in which the testing occurs. Accordingly, if the carrier conducts MOS testing in the first quarter and third quarter, the results will be due by April 15th and October 15th respectively. *See Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 8081, 8089, para. 21 (WCB 2019) ("rather than testing quarterly, we require providers using this MOS testing methodology to test twice in each calendar year, with the two testing instances separated by at least five months.").

[416] *See* 47 CFR § 54.313(j).

[417] *See, e.g.*, *id*. § 54.313(j)(1)(i), (ii). For example, under this rule, if a carrier certifies its quarterly reporting three days late for the first quarter, four days late for the second quarter, and timely files for the third and fourth quarter (seven divided by four equals 1.75 then round to 2), we will assess a seven-day support reduction after the fourth quarter filing is due. If a carrier certifies its quarterly reporting fifteen days late for the first quarter, fifteen days late for the second quarter, seven days late for the third and timely for the fourth quarter, we will assess a sixteen-day support reduction (37 divided 4 equals 9.25 then round to 9, then plus the minimum seven-day reduction).

report of the company's financial conditions and operations.[418] NTCA had sought this relief for all privately held rate-of-return carriers that receive A-CAM support or other fixed support mechanisms, such as the Alaska Plan., and we sought comment on this issue in the *Administrative Notice.*[419]

142. Although NTCA and the Alaska Telecom Association (ATA) support eliminating this requirement, we are not persuaded by their arguments.[420] Moreover, we have determined that the public interest benefits of collecting the information—understanding the efficacy of the model and helping to ensure that support is sufficient but not excessive—outweigh any burdens.

143. The Commission concluded in the 2011 *USF/ICC Transformation Order* that it is not necessary to require publicly traded companies to submit financial information because it could obtain such information directly for Securities and Exchange Commission registrants.[421] At the same time, it declined to impose such a requirement on privately held price cap carriers receiving model-based support because the Commission "expect[ed] that a model developed through a transparent and rigorous process will produce support levels that are sufficient but not excessive."[422]

144. NTCA argues that A-CAM carriers are similarly "recipients of fixed support, which the Commission has already recognized leads them to being 'disciplined by market forces' and which should be the dispositive factor here."[423] However, what the Commission actually stated was that "support awarded through competitive processes," not model-based support, "will be disciplined by market forces."[424] And while we concede that, as NTCA notes, "it is not true across the board" that recipients of CAF Phase II model-based support were publicly traded companies,[425] the vast majority were, and as such their financial information was publicly available. Given these circumstances, it was sound policy not to require this information in that context. In contrast, there are many more rate-of-return carriers receiving A-CAM support, and many more of them are privately held and, thus, their information is not readily available to the Commission. The availability of support recipients' financial information enables the Commission to evaluate whether model-based support is actually sufficient but not excessive. Moreover, all high-cost support recipients have an obligation to use such support only for its intended purpose, and financial information helps the Commission validate compliance with this requirement.[426] Thus, we find that the availability of the financial information of A-CAM carriers will help the Commission evaluate

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[418] The Commission's rules require all privately held rate-of-return carriers that obtain high-cost support to provide "a full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year." 47 CFR § 54.313(f)(2).

[419] *See* Petition for Rulemaking of NTCA—The Rural Broadband Association, WC Docket Nos. 10-9 et al. (filed Oct. 20, 2020), https://ecfsapi.fcc.gov/file/102079774741/10.20.20%20ACAM%20Petittion%20Rulemaking.pdf (NTCA Petition for Rulemaking); *Administrative Notice*, FCC 22-35, paras. 68-70

[420] NTCA Comments at 42-43; Reply Comments of Alaska Telecom Association, WC Docket Nos. 10-90, et al., at 1-2 (rec. Aug. 1, 2022) (ATA Reply). No other commenter expressed an opinion on this issue.

[421] *See 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, 17856, para. 596 (2011) (*USF/ICC Transformation Order*), *aff'd, In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

[422] *Id*. ("We expect that a model developed through a transparent and rigorous process will produce support levels that are sufficient but not excessive, and that support awarded through competitive processes will be disciplined by market forces. The design of those mechanisms should drive support to efficient levels.").

[423] NTCA Comments at 43.

[424] *USF/ICC Transformation Order*, 26 FCC Rcd at 17856, para. 596.

[425] NTCA Comments at 43.

[426] 47 U.S.C. § 254(e) (providing that an ETC must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended").

whether A-CAM produces support levels that are sufficient but not excessive, and as such, it is important for us to continue to collect such information.

145. ATA argues that Alaska Plan carriers' support is "parallel to model-based support in that it is frozen at a set level" and "intended to be sufficient to support a carrier's performance obligations, but is not excessive because the support was frozen at a historic cost-based level which has in effect declined over time as costs increased."[427] However, just because Alaska Plan support is frozen, does not ensure that the support is not excessive. We find that the continued availability of the financial information of Alaska carriers enables the Commission to evaluate whether Alaska Plan carriers' support is sufficient but not excessive.

146. *Sixth*, we adopt our proposal to modify our rules to create a consistent, one-time grace period for all compliance filings with grace periods. Specifically, we establish a grace period that allows filers to submit compliance filings "within four business days" of the relevant due date without risking a finding of non-compliance for missing the filing deadline.[428] Establishing a uniform grace period will reduce confusion and is supported by all commenters who addressed the issue, although WISPA prefers that the grace period be set at five business days instead of four.[429] We find that a four-day grace period is adequate. As we explained in the *Administrative Notice*, we proposed to establish a set grace period to eliminate confusion. Currently, several Commission rules identify a specific date, after the due date, by which carriers could file reports without a support reduction if they had not previously missed a deadline, while other rules identified the grace period as three or four days after the filing deadline.[430] We also clarify that the due date is day zero, so the day after the due date is day one. For example, where a filing is due March 1, recipients must file by the end of March 5 or be subject to a support reduction. Consistent with our Computation of Time rule, if March 5 falls on a weekend or holiday, the filing must be made by the end of the next business day to avoid the support reduction.[431] We also clarify that, by this rule modification, we are not establishing a new opportunity to utilize a grace period for carriers that have already taken advantage of the one-time grace period available to them.

147. *Seventh*, we modify the Commission's rules to adopt uniform deployment, certification, and location reporting deadlines for all CAF Phase II auction support recipients (including recipients of support allocated through New York's New NY Broadband program).[432] In doing so, we codify and make permanent the Bureau's decision to waive recipient-specific reporting deadlines based on the date of authorization in favor of uniform reporting deadlines for all of these recipients, finding that this approach alleviates unnecessary administrative burdens and better facilitates Commission oversight.[433] Two

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[427] ATA Reply at 2.

[428] *See Administrative Notice*, FCC 22-35, at 26, para. 71.

[429] *See* CTIA Comments at 3; Vantage Point Comments at 11; WISPA Reply at 3.

[430] *See Administrative Notice*, FCC 22-35, at 26, para. 71.

[431] *See* 47 CFR § 1.17 (requiring truthful and accurate statements to the Commission).

[432] *See Administrative Notice*, FCC 22-35, at 27, para. 72; 47 CFR §§ 54.310(c), 54.316(b)(4), 54.316(c)(2).

[433] *See Connect America Fund, Connect America Fund Phase II Auction*, WC Docket Nos. 10-90, 17-187, Order, 35 FCC Rcd 109, 112, para. 9 (WCB 2020) (waiving carrier-specific milestone deadlines based on the date of authorization, as set forth in section 54.310(c) of the Commission's rules, and instead, setting the following uniform deadlines: (1) 40% milestone on December 31, 2022, (2) 60% milestone on December 31, 2023, (3) 80% (milestone on December 31, 2024, and (4) 100% milestone on December 31, 2025); *id*. at 112, para. 10 (waiving section 54.316(b)(4)'s deadline for the submission of certifications of compliance with interim milestones by the last business day of the second calendar month following the relevant interim milestone and instead, requiring such certifications to be submitted by an annual March 1st deadline).

commenters support this change, and none oppose it.[434] Accordingly, we modify our rules to provide that all CAF Phase II auction support recipients must comply with deployment milestones by deadlines occurring at the end of the specified calendar year (rather than the date the Bureau authorized the support recipient to receive support) and must meet annual certification and location reporting requirements (annual deployment report) as of March 1st annually, including reporting necessary to demonstrate compliance with the prior year milestone. In addition, we modify section 54.316(b)(7) of the Commission's rules regarding the certification deadlines for the Bringing Puerto Rico Together Fund stage 2 fixed program and the Connect USVI Fund stage 2 fixed program to make explicit the annual March 1st deadline, as specified in the respective authorization public notices, which aligns those programs' rules with the rules for other high-cost support mechanisms.[435]

148. *Eighth*, we decline to amend section 54.316(a) of the Commission's rules to require ETCs receiving high-cost support and subject to defined deployment obligations to report the "maximum speeds actually being offered, advertised, or delivered to customers."[436] We agree with WISPA and CTIA, the only commenters to weigh in on this proposal, that such an amendment would result in collection of information similar to data the Commission already collects through its performance testing program and in fulfillment of its Broadband Data Collection (BDC) responsibilities.[437] Through the performance testing program, the Commission assesses compliance with public service requirements, including speed and latency standards, by requiring high-cost support recipients to perform a minimum of one download test and one upload test per testing hour at a certain number of randomly chosen testing locations and to report this information to the Commission.[438] Ultimately, the Commission will use this information to assess performance throughout the provider's entire supported service area. In addition, under the BDC, each facilities-based provider of fixed broadband internet access service must report maximum advertised download and upload speeds at the location level (with reference to the Broadband

[434] NTCA Comments at 43; WISPA Reply at 4.

[435] *See* 47 CFR § 54.316(b)(7); *Connect USVI Fund Stage 2 Support Authorized For Broadband VI*, WC Docket No. 18-143, 10-90, Public Notice, 36 FCC Rcd 9405, 9407 (WCB 2021); *Wireline Competition Bureau Authorizes Stage 2 Support for Puerto Rico Telephone Company and Liberty Communications of Puerto Rico*, WC Docket No. 18-143, 10-90, Public Notice, 36 FCC Rcd 9914, 9916-17 (WCB 2021).

[436] *See Administrative Notice*, FCC 22-35, at 27-28, para. 73. Currently, section 54.316(a) requires rate-of-return carriers receiving model-based support or CAF BLS support to report "whether [they] are offering service providing speeds of at least 4 Mbps downstream/1 Mbps upstream, 10 Mbps downstream/1 Mbps upstream, and 25 Mbps downstream/3Mbps upstream." 47 CFR § 54.316(a).

[437] *See* CTIA Comments at 4 (argues that proposed changes are duplicative of "granular information on speeds and locations" collected from fixed service providers through the BDC, including advertised speed information at the location level (with reference to the Fabric) or via a geocoded shapefile mapped to the Fabric); WISPA Reply at 4 (argues that proposed changes are duplicative of information collected through the BDC).

[438] *See Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6519, para. 28 (WCB/WTB/OET 2018); *see Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10110, para. 4 (2019) (expanding performance measure testing requirements); *see generally Connect America Fund*, WC Docket No. 10-90, Order, WC Docket No. 10-90, Order, 35 FCC Rcd 14658 (WCB 2020) (clarifying certain requirements); *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6083, para. 15 (2020) (stating that RDOF support recipients must also test and certify compliance with the relevant performance requirements in accordance with the uniform framework that has been adopted for measuring and reporting on the performance of high-cost support recipients' service); 47 CFR § 54.313(a)(6).

Serviceable Location Data Fabric (Fabric)).[439] For these reasons, the proposed modification of section 54.316(a) would result in a largely redundant reporting requirement, and we decline to adopt it.

149. *Ninth*, we adopt our proposal to amend section 54.316(a)(1) of the Commission's rules to more accurately reflect the deployed locations reporting obligations of support recipients.[440] Currently, this rule directs "recipients of high-cost support with defined broadband deployment obligations" to "provide to [USAC] on a recurring basis information regarding the locations to which the [ETC] is offering broadband service in satisfaction of its public interest obligations . . . ."[441] All filers subject to this requirement have a specific annual deadline for submitting this information, and we find that this section's reference to "recurring" filings is superfluous.[442] Accordingly, we modify the rule to remove this language.

150. *Tenth*, we modify the Commission's voice and broadband rate certification rules to clarify the reporting period.[443] Specifically, we make explicit that carriers submitting the annual FCC Form 481 are certifying compliance with both the annual voice and broadband pricing benchmarks adopted in the prior calendar year ending the last day of December.[444] As explained in the *Administrative Notice*, when the Commission moved the annual FCC Form 481 filing deadline to July 1st, the Commission moved the date for the relevant voice rates to the rates in place as of June 1st the year the report was filed, as opposed to the prior year.[445] Maintaining the rule's unique time period for voice rate certifications creates unnecessary confusion.[446] Prior to the adoption of the rate floor provision, all certifications in Form 481 applied to the preceding calendar year, a uniformity to which we return with the adoption of this rule modification.[447] For example, the support recipient submitting a Form 481 on July 1, 2024 will certify compliance during 2023 with voice and broadband benchmarks set for the 2023 calendar year (as announced in 2022). We further update the rule to reflect that the annual public notice announcing the benchmarks is issued by the Bureau and Office of Economics and Analytics (OEA).

151. Relatedly, in its comments, Teleguam Holdings LLC (GTA) asserts that the Commission should release its reasonable comparability benchmark rates earlier in the year (or extend the filing

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[439] 47 CFR § 1.7004(c)(1)(i). If the provider offers speeds below 25 Mbps downstream/3 Mbps upstream, providers shall report this information for each of two services, e.g., service offerings of speeds greater than 200 kbps in at least one direction and less than 10 Mbps downstream/1 Mbps upstream, and service offerings of speeds greater than or equal to 10 Mbps downstream/1 Mbps upstream and less than 25 Mbps downstream/3 Mbps upstream. *Id*. Relatedly, as WISPA notes in its comments, the Commission has required carriers to notify consumers of speed data information on consumer labels of telecommunications equipment. *See* WISPA Reply at 4; *Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-86, at 14, paras. 37-42 (rel. Nov. 17, 2022).

[440] *See Administrative Notice*, FCC 22-35, at 29, para. 74; 47 CFR § 54.316(a)(1).

[441] 47 CFR § 54.316(a)(1).

[442] *See* NTCA Comments at 44 (agrees that the phrase "on a recurring basis" in section 54.316(a)(1) of the Commission's rules is extraneous).

[443] 47 CFR § 54.313(a)(2), (a)(3)

[444] *See Administrative Notice*, FCC 22-35, at 28, paras. 75-76.

[445] *Id*. at 75 & nn.187-88.

[446] NTCA Comments at 44; Vantage Point Comments at 11. *See Administrative Notice*, FCC 22-35, at 28, paras. 75-76.

[447] *See Administrative Notice*, FCC 22-35, at 28, para. 75; *USF/ICC Transformation Order*, 26 FCC Rcd at 17851-53, paras. 576-58.

deadline for this certification) in order to allow support recipients sufficient time to modify their rates.[448] We agree with GTA that release of these benchmark rates too close to the year-end can impose on support recipients, especially smaller companies, significant administrative burdens in effectuating rate changes at the start of the applicable year.[449] Therefore, we will endeavor to release these rates earlier in the year.

152. *Finally*, we amend section 54.316(a) of the Commission's rules to make clear that we will permit high-cost support recipients to report and certify locations that should have been reported for a prior reporting year, even after the reporting deadline for that year, in future annual deployment reports and to count these locations (hereinafter "late-reported locations") toward their defined deployment obligations.[450] To ensure that support recipients are motivated to submit complete and timely annual deployment reports, we adopt a support reduction mechanism that will apply to all late-reported locations due to be reported after the effective date of this Order. For the submission of late-reported locations that should have reported before the effective date of this Order, we exercise our discretion to not apply this mechanism.

153. Under section 54.316(a) of the Commission's rules, support recipients reporting in the HUBB have a duty to report all qualifying locations to which the support recipient deployed service during the relevant reporting period (the prior year) by March 1st, including locations that, if reported, would result in a carrier exceeding an interim or final milestone.[451] As explained in the *Administrative Notice*, there is currently no mechanism by which support recipients can later submit and certify locations toward satisfaction of defined deployment obligations if the recipient missed the reporting deadline for those locations.[452] Creating such a mechanism also better facilitates compliance with support recipients' general duty under section 1.17 of the Commission's rules to correct or amend information reported to the Commission[453] and helps ensure that the Commission may effectively assess these recipients' progress in deploying service.[454]

154. In the *Administrative Notice*, the Commission proposed a formula for a support reduction mechanism for late-reported locations that would take into account the relative due diligence of support

[448] Comments of GTA-Teleguam Holdings, LLC at 4 (rec. July 18, 2022) (GTA Comments).

[449] *Id.*

[450] 47 CFR § 54.316(a).

[451] *See 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, 12909-11 (WCB 2016) (*HUBB Reporting Guidance Public Notice*) (explaining that the annual deployment reporting obligation requires reporting of "all locations to which a carrier has made service available in accordance with its specific obligations for the reporting period, not just a subset of those locations").

[452] *See Administrative Notice*, FCC 22-35, at 29, para. 80.

[453] 47 CFR § 1.17(a)(2) (stating that no person may provide, in any written statement of fact "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading."); *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, 12909-11 (WCB 2016) (specifically noting providers reporting in the HUBB have an independent duty to correct or amend submitted information if they have reason to believe, either through their own investigation or upon notice from USAC, that the data is inaccurate, incomplete, or contains data errors or anomalies).

[454] *See Administrative Notice*, FCC 22-35, at 29, para. 80.

recipients in identifying and reporting locations.[455] Specifically, the Commission proposed "a support reduction mechanism where recipients' support will be reduced for [late-reported] locations based on the percentage of a recipient's total locations for the reporting year being reported after the deadline and the number of days after the deadline."[456] We adopt this formula with certain modifications to address concerns raised by commenters and to balance accountability with administrative burden.

155. As an initial matter, we reject NTCA's argument that any support reduction is unnecessary because support recipients are already sufficiently motivated to report and amend their filings to avoid possible default consequences and to gain the benefits of demonstrating to the public their deployment efforts.[457] While, ultimately, support recipients may need to submit late-reported locations to avoid default, they would have no particular motivation to do so unless and until default is imminent, absent any consequence for late reporting. Indeed, acceptance of late-reported locations for the purpose of counting these locations toward defined deployment obligations at any time during the deployment period without consequence would encourage a lackadaisical approach to identifying and reporting locations on a timely basis and potentially could delay or disrupt verifications of compliance with milestones. Further, many support recipients are likely to delay deployment to the most difficult to serve areas where locations can be more difficult to assess, e.g., where newly deployed areas are missing postal addresses. Support recipients may thus be motivated to delay reporting of certain easily identifiable locations in other earlier deployed areas in order to increase the likelihood of passing verification for later milestones, i.e., by closing the non-compliance gap[458] or increasing the probability of passing under the statistical measures used in the verification process. Finally, customers' goodwill toward their service providers is unlikely to be greatly affected by reporting delays unless the number of unreported locations is substantial and/or causes a milestone failure, and therefore, this concern is unlikely to be a significant factor in motivating support recipients to accurately assess and timely report or amend their annual deployment reports.[459]

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[455] *See id.* at 30, para. 81 (noting that factoring in the duration and the relative number of late-reported locations "further helps make the reduction in support proportional to the severity of the rule violation").

[456] *See id.* at 17, para. 81. The Commission provided the following illustration: "suppose a recipient certifies 10,000 locations deployed to in 2022 by March 1, 2023 but on June 7, 2023 reports an additional 100 locations deployed to in 2022—meaning the total number of locations deployed to in 2022 is now 10,100. Based on our rules, the carrier should have certified 100% of locations deployed to in 2022 by March 1, 2023. However, that the carrier timely certified 99% of locations (10,000/10,100) deployed in 2022, which means 1% of locations certified were late reported. In this example, if the recipient's daily support is $1,000, and the recipient reported the 100 locations 99 days after the deadline, the support reduction would be $1,000 x 99 x 0.01, which equals $990.00—(daily support) x (number of days after the deadline) x (percentage of locations for the reporting year filed after the deadline)." *See id*. at 17 n.196.

[457] NTCA Comments at 45 (stating that the "effort to coordinate HUBB and Broadband Data Collection filings would help greatly in addressing such concerns and mitigate any potential perceived incentives" to not report late-reported locations).

[458] *See, e.g.,* 47 CFR § 54.320(d)(1)(1)(i)-(iv) (dividing deployment compliance gaps into four tiers, based on the percentage of the gap, with the highest gap in compliance being relegated to the highest tier—Tier 1: compliance gap of at least 5% but less than 15%; Tier 2: gap of at least 15% but less than 25%; Tier 3: gap of at least 25% but less than 50%; Tier 4: gap of 50% or more). A carrier may reduce or cure a compliance gap by submitting new locations, which will become effective upon issuance of a Bureau letter to that effect. *See id*.

[459] For the same reasons supporting the consequence for late-reporting of locations, we also decline to conduct a true-up after the final milestone to restore any support associated with the filing of late-reported locations that ultimately, proved to be in excess of satisfying the final milestone. Support recipients must report *all* locations deployed on an annual basis; to allow this true-up would encourage support recipients to only report those locations necessary to meet a milestone and forgo reporting of locations that might be more difficult to assess and thus, could

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156. In their comments, GCI and NTCA object to the use of the support reduction mechanism as proposed in the *Administrative Notice*, asserting that it would result in large variability in support reductions and have a disproportionately negative impact on those support recipients with fewer locations to serve and/or slower deployments at the beginning of their deployment term.[460] While we acknowledge that carriers with fewer deployed locations in a given year risk a larger support reduction for submitting late-reported locations for that year, we also note that the time and effort associated with identifying and correctly reporting deployed locations should generally scale based on the number of locations deployed in a given year. In other words, as the number of deployed locations reported in a given year increases, so too do the burdens on carriers assessing locations and the associated likelihood of omitting a deployed location. Accordingly, this ratio is a reasonable measure of the relative due diligence by the reporting carrier warranting its incorporation in the support reduction formula.

157. GCI also asserts that "[t]he penalties for providers who timely certified their deployed locations and need to add additional locations should not be worse than the penalties for failure to deploy on time," i.e., a scaled withholding of support during a set time frame (cure period) during which time the carrier may recover withheld support upon demonstration of compliance.[461] We reject GCI's attempt to analogize late reporting to delayed deployment. The cure period serves the Commission's overriding interest in maximizing deployment benefits by providing noncompliant carriers with the time to come into compliance by continuing to build the network.[462] Carriers that seek to report late-reported locations do not need a cure period to provide them with additional time to file the locations. There may be circumstances where the support recipient has acted in good faith when deploying its network and reporting locations, only to learn of reporting errors during the verification process, such as the reporting of ineligible locations as eligible locations. In these circumstances, the support recipients may come into compliance by reporting locations newly deployed within the cure period (without support reduction) and/or reporting late-reported locations subject to the support withholding we adopt here. Accordingly, all carriers reporting late-reported locations, whether they are in the cure period or not, are similarly situated in terms of support reduction consequences.

158. The Commission does, however, recognize that in certain circumstances application of the proposed formula would result in a significant support reduction that could threaten the ability of the support recipient to complete deployment, meet performance standards, and satisfy public interest obligations. We also recognize that some limited modification to the withholding formula would produce greater consistency in the amount of support withheld among support recipients with similar obligations and receiving similar support amounts, thus addressing some of GCI's expressed concerns.[463] Accordingly, we modify the proposed formula to provide for a maximum per-day, per-location reduction of seven dollars ($7).[464] We also cap the duration multiplier at 15 days if the late-reported locations are

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potentially disrupt or skew verification processes. It would also unfairly reward those support recipients that find more locations than needed based on circumstances unrelated to the relative level of pre-auction or annual due diligence in identifying locations to the detriment of other support recipients.

[460] GCI Reply at 3; NTCA Comments at 45. As an example, GCI notes that if a carrier were to report no deployed locations in a given year, and then later discover one location that should have been reported for that year, the carrier would face a withholding equivalent to 100% of its per diem support per day that the location was not filed. GCI Comments at 5.

[461] GCI Comments at 7; 47 CFR § 54.320(d).

[462] *See, e.g.,* 47 CFR § 54.320(c), (d)(1)(iv), (d)(2), (d)(3).

[463] GCI Comment at 6; *Administrative Notice,* FCC 22-35, at 17-18, paras. 81-82.

[464] The $7 maximum is the median per day, per location support received by the top 25% of all support recipients reporting in the HUBB (with a few outliers removed). To illustrate this change from the formula as proposed in the *Administrative Notice*, where the recipient's late-reported certified locations constituted 1% of the locations that

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filed as of the next reporting deadline after the locations should have been filed and at 30 days (for each instance of late reporting) if the late-reported locations are filed at any time thereafter. Further, we adopt a one-time de minimis exception from support withholding for late-reported locations deployed in any single year that are less than five percent of the locations that were filed in the relevant reporting year. We thus acknowledge GCI's and NTCA's concerns regarding the likelihood that carriers will make a minimum number of "inevitable" errors in reporting despite the exercise of due diligence,[465] while also striking an appropriate balance to ensure that support recipients will make best efforts to avoid such errors.

159. Finally and contrary to our tentative conclusion in the *Administrative Notice*, we adopt a one-time grace period for amending an annual filing with additional locations consistent with the grace period afforded support recipients that fail to submit their annual filing in section 54.316(c)(2)(iii) of the Commission's rules.[466] We find that such one-time grace period, like that granted for late annual filings, places a minimum burden on the resources dedicated to program administration and evaluation of location information while accommodating the potential for a one-time administrative error. This is a particularly opportune time for the adoption of this grace period as carriers have been in the process of assessing their deployed locations for the mandatory BDC filings.[467] We will apply the support reduction for the filing of late-reported locations in the next month immediately following the notice of support reduction to the eligible telecommunications carrier from USAC or as soon as feasible thereafter.

160. To encourage support recipients to complete annual reviews of already served areas to identify unreported or misreported locations and to immediately report those locations even if the support recipient does not perceive such locations as necessary to meet interim deployment milestones, the Commission will not apply the support reduction consequence to any locations that were deployed in years prior to the effective date of this rule change but reported after the effective date of this rule. We thus dismiss as moot all pending petitions for waiver to allow such reporting.[468]

161. In addition, we will not reduce support for late-reported locations reported after the support recipient has demonstrated compliance with the final milestone.[469] Reducing support under these

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should have been reported, the recipient receives a daily per location support of $1,000, and the recipient reported the late-reported locations 99 days the deadline, the support reduction would be $7 x 30 x 0.01 ($2.10) instead of $1,000 x 99 x 0.01($990)—(daily support capped at $7) x (number of days after the deadline capped at 30 days) x (percentage of locations for the reporting year filed after the deadline).

[465] GCI Comments at 5; NCTA Comments at 45.

[466] 47 CFR § 54.316(c)(2)(iii).

[467] The Commission "require[s] filers whose data in the HUBB conflict with their availability data to submit conforming or corrective information after determining which information is in error." *Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program*, WC Docket Nos. 19-195, 11-10, Second Report and Order and Third Further Notice of Proposed Rulemaking, 35 FCC Rcd 7460, 7485, para. 57 (2020).

[468] *See, e.g.*, Petition for Waiver of United Utilities Inc., WC Docket Nos. 10-90 et. al. (filed July 17, 2023); Petition of Waiver of United Utilities, Inc., WC Docket Nos. 10-90 et. al. (filed Oct. 6, 2021); Union Telephone Petition for Waiver, WC Docket Nos. 10-90 et al. (rec. July 22, 2023); Petition for Waiver of TDS Telecommunications LLC, WC Docket Nos. 10-90 et al. (rec. Oct. 1, 2020); Petition of Nucla Naturia Telephone Company Request for Waiver of Section 54.316, WC Docket Nos. 10-90 et al. (filed Feb. 22, 2021). By this decision, we also render moot GCI's arguments that to apply the support reduction consequences to locations deployed before the effective date of the Commission's rules but reported after this date is an impermissibly retroactive change to the rules. GCI Comments at 8.

[469] We note, however, that all carriers subject to defined deployment obligations (with the exception of support allocated through the Rural Broadband Experiments (RBE)) must continue to file annual deployment reports until

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circumstances, where the benefit to carriers of such reporting is significantly less, would likely result in some support recipients failing to amend their filings. In addition, after the conclusion of the deployment period (including any cure period), the Commission will have a lesser stake in motivating timely reporting of every deployed location with a support reduction mechanism because such reporting will not threaten to disrupt verification processes. We make clear, however, that our approach to late-reported locations adopted here is independent of the obligation to amend filings under section 1.17 of the Commission's rules that attaches from the moment of filing and which could lead to forfeiture consequences, even in the absence of intentional misreporting and even after the demonstration of compliance with final deployment requirements.[470] Support recipients have a continuing obligation to timely amend every annual deployment report upon discovery of an inaccuracy or omission.[471]

2. Streamlining Review of Rate-of-Return Local Exchange Carrier (LEC) Mergers

162. In this section we amend our rules to provide a simpler process for rate-of-return LECs seeking to merge, consolidate, or acquire one or more rate-of-return study areas to calculate the new entity's Access Recovery Charge (ARC), Connect America Fund – Intercarrier Compensation (CAF ICC) support, and reciprocal compensation and switched access rate caps. We find that the rule revisions proposed in the *Administrative Notice*[472] will significantly reduce the administrative burdens on rate-of-return LECs seeking to increase efficiencies and productivity through these transactions and provide predictability to carriers considering such transactions, ultimately benefiting consumers.[473] The limited

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the end of their support term, even in situations where the support recipients recipient has already partially defaulted on such obligation. *Wireline Competition Bureau Provides Further Guidance to Recipients of Connect America Fund-Broadband Loop Support on Reporting and Deployment Obligations*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 2119, 2120 (WCB 2018) ("We clarify that our rules require carriers with HUBB filing obligations to submit locations and make related certifications on an annual basis until the end of their support term, regardless of whether they have already met their final deployment obligation") (citing 47 CFR §§ 54.316(a)(1), (c)(1)), *Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10150, para. 31 (2016) ("[W]e anticipate that some carriers will complete their deployment in a shorter timeframe. Carriers will still be required to report their progress on an annual basis . . .").

[470] *See, e.g., San Francisco Unified School District*, MB Docket No. 04-191, Hearing Designation Order and Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 13326, 13337 (2002) (warning a licensee that an incorrect certification that an application was complete even "absent an intent to deceive, constitutes an actionable violation of [s]ection 1.17 of the [Commission's rules]"); *Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, Report and Order, 18 FCC Rcd 4016, 4017, para. 4 (2003)) (stating that section 1.17 of the Commission's rules, as revised and clarified, is intended to "prohibit incorrect statements or omissions that are the result of negligence, as well as an intent to deceive"); *id*. at 4021, para. 12 (explaining that section 1.17 of the Commission's rules requires that regulatees submitting written statements to the Commission must use due diligence in providing information that is correct and not misleading, including taking appropriate affirmative steps to determine the truthfulness of what is being submitted).

[471] *See HUBB Reporting Guidance Public Notice*, 31 FCC Rcd at 12910 (explaining that support recipients have a duty to correct or amend submitted information if they have reason to believe, either through their own investigation or upon notice from USAC, that the data is inaccurate, incomplete, or contains data errors or anomalies).

[472] *See Administrative Notice*, FCC 22-35, at 30-34, paras. 83-92 and Appx. A (proposing revisions to 47 CFR §§ 51.909, 51.917).

[473] *USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902 ("Our framework allows rate-of-return carriers to profit from reduced switching costs and increased productivity, ultimately benefitting consumers. We note in this regard that the transition to broadband networks affords smaller carriers opportunities for efficiencies not previously available. For example, small carriers may be able to realize efficiencies through measures such as sharing switches, measures that preexisting regulations, such as the thresholds for obtaining LSS support, may have deterred."). *See generally Connect America Fund et al*., WC Docket No. 10-90 et al., Order, 35 FCC Rcd 1869

(continued….)

record received on the rule revisions proposed in the *Administrative Notice* supports the proposed revisions, with one commenter agreeing that the proposals "reflect a practical and effective step forward to streamline the merger and acquisition process. . . ."[474] No party opposes these proposed changes. Accordingly, we now adopt those proposed changes and revise our rules to eliminate the need for a rate-of-return LEC that is involved in a merger, consolidation, or acquisition with another rate-of-return carrier to obtain a waiver of the applicable intercarrier compensation rules when certain conditions apply. We also adopt a streamlined process that will apply in those cases where carriers are still required to seek a waiver of the Commission's rules.

163. In the *USF/ICC Transformation Order*, the Commission capped rate-of-return carriers' reciprocal compensation and interstate switched access rates and most intrastate switched access rates at the rates in effect on December 29, 2011.[475] At the same time, the Commission adopted a multi-year transition for reducing most terminating switched access rates to bill-and-keep.[476] As part of these reforms, the Commission adopted the ARC, which allows rate-of-return carriers to recover from end-users a portion of the intercarrier compensation revenues lost due to the Commission's reforms, up to a defined amount (Eligible Recovery) for each year of the transition.[477] If the projected ARC revenues are not sufficient to cover the entire Eligible Recovery amount, rate-of-return carriers may elect to collect the remainder in CAF ICC support.[478]

164. The calculation of a rate-of-return LEC's Eligible Recovery begins with its Base Period Revenue.[479] A rate-of-return carrier's Base Period Revenue is the sum of certain terminating intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during Fiscal Year (FY) 2011,[480] and the projected revenue requirement for interstate switched access services for the 2011-2012 tariff period.[481] A rate-of-return LEC's Base Period Revenue is calculated only once, but is adjusted during each step of the intercarrier compensation recovery mechanism calculations for each year of the transition.[482] Specifically, the Base Period Revenue for rate-of-return carriers has been reduced by five percent each year, beginning in 2012, the first year of reform.[483] A rate-of-return carrier's Eligible Recovery is equal to the adjusted Base Period Revenue for the year in question, less, for the relevant year of the transition, the sum of: (1) projected terminating intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net

(WCB 2020) (*TrioTel-Farmers-ICTC Order*); *Connect America Fund et al.,* WC Docket No. 10-90 et al., Order, 34 FCC Rcd 9617 (WCB 2019) (*Sunflower-Lakeland Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 34 FCC Rcd 4777 (WCB 2019) (*Titonka-ITC-Northeast Order*).

[474] NECA Comments at 3-5. Notably, NECA's comments are limited to the proposals for streamlining review of rate-of-return LEC mergers "as they relate to carriers participating in NECA's traffic-sensitive tariff." *Id*. at 2.

[475] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17934, para. 801; 47 CFR § 51.909(a).

[476] *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, para. 801 & fig. 9.

[477] *See id*. at 17956-57, paras. 847, 850; *id*. at 17958-61, para. 852; 47 CFR §§ 51.917(d)-(e).

[478] *USF/ICC Transformation Order*, 26 FCC Rcd at 17994-95, para. 918; 47 CFR § 51.917(f).

[479] *See* 47 CFR § 51.917(b)(7).

[480] For purposes of the recovery mechanism, FY 2011 is defined as October 1, 2010 through September 30, 2011. *See* 47 CFR § 51.903(e).

[481] *See id*. § 51.917(b)(7).

[482] *See id.* § 51.917(d).

[483] *See id.* § 51.917(b)(3).

reciprocal compensation revenue.[484] Eligible Recovery is also adjusted to reflect certain demand true-ups.[485]

165. The Commission's existing rules for calculating Eligible Recovery do not address the adjustments that are necessary when study areas are merged after one company acquires all or a portion of another.[486] Because a carrier's Base Period Revenue and interstate revenue requirement are study-area-specific, as are a carrier's capped switched access rates, combining two study areas requires a decision about how best to combine two different Base Period Revenues and interstate revenue requirements, and—when the study areas do not have the same capped rates—a waiver of the Commission's rules to establish the proper rate levels.

166. Since the Eligible Recovery rules have taken effect, several rate-of-return LECs have partially or fully merged study areas or acquired new study areas. Because the intercarrier compensation and CAF ICC rules adopted in the *USF/ICC Transformation Order* do not contemplate study area changes, these carriers have had to file petitions for waiver of portions of section 51.917 of the Commission's rules to reset the applicable Base Period Revenue associated with the study areas they have merged or acquired.[487] In this line of waiver orders, the Bureau has permitted carriers to add together the relevant interstate revenues from FY 2011 of the merging study areas and the 2011-2012 interstate revenue requirement of the merging study areas.[488] This calculation then creates a combined Base Period Revenue which serves as the baseline for calculating the Eligible Recovery of the company serving the combined study area going forward.[489] To facilitate mergers for entities that participate in the NECA traffic-sensitive tariff, the Bureau has granted waivers of section 51.909 of the Commission's rules to allow NECA to place the consolidated study area in the rate bands that most closely approximate the merged entities' cost characteristics.[490] The rate for each rate band then becomes the rate cap for the corresponding rate element in the merged study area.[491]

167. In the *Administrative Notice*, the Commission observed that the waiver process imposes costs and administrative burdens on rate-of-return LECs and, in some cases, may delay the closing of transactions.[492] The Commission determined that rule revisions reflecting the pattern of outcomes in prior waiver orders would reduce these costs and administrative burdens by eliminating the need for carriers to obtain individual waivers when certain conditions apply.[493] No party disputed these conclusions or identified any issues with the proposed rule revisions. In fact, the only comments addressing these

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[484] *See id.* § 51.917(d).

[485] The carrier would reflect forward any required true-ups resulting from the operation of the pre-merger study areas in the proper year for the merged study area. *See, e.g.*, 47 CFR § 51.917(b)(6). As part of the transaction, the involved carriers may negotiate another, perhaps contractual, arrangement for payment or true-up prorated between the buyer and seller based on, for example, the relative demand for the buyer's and seller's services.

[486] *See Administrative Notice*, FCC 22-35, at 32, para. 87.

[487] *See, e.g.*, *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 33 FCC Rcd 1152, 1157-58, paras. 15-16 (WCB 2018) (*Butler-Panora Order*) (outlining and applying relevant Commission precedent to approve the merger of two rate-of-return study area waiver petitions); *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781, paras. 8-10 (similar).

[488] *See generally Butler-Panora Order*; *Titonka-ITC-Northeast Order*.

[489] *See Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

[490] *See, e.g.*, *id.* at 1157-58, para. 16; *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781-82, para. 10.

[491] *Sunflower-Lakeland Order*, 34 FCC Rcd 9617, 9621, para. 10.

[492] *See Administrative Notice*, FCC 22-35, at 32, para. 88.

[493] *Id*.

proposals were filed by NECA, which agreed that the proposed rule changes would ease administrative burdens and provide carriers with predictability when considering mergers and/or acquisitions.[494]

168. We conclude that adopting the proposed rules will reduce regulatory costs and burdens, avoid potential delay, and allow carriers to assess the effects of a proposed transaction more accurately. For these reasons, we adopt the rule revisions proposed in the *Administrative Notice* and amend the intercarrier compensation rules in sections 51.917 and 51.909 to address study area changes resulting from transactions involving rate-of-return carriers.[495]

169. *Base Period Revenue calculation.* We revise section 51.917 to provide guidance on calculating Base Period Revenues for rate-of-return study areas affected by a transaction, thereby permitting rate-of-return carriers to adjust their Base Period Revenues without the need for a waiver. Specifically, we revise section 51.917 of our rules to provide that when two or more entire rate-of-return study areas are merged, the LEC shall combine the Base Period Revenue and interstate revenue requirements of the merging study areas for purposes of calculating Eligible Recovery. This approach is supported by NECA and consistent with the approach the Commission has taken previously in addressing transactions where study areas have merged.[496] In the case of a partial study area change, the revised rules provide that rate-of-return LECs shall allocate the Base Period Revenue and interstate revenue requirement levels of the partial study area based on the proportion of access lines acquired compared to the total access lines in the pre-merger study area of the remaining entity.

170. *Setting rate caps.* We revise section 51.909 to establish procedures for setting new rate caps for merging rate-of-return LECs and adopt a streamlined waiver process if the rates for the new combined study area would result in the new entity's CAF ICC support exceeding a certain threshold. Specifically, for carriers that file their own tariffs, the new rate cap for each rate element shall be the weighted average of the preexisting rates in each of the affected study areas.[497] This approach is consistent with precedent and there was no opposition in the record to this logical and straightforward approach to establishing new rate caps for merging rate-of-return LECs that do not participate in NECA tariffs.

171. For merging rate-of-return LECs that participate in the NECA traffic-sensitive tariff and that have to establish a single switched access rate for a rate element, the revised rules provide that the new consolidated rate, as determined by NECA pursuant to the rate bands in its traffic-sensitive tariff, shall be the new rate cap if the merged entity's CAF ICC support will not increase as a result of the merger by more than two percent above the amount received by the merging entities prior to the transaction, using the demand and rate data for the preceding calendar year. In prior orders, the Bureau allowed NECA to place the consolidated study area in the rate bands that most closely approximated the merged entities' cost characteristics and NECA worked cooperatively with the Bureau to ensure that the most accurate rate bands are used for the merged entities.[498] Under this approach, the rate for each rate band will become the rate cap for the corresponding rate element in the merged study area. We expect that NECA will continue to evaluate the circumstances of each transaction, select the appropriate rate bands, and coordinate with the Bureau as appropriate.

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[494] *See* NECA Comments at 3-4.

[495] *See Administrative Notice*, FCC 22-35, at 30-34, paras. 83-92 and Appx. A (proposing revisions to 47 CFR §§ 51.909, 51.917).

[496] *See* NECA Comments at 3-4; *see, e.g.*, *Butler-Panora Order*, 33 FCC Rcd at 1152, 1157-58, paras. 15-16; *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781, para. 9.

[497] *See, e.g.*, *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781-82, para. 10; *TrioTel-Farmers-ICTC Order*, 35 FCC Rcd at 1873-74, para. 10.

[498] *See Administrative Notice*, FCC 22-35, at 32, para. 87; NECA Comments at 2 & n.9.

172. The Commission proposed a two-percent threshold based on recently submitted petitions for waiver, which predicted increases between zero and two percent to CAF ICC as a result of the waiver.[499] No party objected to this particular threshold or suggested an alternative one and increases in CAF ICC support of two percent or less will not materially impact the CAF ICC fund.[500] Thus, we now adopt the proposed two-percent threshold for carriers participating in the NECA traffic-sensitive tariff and eliminate the need for a waiver in circumstances where the CAF ICC increase is at or below two percent.[501]

173. *Streamlined waiver process.* The *Administrative Notice* also proposed revised rules that would streamline the waiver process for NECA tariff participants if the impact of rate banding exceeds the two-percent threshold.[502] In such circumstances, the revised rules require carriers to file a petition for waiver specifying the impact of the merger, acquisition, or consolidation on the new entity's rates and CAF ICC support. Any petition for waiver should include information such as: (1) a description of the merging study areas, or portions of study areas involved; (2) the intrastate and interstate switched access demand for each rate element; (3) the relevant pre- and post-merger intrastate and interstate switched access rates for the study areas involved, as proposed; (4) the relevant pre-and post-merger intrastate and interstate switched access revenues, including the effects of interstate switched access revenue pooling, for the study areas involved; (5) the effect on CAF ICC resulting from the merger; and (6) a brief statement of the public interest benefits of the merger. The petition must be submitted for consideration via the Electronic Comment Filing System and a courtesy copy must be emailed to the Chief, Pricing Policy Division, Wireline Competition Bureau.

174. Under the new streamlined process, once the petition for waiver is filed, the Bureau will release a public notice announcing receipt of the waiver petition and establishing a 30-day comment period with an additional 15-day period for replies. If there is no opposition to the petition, the waiver will be deemed granted on the 60th day after the release of the public notice, unless the Bureau or the Commission acts to prevent the "automatic" grant. If an opposition is filed, the petition will no longer be eligible for the streamlined grant process and will instead be subject to our rules for waiver petitions generally. Because no party opposes this proposal or suggested changes to the proposed process or waiver requirements, we adopt this streamlined process and delegate to the Bureau the authority to review, analyze, and approve these petitions for waiver.[503]

3. Acquisition of Exchanges by a CAF BLS Recipient

175. For the reasons specified in the *Administrative Notice*, we amend section 54.902 of our rules – which governs the amount of CAF BLS support a rate-of-return carrier receives when it acquires exchanges from another incumbent local exchange carrier (LEC) – to better reflect the current state of the high-cost program.[504] Currently, section 54.902(a) describes how CAF BLS support is calculated when a

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[499] *See Administrative Notice*, FCC 22-35, at 33, n.221. NECA confirms that recently granted waivers have met the two-percent threshold requirement. NECA Comments at 3.

[500] Although NECA did not take a position on whether two percent is the correct threshold for requiring a waiver, NECA expressed general support for all of our proposed rule changes. *See* NECA Comments at 3-4 (stating that the proposed rules "reflect a practical and effective step forward to streamline the merger and acquisition process, provide companies with predictability when considering mergers and/or acquisitions and will ease the administrative burden associated with the waiver process on all involved").

[501] *See Administrative Notice*, FCC 22-35, at 33, para. 90 and App. A (proposed revisions to 47 CFR § 51.909(a)(7)(ii)).

[502] *See id*. at 33-34, paras. 91-92.

[503] *See id.* at 34, para. 92.

[504] *See id*. at 34-35, paras. 93-95; 47 CFR § 54.902.

rate-of-return carrier acquires exchanges from another rate-of-return carrier, while section 54.902(b) specifies that in situations where a rate-of-return carrier acquires exchanges from a price cap carrier, the acquired exchanges remain subject to the support amounts and obligations established for frozen and model-based support.[505] We modify section 54.902(a) to provide that only transferred exchanges that are already eligible for CAF BLS would be eligible for CAF BLS after their transfers.[506] We further modify section 54.902(b) to provide that any acquired exchanges subject to section 54.902(b) continue to be subject to the support obligations in place at the time that the exchange is acquired, including obligations associated with frozen and auction-based support. As explained in the *Administrative Notice*, these modifications are consistent generally with the rules as originally adopted, when all rate-of-return carriers were subject to the Interstate Common Line Support (ICLS) mechanism (which was renamed CAF BLS when modernized by the Commission in 2016),[507] and consider changes to the high-cost program after the current rule went into effect: specifically, the creation of a voluntary pathway for rate-of-return carriers to select model-based support and the introduction of auction mechanisms permitting rate-of-return carriers to acquire exchanges from carriers that are not subject to rate-or-return or price cap regulation.[508]

[505] 47 CFR § 54.902(a) (establishing eligibility and terms for the receipt of frozen high-cost support); *id* § 54.902(b) (providing that if a "rate-of-return carrier acquires exchanges from a price-cap carrier, absent further action by the Commission, the exchanges shall receive the same amount of support and be subject to the same public interest obligations as specified [for the CAF Phase II auction], as applicable").

[506] We note that any acquisition of exchanges is subject to the grant of a study area waiver by the Commission. Without regard to this proposed rule change, the Commission would consider whether the study area waiver to permit the acquisition of exchanges subject to A-CAM support by a CAF BLS recipient would be in the public interest without continued application of the support and obligations pursuant to A-CAM. As a result, even though the current rule does not exclude the provision of CAF BLS to exchanges acquired from A-CAM recipients, it is unlikely that any such acquisition would be approved by the Commission without conditions to prevent receipt of CAF BLS support for those exchanges. In addition and absent specific limitations on post-transaction support, the Commission would not find that a study area waiver serves the public interest in situations where a restructured study area would "[p]rovid[e] additional universal service support to a company as a result of cost shifting [based on such restructuring] and not because of any increased broadband service to consumers," because it is "not an efficient use of limited universal service resources." *See, e.g., 3 Rivers Telephone Cooperative, Inc., and Siyeh Communications Application for Transfer of Assets Pursuant to Section 214 of the Communications Act of 1934, as Amended, et al.,* WC Docket No. 20-85 et al., Order, 35 FCC Rcd 12983, 12896-97, 12899 (WCB 2020) (conditioning a study area waiver on the adoption of the associated 214 transfer limitations to ensure that the total amount of support received will not increase above what it otherwise would be without this transaction); *see also Joint Application of W. Mansfield Jennings Limited Partnership and Hargray Communications Group, Inc., for Consent to the Transfer of Control of ComSouth Corporation Pursuant to Section 214 of the Communications Act of 1934*, WC Docket 18-52, Memorandum Opinion and Order, 33 FCC Rcd. 4780, 4785, para. 19 (2018) (adopting certain conditions on certain mixed merger transactions and authorizing the Bureau to apply these conditions on future transactions of this kind).

[507] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256 *et al.*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19752-53, App. A, § 54.902 (2001) (*MAG Order*).

[508] *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3094-117, paras. 17-79 (2016).

4. Study Area Boundary Waivers

176. We modify the study area boundary process to require waivers for all study area boundary changes.[509] We find that the original purpose of the study area boundary freeze – to prevent incumbent LECs from establishing separate study areas made up of only high-cost exchanges to maximize their receipt of high-cost universal service support – is best served by providing WCB with the opportunity to review such changes.[510] By requiring waivers for all study area boundary changes, we eliminate the exceptions adopted in 1996 by the then Common Carrier Bureau (now the Wireline Competition Bureau).[511] Requiring all changes in study area boundaries to be reviewed by the Bureau will ensure that any proposed changes are not approved until the effects on the Fund are taken into account.[512]

177. Since the exceptions to the study area boundary waiver requirement were adopted in 1996, the Commission has substantially reformed how universal service support is awarded. Incumbent LECs now receive support in different ways, including model-based support and auction support, in addition to traditional rate-of-return regulation (legacy support).[513] Under our current rules, when a carrier that owns multiple study areas within a state wants to merge these commonly-owned study areas, the carrier is not required to petition the Commission. However, allowing carriers to merge study areas that receive support under different mechanisms creates opportunities for carriers to manipulate the Commission's support. For example, if a carrier seeks to merge two study areas in a state, one of which receives legacy rate-of-return support and another that receives model-based support, it would be difficult for the Commission to determine which lines in the new study area are entitled to rate-of-return support, which typically increases as the number of lines increases. Similarly, such a merger could create confusion regarding tracking carrier mandatory build-out obligations by changing the areas in which they must deploy broadband. For example, an A-CAM carrier receives a fixed amount of support in exchange for deploying broadband to a specific number of locations based on costs as determined by a model. If

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[509] *See Administrative Notice*, FCC 20-35, para. 101. A study area is a geographic segment of an incumbent LEC's telephone operations and forms the basis of the jurisdictional separation of its costs and its cost studies. 47 CFR § 36 app.

[510] The Commission froze all study area boundaries effective November 15, 1984. *See MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, *Recommended Decision and Order,* 49 Fed. Reg. 48325 (1984) (*1984 Joint Board Recommended Decision*); *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, FCC 84-637, *Decision and Order,* 50 Fed. Reg. 939 (1985) (*1985 Order Adopting Recommendation*); *see also Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board,* CC Docket No. 80-286, *Notice of Proposed Rulemaking,* 5 FCC Rcd 5974 (1990).

[511] Carriers were not required to seek study area waivers if "(1) a separately incorporated company is establishing a study area for a previously unserved area; (2) a company is combining previously unserved territory with one of its existing study areas in the same state; [or] (3) a holding company is consolidating existing study areas in the same state." *Request for Clarification Filed by the National Exchange Carrier Association, Inc., and Petitions for Waiver Filed by Alaska Telephone Company, Ducor Telephone Company, and Kingsgate Telephone, Inc., Concerning the Definition of "Study Area: in the Part 36 Appendix-Glossary of the Commission's Rules*, AAD 95-173, AAD 96-29, AAG 96-51, Memorandum Opinion and Order, 11 FCC Rcd 8156, 8160 (CCB July 16, 1996). The *Skyline Order* had modified the 1996 Bureau-level order by prohibiting the establishment of a new study area in previously unserved territory if the unserved area was within an existing study area. *M&L Enterprises., d/b/a Skyline Telephone Company Petition for Waiver of Sections 36.311, 36.312, and 69.2(hh) of the Commission's Rules*, CC Docket No. 96-45, 19 FCC Rcd 6761, 6766, para. 11 (2004) (*Skyline Order*).

[512] We add new subsection 36.4(c) to require incumbent local exchange carriers to seek waiver for study area boundary changes notwithstanding any prior exemptions.

[513] *Id.* at 17709, paras. 115-120.

the A-CAM carrier merges its study area with a legacy rate-of-return study area in the same state owned by the same carrier, it would then be harder to track the deployment obligations under each program.

178. In addition, allowing carriers to add unserved areas to their study areas, even if those areas are not within an existing study area, could undermine the Commission's goal of distributing universal service support in the most efficient manner possible.[514] In furtherance of this objective, the Commission has encouraged the transition to model-based support and auction-awarded support over traditional rate-of-return regulation.[515] If rate-of-return carriers can extend their existing study area into unserved areas, this could result in the use of legacy support in additional areas when such areas could be served with broadband more efficiently using model-based or auction-based support.

179. The Nebraska Public Service Commission (PSC), the only party commenting on this issue, supports a streamlined mechanism for study area boundary changes, and suggests that any study area changes that have been previously approved by a state should be eligible for the streamlined review process.[516] We note that the Commission already has adopted a streamlined process to address all study area waiver petitions in the 2011 *USF/ICC Transformation Order*, and this streamlined process would apply to the waiver applications required here. The process takes into consideration whether the state commission having regulatory authority over the transferred exchanges does not object to the transfer, and whether the transfer is in the public interest.[517] Evaluation of the public interest benefits of a proposed study area waiver include: (1) the number of lines at issue; (2) the projected universal service fund cost per line; and (3) whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of the economies of scale, *i.e.*, reduction in cost per line due to the increased number of lines.[518] Under the streamlined process, once a carrier submits a petition the Bureau will issue a public notice seeking comment and noting whether the waiver is appropriate for streamlined treatment.[519] Absent any further action by the Bureau, if the waiver is subject to streamlined treatment, it is granted on the 60th day after the reply comment due date.[520] Alternatively, if the petition requires further analysis and review, the public notice will state that the petition is not suitable for streamlined treatment.[521]

180. Requiring waivers for all study area boundary changes will help to avoid the issues created by merging study areas receiving different types of support or the expanded use of less efficient support methodologies. Requiring changes in study area boundaries to be reviewed by the Bureau will ensure that any proposed changes are not approved until the effects on the Fund are taken into account. Because the Commission has already established a streamlined process for such waivers, those requests that do not present any support or other concerns can be swiftly granted, thereby minimizing the burden on those carriers proposing mergers that promote efficiency and are clearly in the public interest.

5. Quarterly Line Count Updates for CAF BLS Recipients

181. As proposed in the *Administrative Notice*, we eliminate optional quarterly line count reporting for CAF BLS support recipients, finding that the mandatory annual line count reporting set forth

[514] *Id*. at 17667, para. 1.

[515] *Id*. at 17707, para. 117.

[516] Nebraska PSC Comments at 8.

[517] *USF/ICC Transformation Order*, 26 FCC Rcd at 17762-63, paras. 265, 267.

[518] *Id*. at 17762, para. 265.

[519] *Id*. at 17762, para. 267.

[520] *Id.*

[521] *Id.*

in sections 54.313(h)(5) and 54.903(a)(1) of the Commission's rules suffices for the purposes of setting per line caps.[522] No commenter filed comments on this proposal or the Commission's alternative proposal to update the schedule to file optional quarterly line counts to better align with the deadline for mandatory annual line count filings.[523]

182. The optional quarterly reporting deadlines, falling on September 30th, December 31st, and March 31st, pertain to line counts as of six months prior to the filing deadline.[524] We note that the December 31st optional quarterly line count update is due on the same day as the mandatory annual line count report for the prior reporting year, making this optional quarterly filing obsolete. All other quarterly line count reports have a six-month lag time, i.e., each quarterly report reports line counts as of six months earlier.[525] These optional quarterly line count filings also have limited utility. While USAC uses these quarterly line count updates to administer the monthly per-line cap on high-cost universal service support each quarter,[526] only a very limited number of carriers have filed these updates in recent years, many of which are not subject to the per-line cap.[527] USAC also uses quarterly line count data to determine preliminary CAF BLS amounts for a carrier that has acquired exchanges from another CAF BLS support recipient, but those amounts are ultimately subject to a true-up based on the acquiring carrier's actual cost and revenue data for their exchange (including the acquired exchange).[528] Because the Commission can generally rely on the mandatory annual line counts due on March 31st to monitor line counts with minimum impact on reporting carriers and with minimum limitation on accuracy, we conclude that eliminating the optional quarterly line count filings is a more efficient modification than merely updating the filing schedule for these filings. Accordingly, the Commission eliminates these optional quarterly line count filings and modifies all related rules regarding these quarterly line counts.[529]

6. Process for Relinquishment of ETC Designation

183. We revise section 54.205 of the Commission's rules to require an ETC designated by a state authority and seeking to relinquish its ETC designation to also provide advance notice to the Commission. We sought comment on this proposal, which was supported by NTCA.[530] As per this proposal, we will also require the former ETC to notify the Commission of the state's decision to permit or deny such relinquishment by submitting the relevant state order or other document issued by the state within 10 days of such issuance in the Electronic Comment Filing System (ECFS), WC Docket No. 09-

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[522] *See Administrative Notice*, FCC 22-35, at 38, para. 104; 47 CFR § 54.903(a)(2). Carriers receiving CAF BLS support must file line counts annually pursuant to section 54.903(a)(1) of the Commission's rules. 47 CFR § 54.903(a)(1). Rate-of-return carriers receiving A-CAM or Alaska Plan support must file annual line counts pursuant to section 54.313(h)(5). 47 CFR § 54.313(h)(5).

[523] *See Administrative Notice*, FCC 22-35, at 38, para. 104.

[524] *See id*. at 37, para. 103 (citing *MAG Order*, 16 FCC Rcd at 19686, para. 170).

[525] *See id*.

[526] *See id.* at 38, para. 104; 47 CFR § 54.302.

[527] *See Administrative Notice*, FCC 22-35, at 38, para. 104 (noting only 17 carriers filed updated line counts on December 31, 2020, and most of those were not subject to the per-line cap).

[528] *See id*.; 47 CFR § 54.902.

[529] *See* 47 CFR §§ 54.305, 54.903, 54.1301, 54.1306, 54.1309, 54.1310.

[530] *See Administrative Notice*, FCC 22-35, at 38-39, paras. 106-109. *See* NTCA Comments at 44 (supporting proposal to require advance notice of intent to relinquish ETC designation, and notice of state grant of relinquishment within 10 days of such grant).

197.[531] We will require these filings regardless of whether the ETC is currently receiving federal support, consistent with long standing precedent that states that obligations run with the ETC designation.[532] The Commission's decision to require notice of relinquishment will help deter waste, fraud, and abuse by enabling swift discontinuance of support payments to non-ETCs, and, where applicable, allow the Commission to initiate default and potentially enforcement proceedings where it becomes clear that the support recipient has failed to fulfill its obligations.[533] We note that these changes are applicable to all ETCs, including Lifeline-only ETCs. We make these modifications pursuant to authority granted under section 254 and as reasonably ancillary thereto.[534] These changes will apply to all ETCs submitting requests for relinquishment after the effective date of these rule changes.

7. Other Procedural Rule Changes and Considerations

184. We adopt several minor changes to our rules to correct inaccuracies associated with subsequent rule changes.[535] Specifically, we make the following corrections:

- Section 54.314(d)(2) of the Commission's rules cross references section 54.313(a)(8).[536] Section 54.313 was revised and renumbered, and section 54.313(a)(8) became section 54.313(a)(4), while section 54.313(a)(8) was eliminated.[537] Accordingly, we take this opportunity to revise section 54.314(d)(2) to reference 54.313(a)(4) rather than section 54.313(a)(8).
- Section 54.315(c)(4) of the Commission's rules currently indicates that the failure of CAF Phase II auction support recipients to meet service milestones will trigger reporting

[531] Telecommunications Carriers Eligible to Receive Universal Service Support, WCB Docket No. 09-197, https://www.fcc.gov/ecfs/search/docket-detail/09-197.

[532] *In re: FCC 11-161*, 753 F.3d 1015, 1088 (10th Cir. 2014); *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations that Inhibit Deployment of Next Generation Networks*, WC Docket Nos. 14-192, 11-42, 10-90, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6228-29, paras. 138-143 (2015) (holding that the obligation to provide voice service is based on the ETC's eligibility for support, not its receipt of support).

[533] *See* 47 U.S.C. § 503; 47 CFR § 1.80.

[534] The Commission may adopt rules pursuant to its ancillary jurisdiction when "'(1) the Commission's general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.'" *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (quoting *American Library Ass'n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)).

[535] Because these are minor corrections to cross references or internal citations that do not change a party's legal obligations or rights, these changes are not subject to prior notice and comment requirements in the APA. 5 U.S.C. § 553(b)(3)(A) (statutory exemptions from APA notice and comment requirements include "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice . . . ."); *Mendoza v. Perez*, 754 F.3d 1002, 1021 (D.C. Cir. 2014) (providing that rules that are interpretative and therefore, exempt from notice and comment requirements, if they "clarify a statutory or regulatory term, remind parties of existing statutory or regulatory duties, or 'merely track[ ]' preexisting requirements and explain something the statute or regulation already required.") (citations omitted).

[536] 47 CFR § 54.314(d)(2).

[537] *Id*. § 54.313.

obligations and support withholding consistent with section 54.320(c) of the Commission's rules.[538] This rule section should instead cross reference section 54.320(d).[539]

- Similarly, section 54.1508(e)(1) of the Commission's rules also includes an incorrect cross reference.[540] Specifically, when the section references milestones, it should cross reference section 54.320(d) instead of section 54.320(c).[541]
- Subpart K of part 54 of Title 47 is titled "Interstate Common Line Support Mechanism for Rate-of-Return Carriers."[542] In 2016, the Commission reformed this mechanism to provide support for stand-alone broadband, now known as CAF BLS.[543] Consistent with this reform, we retitle subpart K to read "Connect America Fund Broadband Loop Support for Rate-of-Return Carriers."
- Similarly, sections 54.701(c)(1)(iii) and 54.705(c) of the Commission's rules describe the high-cost support mechanisms to include "interstate access universal service support mechanism for price cap carriers described in subpart J of this part, and the interstate common line support mechanism for rate-of-return carriers described in subpart K of this part."[544] The Commission deleted subpart J of part 54 to reflect the Commission's decision in the *USF/ICC Transformation Order* to eliminate the Interstate Access Support (IAS) mechanism as a stand-alone support mechanism.[545] In 2016, the Commission replaced the interstate common line support mechanism.[546] In subsequent years, the Commission also created several new high-cost support mechanisms for rate-of-return and price-cap carriers. Accordingly, we revise sections 54.701(c)(1)(iii) and 54.705(c) to remove the references to "interstate access universal service support mechanism for price cap carriers described in subpart J of this part," and "interstate common line support mechanism."[547] We add to these sections a reference to the high-cost support mechanisms described in subparts J, K, M and O of this part, and the low-income support mechanisms described in subpart E of this part.

185. GTA has submitted proposals as part of its comments in this proceeding to apply the newly adopted Alaska rate benchmarks as suitable proxy for all insular territories in the United States.[548]

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[538] *Id*. § 54.315(c)(4).

[539] *Id*. § 54.320(d).

[540] *Id*. § 54.1508(e)(1).

[541] *Id*. § 54.320(c).

[542] 47 CFR § 54.901-54.904.

[543] *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3120, para. 86 (changing the name of interstate common line support (ICLS) to Connect America Fund Broadband Loop Support (CAF BLS)).

[544] 47 CFR §§ 54.701(c)(1)(iii), 54.705(c).

[545] *USF/ICC Transformation Order*, 26 FCC Rcd at 17712-13, para. 128. The eliminated subpart J was reserved and subsequently utilized when adopting Rural Digital Opportunity Fund (RDOF) rules. *See generally Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686, 688-89, paras. 5-6 (2020).

[546] *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3170, para. 225.

[547] 47 CFR §§ 54.701(c)(1)(iii), 54.705(c).

[548] GTA Comments at 3-4. The methodology for adopting benchmarks applies to all states, with the exception of Alaska. *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC 13485, 13487, para. 12 (2014). Because of the higher costs of building infrastructure in Alaska, the Commission directed the Bureau to determine an Alaska-specific reasonable comparability benchmark for service. *See Connect America Fund; Universal Service*

(continued….)

This proposal is not sufficiently related to those proposals raised in the *Administrative Notice* to provide the requisite notice and comment periods for rulemakings as specified in the APA.[549] Accordingly, we decline to address them as part of this Order. These issues would need to be raised in a petition for rulemaking. We do note that in its comments in this proceeding, GTA did not provide sufficient arguments or evidence for the Commission to evaluate the reasonableness of the proposal, so we would expect any such petition to include substantial additional information.

VI. PROCEDURAL MATTERS

186. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[550] 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."[551] Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of potential rule and/or policy changes contained in this *Notice* on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *Notice* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

187. We have also prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *Order* on small entities. The FRFA is set forth in Appendix C.

188. *Congressional Review Act.* The Commission will submit this draft Notice of Proposed Rulemaking and 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 Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

189. *Paperwork Reduction Act*. The *Notice* contains possible new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this *Notice*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

190. The *Order* contains new and modified information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section

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Reform; Connect America Fund – Alaska Plan, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10149, para. 28 (2016), and *Connect America Fund*, Order, 31 FCC Rcd 12086, 12092, para. 21 (2016). Thus, the Bureau adopted reasonable comparability voice and broadband benchmarks separately for Alaska Plan rate-of-return carriers and Alaska Communications Systems. *Wireline Competition Bureau Announces Voice and Broadband Reasonable Comparability Benchmarks for Alaska Plan Rate-of Return Carriers and Alaska Communications Systems and Confirms Minimum Usage Allowance Requirements*, 32 FCC Rcd 3003 (2017).

[549] 5 U.S.C. § 553(b) (requiring agencies to provide a general notice of a proposed rulemaking that includes information regarding the "time, place, and nature" of the rulemaking proceeding, the legal authority for the proposed rule, and "either the terms or substance of the proposed rule or a description of the subjects and issues involved").

[550] 5 U.S.C. §§ 601-612. The RFA was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[551] 5 U.S.C. § 605(b).

3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new and modified information collection requirements contained in this proceeding. Additionally, we note that, pursuant to the Small Business Paperwork Relief Act of 2002,[552] we previously sought specific comment, in the *Order,* 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 FRFA in Appendix C.

191. *Ex Parte Rules—Permit-But-Disclose*. These proceedings shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[553] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).

192. In light of the Commission's trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, we find the public interest requires a limited modification of the *ex parte* rules in these proceedings.[554] Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.[555] However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from disclosure in permit-but-disclose proceedings[556] and exempt from the prohibitions during the Sunshine Agenda period.[557] To be clear, while the Commission recognizes consultation is critically important, we emphasize that the Commission will rely in its decision-making only on those presentations that are placed in the public record for these proceedings.[558]

193. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing

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

[553] 47 CFR §§ 1.1200 *et seq.*

[554] *See* 47 CFR § 1.1200(a). Although the Rules do not generally require *ex parte* presentations to be treated as "permit but disclose" in Notice of Inquiry proceedings, *see* 47 CFR § 1.1204(b)(1), we exercise our discretion in this instance, and find that the public interest is served by making *ex parte* presentations available to the public, in order to encourage a robust record. *See id.*

[555] 5 U.S.C. § 551 *et seq.*

[556] *See generally* 47 CFR § 1.1206.

[557] *See* 47 CFR § 1.1203.

[558] *See Updating of the Commission's Ex Parte Rules*, GN Docket No. 20-21, Notice of Proposed Rulemaking, 35 FCC Rcd 6947, 6950-54, paras. 9-21 (2020).

oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

194. *Comments and Replies*. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.[559] Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[560] *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788, 2788-89 (OS 2020).

195. Comments and reply comments exceeding ten pages must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to follow the same order and organization set forth in the Notice of Proposed Rulemaking or the Report and Order in order to facilitate our internal review process.

196. *Availability of Documents*. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

[559] Comments and reply comments filed in response to the Notice of Proposed Rulemaking and the Notice of Inquiry are subject to sections 1.415,1.419, and 1.430 of the Commission's rules. 47 CFR §§ 1.415, 1.419, 1.430.

[560] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

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

198. *Availability of Documents*. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

199. *Additional Information*. For additional information on the *Notice* proceeding, contact Rebekah Douglas, Rebekah.Douglas@fcc.gov, of the Wireline Competition Bureau, Telecommunications Access Policy Division, at (202) 418-7931, or Matt Warner, Matthew.Warner@fcc.gov, of the Wireless Telecommunications Bureau, Competition and Infrastructure Policy Division, at (202) 418-2419. For additional information on the Report and Order, contact Nissa Laughner, Nissa.Laughner@fcc.gov, of the Wireline Competition Bureau, Telecommunications Access Policy Division, at (202) 418-1358.

VII. ORDERING CLAUSES

200. IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4, 5, 201-06, 214, 218-220, 251-52, 254, 256, 301, 303, 309, 332, and 403 and of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-52, 154-55, 201-06, 214, 218-20, 251-52, 254, 256, 301, 303, 309, 332, and 403 this Notice of Proposed Rulemaking IS ADOPTED. This Notice of Proposed Rulemaking will be EFFECTIVE upon publication in the Federal Register, with comment dates indicated therein.

201. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 218-220, 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 thirty days after publication in the Federal Register, except for portions containing information collection requirements 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.

202. IT IS FURTHER ORDERED that Parts 36, 51 and 54 of the Commission's rules ARE AMENDED as set forth in Appendix B, 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 or Office of Management and Budget approval of the Commission's rules, and on the effective date announced therein.

203. IT IS FURTHER ORDERED that the Office of the Secretary, SHALL SEND a copy of the *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

204. IT IS FURTHER ORDERED that the Commission's Office of the Secretary, 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.

205. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this Notice of Proposed Rulemaking and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Federal Communications Commission (Commission) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking* (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In the *Notice*, the Commission seeks comment regarding the best approach for developing the next phase for the Alaska Plan (the Alaska Connect Fund) in order to determine the most effective means of supporting Alaska's remote areas once fixed and mobile support for both incumbent and competitive Local Exchange Carriers (LECs)have ended. The Commission has recognized the inherent challenges in serving these areas of Alaska and understands the necessity in providing innovative solutions and unique accommodations to residents and businesses alike. We also recognize that there are areas of Alaska that still lack high-quality affordable broadband, where residents may be deprived of the opportunity to keep up with the advancements in technology that Americans living elsewhere benefit from. Currently, the Commission provides high-cost support to Alaska Plan fixed and mobile carriers, Alaska Communications Systems (ACS), and Alternative Connect America Cost Model (A-CAM) carriers. In the *2016 Alaska Plan Order*,[4] the Commission stated that it would conduct a rulemaking prior to the close of the 10-year support term to determine whether and how support would be provided after the end of the 10-year support term, and that the Commission would consider adjustments for marketplace changes and the realities of the current time. In the *ACS Order*,[5] the Commission stated that it would conduct a rulemaking in year eight of the program to determine how support would be awarded for the areas at the conclusion of the program. In the *Notice*, we initiate those rulemakings as a means of assessing all of the changes, both in technology and in the broadband funding landscape, that have occurred in Alaska since the inception of the Alaska Plan and the *ACS Order* in 2016. We also undertake a fresh look at the most efficient use of Universal Service Fund high-cost support in Alaska going forward not only to help connect unserved Alaskan communities but also to support existing service and service funded through other federal and state programs. We rely on the experiences of the Alaskan carriers—many of which are small business entities—and the record stemming from proposals in recent petitions to build a record on how best to structure and target Alaska Connect Fund support.

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id*.

[4] *Connect America Fund – Alaska Plan*, *et al*., WC Docket Nos. 16-271 and10-90, WT Docket No. 10-208, Report and Order, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*2016 Alaska Plan Order*).

[5] *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 12086 (2016) (*ACS Order*)

B. Legal Basis

3. The proposed action is authorized pursuant to sections 1, 2, 4, 5, 201-06, 214, 218-220, 251-52, 254, 256, 301, 303, 309, 332, and 403 and of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-52, 154-55, 201-06, 214, 218-20, 251-52, 254, 256, 301, 303, 309, 332, and 403.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

4. 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 proposed rules, if adopted.[6] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[7] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act."[8] 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.[9]

5. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.10 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.11 These types of small businesses represent 99.9% of all businesses in the United States which translates to 33.2 million businesses.12 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."13 The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.14 Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration

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[6] 5 U.S.C. § 603(b)(3).

[7] 5 U.S.C. § 601(6).

[8] 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."

[9] 15 U.S.C. § 632.

[10] 5 U.S.C. § 601(3)-(6).

[11] *See* SBA, Office of Advocacy, "What's New With Small Business?," https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf. (Mar. 2023).

[12] *Id.*

[13] 5 U.S.C. § 601(4).

[14] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

and tax data for exempt organizations available from the IRS.15 Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."16 U.S. Census Bureau data from the 2017 Census of Governments17 indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.18 Of this number, there were 36,931 general purpose governments (county,19 municipal, and town or township20) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts21 with enrollment populations of less than 50,000.22 Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."23

[15] Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[16] 5 U.S.C. § 601(5).

[17] 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[18] U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[19] *Id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[20] *Id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[21] *Id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[22] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[23] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

6. *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.24 Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.25 By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.26 Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.27

7. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.28 U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.29 Of this number, 2,964 firms operated with fewer than 250 employees.30 Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.31 Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.32 Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

8. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers33 is the closest industry with an SBA small business size standard.34 Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service

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[24] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[25] *Id.*

[26] *Id.*

[27] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[28] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[29] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[30] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[31] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf..

[32] *Id.*

[33] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[34] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

providers.35 The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.36 U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.37 Of this number, 2,964 firms operated with fewer than 250 employees.38 Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.39 Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.40 Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

9. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers41 is the closest industry with an SBA small business size standard.42 The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.43 U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.44 Of this number, 2,964 firms operated with fewer than 250 employees.45 Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.46 Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.47 Consequently, using the SBA's small business size

[35] Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[36] *Id.*

[37] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[38] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[39] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[40] *Id.*

[41] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[42] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[43] *Id.*

[44] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[45] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[46] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[47] *Id.*

standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

10. Competitive Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[48] Wired Telecommunications Carriers[49] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[50] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[51] Of this number, 2,964 firms operated with fewer than 250 employees.[52] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.[53] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[54] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

11. Interexchange Carriers (IXCs). Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers[55] is the closest industry with a SBA small business size standard.[56] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[57] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this

[48] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[49] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[50] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[51] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[52] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[53] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[54] *Id.*

[55] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[56] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[57] *Id.*

industry for the entire year.[58] Of this number, 2,964 firms operated with fewer than 250 employees.[59] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.[60] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

12. Local Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.[61] 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.[62] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[63] Mobile virtual network operators (MVNOs) are included in this industry.[64] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[65] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[66] Of that number, 1,375 firms operated with fewer than 250 employees.[67] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported they were engaged in the provision of local resale services.[68] Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.[69] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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[58] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[59] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[60] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[61] U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[62] *Id.*

[63] *Id*.

[64] *Id*.

[65] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[66] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[67] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[68] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[69] *Id.*

13. Toll Resellers. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers70 is the closest industry with a SBA small business size standard. 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.71 Mobile virtual network operators (MVNOs) are included in this industry.72 The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.73 U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.74 Of that number, 1,375 firms operated with fewer than 250 employees.75 Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.76 Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.77 Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. Other Toll Carriers. Neither the Commission nor the SBA has developed a definition 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. Wired Telecommunications Carriers78 is the closest industry with a SBA small business size standard.[79] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.80 U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.81

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[70] U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[71] *Id.*

[72] *Id*.

[73] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[74] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[75] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[76] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[77] *Id.*

[78] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[79] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[80] *Id.*

[81] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

Of this number, 2,964 firms operated with fewer than 250 employees.82 Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.83 Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.84 Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers85 is the closest industry with a SBA small business size standard. 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.86 Mobile virtual network operators (MVNOs) are included in this industry.87 The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.88 U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.89 Of that number, 1,375 firms operated with fewer than 250 employees.90 Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.91 Of these providers, the Commission estimates that 61 providers have 1,500 or fewer employees.92 Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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[82] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[83] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[84] *Id.*

[85] U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[86] *Id.*

[87] *Id*.

[88] 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[89] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[90] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[91] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[92] *Id.*

16. Fixed Microwave Services. Fixed microwave services include common carrier,[93] private-operational fixed,[94] and broadcast auxiliary radio services.[95] They also include the Upper Microwave Flexible Use Service (UMFUS),[96] Millimeter Wave Service (70/80/90 GHz),[97] Local Multipoint Distribution Service (LMDS),[98] the Digital Electronic Message Service (DEMS),[99] 24 GHz Service,[100] Multiple Address Systems (MAS),[101] and Multichannel Video Distribution and Data Service (MVDDS),[102] where in some bands licensees can choose between common carrier and non-common carrier status.[103] Wireless Telecommunications Carriers (except Satellite)[104] is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[105] U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year.[106] Of this number, 2,837 firms employed fewer than 250 employees.[107] Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

17. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as

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[93] 47 CFR Part 101, Subparts C and I.

[94] *Id.* Subparts C and H.

[95] Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. *See* 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[96] 47 CFR Part 30.

[97] 47 CFR Part 101, Subpart Q.

[98] *Id.* Subpart L.

[99] *Id.* Subpart G.

[100] *Id.*

[101] *Id.* Subpart O.

[102] *Id.* Subpart P.

[103] 47 CFR §§ 101.533, 101.1017.

[104] U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers* (*except Satellite*)," https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[105] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[106] U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[107] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.[108]

18. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

19. *Cable and Other Subscription Programming*. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.109 The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.110 The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.111 The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small.112 Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.113 Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more.114 Based on this data, the Commission estimates that a majority of firms in this industry are small.

20. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.115 Based on industry

[108] 47 CFR §§ 101.538(a)(1)-(3), 101.1112(b)-(d), 101.1319(a)(1)-(2), and 101.1429(a)(1)-(3).

[109] U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[110] *Id.*

[111] *Id.*

[112] 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

[113] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

[114] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[115] 47 CFR § 76.901(d).

data, there are about 420 cable companies in the U.S.116 Of these, only seven have more than 400,000 subscribers.117 In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[118] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[119] Of these, about 639 have more than 15,000 subscribers.[120] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

21. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[121] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.[122] Based on industry data, only six cable system operators have more than 677,000 subscribers.[123] Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[124] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

22. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and

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[116] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

[117] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited July 23, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[118] 47 CFR § 76.901(c).

[119] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

[120] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited July 23, 2023).

[121] 47 U.S.C. § 543(m)(2).

[122] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 49.8 million. *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 80, para. 218, Fig. II.E.1. (2022) (2022 Communications Marketplace Report). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN,* the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR § 76.901(e)(1).

[123] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited July 23, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[124] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

television broadcast and wireless communications equipment.[125] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[126] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[127] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[128] Of this number, 624 firms had fewer than 250 employees.[129] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

23. *Satellite Telecommunications.* This industry 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."[130] Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small.[131] U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year.[132] Of this number, 242 firms had revenue of less than $25 million.[133] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 65 providers that reported they were engaged in the provision of satellite telecommunications services.[134] Of these providers, the Commission estimates that approximately 42 providers have 1,500 or fewer employees.[135] Consequently, using the SBA's small business size standard, a little more than half of these providers can be considered small entities.

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[125] U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[126] *Id.*

[127] 13 CFR § 121.201, NAICS Code 334220.

[128] U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[129] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[130] U.S. Census Bureau, *2017 NAICS Definition, "517410 Satellite Telecommunications,"* https://www.census.gov/naics/?input=517410&year=2017&details=517410.

[131] 13 CFR § 121.201, NAICS Code 517410.

[132] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[133] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517410, https://data.census.gov/cedsci/table?y=2017&n=517410&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[134] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[135] *Id.*

24. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[136] 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.[137] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[138] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[139] Of that number, 2,837 firms employed fewer than 250 employees.[140] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.[141] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[142] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

25. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[143] 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.[144] Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.[145] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[146] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry

[136] U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[137] *Id.*

[138] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[139] U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[140] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[141] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[142] *Id.*

[143] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[144] *Id.*

[145] *Id.*

[146] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

that operated for the entire year.[147] Of those firms, 1,039 had revenue of less than $25 million.[148] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

26. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[149] Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[150] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[151] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[152] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[153] Of this number, 2,964 firms operated with fewer than 250 employees.[154]

27. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.[155] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2022 Communications*

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[147] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[148] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[149] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[150] 47 CFR § 1.7001(a)(1).

[151] U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[152] 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[153] U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[154] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[155] *See* Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 *(IAS Status 2019)*, Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

Marketplace Report,[156] we believe that the majority of wireline Internet access service providers can be considered small entities.

28. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.[157] Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"[158] Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[159] Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[160] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[161] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[162] Of that number, 2,837 firms employed fewer than 250 employees.[163]

29. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.[164] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,[165] as well as on terrestrial fixed wireless broadband providers in general,[166] we believe that the majority of wireless Internet access service providers can be considered small entities.

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[156] *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

[157] Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

[158] Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 *(IAS Status 2019)*, Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports.

[159] 47 CFR § 1.7001(a)(1).

[160] U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[161] 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[162] U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[163] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[164] *IAS Status 2019,* Fig. 30.

[165] *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

[166] *Id.* at 8, para. 22.

30. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.[167] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[168] For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[169] Of those firms, 1,039 had revenue of less than $25 million.[170] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

31. *All Other Information Services*. This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).[171] The SBA small business size standard for this industry classifies firms with annual receipts of $30 million or less as small.[172] U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.[173] Of those firms, 556 had revenue of less than $25 million.[174] Consequently, we estimate that the majority of firms in this industry are small entities.

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

32. We expect the proposed rules in the *Notice* will impose new or additional reporting, recordkeeping and/or other compliance obligations on small entities as well as other licensees and applicants beyond the December 31, 2026 date of the original *Alaska Plan Order*. In the *2016 Alaska Plan Order*, to qualify for support, we directed the Wireline Competition Bureau (WCB) and Wireless Telecommunications Bureau (WTB) (together "the Bureaus") to review proposed performance plans from Alaskan carriers interested in participating in the Alaska Plan that specify the number of locations they

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[167] U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[168] 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[169] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[170] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[171] U.S. Census Bureau, *2017 NAICS Definition, "519190 All Other Information Services,"* https://www.census.gov/naics/?input=519190&year=2017&details=519190.

[172] 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

[173] U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[174] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than $100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

commit to serve and the minimum speeds. For the next version of plan, the Bureaus may require a similar system. At this time however, the Commission is not in a position to determine whether, if adopted, our proposals and the matters upon which we seek comment will require small entities to hire attorneys, engineers, consultants, or other professionals in order to comply with the proposed rules in the Notice and cannot quantify the cost of compliance with the potential rule changes discussed herein.

33. Depending on variations in the Alaska Connect Fund, participants of, some of which are small entities, may be given a multi-year term of support and would be required to offer voice and broadband service meeting certain latency, data usage, and reasonably comparable rate obligations. In their performance plans or obligations, Alaska Connect Fund participants would commit to offer such service to a certain number of locations in their service areas at specified minimum speeds by the end interim milestones by the end of their support term, or in the alternative maintain existing voice and broadband service meeting the relevant public interest obligations to a specified number of locations. Alaska Connect Fund participants that fail to meet their service milestones would be subject to certain non-compliance measures, including support reductions and reporting. At an interim point, Alaska Connect Fund participants would also likely need to update their end-of-term commitments, which will be reviewed by the Bureaus, taking into account such factors as improved access to middle mile infrastructure and updated competitive coverage. The Bureaus would then reassess the approved performance plans of carriers that commit to maintain existing service more frequently. These requirements would impose little to no compliance burden for small entities, as it is in keeping with what is currently done. The Commission may impose additional requirements, such as an additional interim milestone or different requirements beyond what was required of the Alaska Plan, which could cause more burden on small entities.

34. Participants in the Alaska Connect Fund could also be required to submit certain data for the locations where they deploy new service. We expect such information will be submitted on a rolling basis, starting on March 1st of the year following the Order's adoption, then on March 1st following each support year. Submitting the information on a rolling basis rather than all at once, should reduce the compliance burden on small entities who typically lack the resources of larger businesses. Alaska Connect Fund participants would also certify that they have met their milestone commitments. Finally, Alaska Plan participants would be required to comply with all other existing high-cost reporting and oversight mechanisms, unless otherwise modified by the Order. The Commission would rely on Broadband Data Collection data in order to determine eligible areas.

35. If the Alaska Connect Fund is like the Alaska Plan, each competitive eligible telecommunications carrier (ETC) that participates in the Alaska Connect Fund would need to identify in its performance plan: 1) the types of middle mile used on that carrier's network; 2) the level of technology (2G, 3G, 4G LTE, 5G-NR) that carrier provides service at for each type of middle mile used; and 3) the delineated eligible populations served at each technology level by each type of middle mile as they stand currently and at interim milestones and end of support term. Accordingly, each performance plan would need to specify the level of data service by each type of middle mile on a per person basis that will be offered by the milestones. The proposed performance plans would need to reflect any improvements to service, through improved middle mile, improved technology, or both. Alaska Plan participants must offer service meeting the milestones they commit to in their adopted service plans. Variations with provider commitments to receive support may also include processes used for reverse auctions or other potential means to supporting deployment and other costs. WTB may also require additional information, including during the Bureau's review of the proposed performance plans, from individual participants that it deems necessary to establish clear standards for determining whether or not they meet their commitments, which may include geographic location of delineated-eligible populations, as well as specific requirements for demonstrating that competitive ETCs have met their commitments regarding broadband speeds. Competitive ETC participants would likely also be required to update their end-of-term commitments no later than a specified date, and WTB would review these updates in light of any

new developments, including newly available infrastructure, and require revised commitments if it serves the public interest.

36. Additionally, small and other carriers electing to participate may be required to submit a letter from an officer of the company certifying that they will comply with the required public interest obligations and performance obligations set forth in their approved performance plan. To monitor Alaska Plan participants' use of support to ensure it is used for its intended purpose, the Commission has imposed several reporting requirements. Alaska Connect Fund participants would be required to continue to file annual FCC Form 481s and would also likely be required to certify and report certain data regarding the availability of backhaul and certify compliance with the relevant public interest obligations and their adopted performance plan. Additionally, participants may be required to submit fiber network maps and microwave network maps and update them whenever changes are made. Further, some mobile carriers, likely those receiving more than $5 million annually in support, may be required to provide certifications with data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plans.

37. The Commission acknowledges that some of the carriers who will participate in the Alaska Connect Fund may be small entities and welcomes their input in comments, as we seek to ultimately adopt rules that will strike a balance between providing much needed support to the rural and remote areas of Alaska, while minimizing compliance-related burdens for small and other entities providing service to that region.

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

38. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such 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 such small entities."[175]

39. In the *Notice*, the Commission takes steps to minimize the economic impact on small entities and considers significant alternatives by proposing and seeking alternative proposals designed to to balance our requirement to provide support that is sufficient to achieve the Commission's universal service goals, while also providing appropriate incentives for prudent and efficient expenditures. With these goals in mind, in the *Notice*, we took the step of considering measures related to the budget for the Alaska Connect Fund support mechanism that could potentially benefit legacy support recipients, including small entities, by having their support shifted towards costs that are trending higher for such carriers. For example, we considered providing funding for both areas that still require buildout and ongoing support for areas that are already built out. In addition, we also considered allowing the option to participate in the Alaska Connect Fund for small entities and other carriers that are not current support recipients. In considering these matters, we note that the costs of high-cost universal service is ultimately borne by consumers through the contributions factors assessed on their bills.

40. We also considered alternatives for specific deployment obligations for carriers receiving Alaska Plan support. For example, we considered whether we should change the obligations to require the deployment of broadband at a different speed, for example 100/20 Mbps consistent with the Infrastructure Act. Alternatively, we considered retaining the existing requirement that support recipients

[175] 5 U.S.C. § 603(c)(1)–(4).

offer broadband at speeds of 25/3 Mbps deployment obligations, as well as revisiting deployment obligations to account for another government agency making a qualifying award with enforceable deployment obligations in the carrier's service area. If the Commission were to adopt lower broadband speed obligations, like 25/3 Mbps, it might reduce costs for small and other legacy support recipients. A carrier's costs may also be reduced if other funding programs award funding in the rate-of-return carrier's service area, and that carrier is no longer required to serve the locations receiving the alternative funding. However, these scenarios may affect support for such carriers if the Commission adjusts support to account for the lower costs or duplicative funding.

41. Additionally, we considered alternatives for specific deployment obligations for mobile-provider participants that receive Alaska Connect Fund support. For example, we considered whether we should require the deployment of 5G-NR at 35/3 Mbps, or whether we should revisit deployment obligations to account for another agency making a qualifying award with enforceable deployment obligations in the carrier's service area. If the Commission were to adopt lower broadband speed obligations, like 7/1 Mbps, it might reduce costs for small and other legacy support recipients. A carrier's costs may also be reduced if other funding programs award grants in the mobile participant's awarded area, and if carriers receiving duplicative support are no longer required to serve the locations receiving the alternative funding. However, as is the case for rate-of-return carriers, these scenarios may result in the reduction of support for these carriers if the Commission adjusts support to account for the lower costs or duplicative funding.

42. Lastly, in consideration of reducing the economic burden small and other entities might experience, we seek comment on alternatives for reducing a carrier's support amount to reflect the availability of funding from other federal and state programs in their service areas or to reflect that an unsubsidized competitor serves the area. For example, we could identify whether the timing for Broadband Equity Access and Deployment program (BEAD) funding, which instructs states to award funding for unserved locations, underserved locations and community anchor institutions, overlaps with the Alaska Connect Fund funding, thereby warranting changing the timing for awarding support amounts.

43. The matters discussed in the *Notice* are designed to ensure the Commission has a better understanding of both the benefits and the potential burdens associated with the different actions and methods before adopting its final rules.

44. To assist in the Commission's evaluation of the economic impact on small entities, as a result of actions we have proposed in the *Notice*, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated the filing, recordkeeping and reporting requirements described above can be minimized for small businesses. Through comments received in response to the *Notice* and the IRFA, including costs and benefits information and any alternative proposals, the Commission expects to more fully consider ways to minimize the economic impact on small entities. The Commission's evaluation of the comments filed in this proceeding will shape the final alternatives it considers, the final conclusions it reaches, and the actions it ultimately takes in this proceeding to minimize any significant economic impact that may occur on small entities as a result of any final rules that are adopted.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

45. 47 CFR § 54.321(b). If the start date of the Alaska Connect Fund begins before December 31, 2026, then the requirements of Section 54.321(b) may be moot, as they come at the completion of the Alaska Plan.

APPENDIX B

FINAL RULES

For the reasons set forth above, Parts 36, 51, and 54 are amended as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 154(i) and (j), 201, 205, 220, 221(r), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

2. Amend § 36.4 by adding introductory text before paragraph (c) and adding paragraph (c) to read as follows:

§ 36.4 Streamlining procedures for processing petitions for waiver of study area boundaries
* * * * *

Effective as of 30 days after the effective date of the following paragraph, local exchange carriers seeking a change in study area boundaries shall be subject to the following procedure:

(c) A local exchange carrier must file a petition for waiver for study area boundary changes notwithstanding any prior exemptions from such waiver requests including, but not limited to, when a company is combining previously unserved territory with one of its study areas or a holding company is consolidating existing study areas within the same state. The Wireline Competition Bureau or the Office of Economics and Analytics are permitted to accept study area boundary corrections without a waiver.

PART 51—INTERCONNECTION

1. The authority citation for Part 51 continues to read as follows:

AUTHORITY: 47 U.S.C. 151-55, 201-05, 207-09, 218, 225-27, 251-52, 271, 332, unless otherwise noted.

2. Amend § 51.909 by adding paragraph (a)(7) to read as follows:

§ 51.909 Transition of rate-of-return carrier access charges

(a) * * *

(7) Rate-of-return carriers subject to section 51.917 that merge with, consolidate with, or acquire, other rate-of-return carriers shall establish new rate caps as follows:

(i) If the merged entity will file its own access tariff, the new rate cap for each rate element shall be the average of the preexisting rates of each study area weighted by the number of access lines in each study area; or

(ii) If the merged entity participates in the Association traffic-sensitive tariff and has to establish a single switched access rate for one or more rate elements, the new consolidated rate reflecting the cost characteristics of the merged entity, as determined by the Association, will serve as the new rate cap if the merged entity's CAF ICC support will not be more than two percent higher than the combined amount received by the entities prior to merger, using rate and demand levels for the preceding calendar year. A merging entity that does not satisfy this requirement may file a streamlined waiver petition that will be subject to the following procedure:

(A) *Public Notice and Review Period.* The Wireline Competition Bureau will issue a public notice seeking comment on a petition for waiver of the two-percent threshold established by this rule.

(B) *Comment Cycle.* Comments on petitions for waiver may be filed during the first 30 days following public notice, and reply comments may be filed during the first 45 days following public notice, unless the public notice specifies a different pleading cycle. All comments on petitions for waiver shall be filed electronically, and shall satisfy such other filing requirements as may be specified in the public notice.

(C) *Effectuating Waiver Grant*. A waiver petition filed pursuant to this paragraph will be deemed granted 60 days after the release of the public notice seeking comment on the petition, unless opposed or the Commission acts to prevent the waiver from taking effect. The Association and the petitioner shall coordinate the timing of any tariff filing necessary to effectuate this change. The revised rate filed by the Association shall be the rate cap for purposes of applying section 51.909(a).

* * * * *

3. Amend § 51.917 by revising paragraph (c) to read as follows:

§ 51.917 Revenue Recovery for Rate-of-Return Carriers

* * * * *

(c) Base Period Revenue

(1) *Adjustment for Access Stimulation activity*. 2011 Rate-of-Return Carrier Base Period Revenue shall be adjusted to reflect the removal of any increases in revenue requirement or revenues resulting from Access Stimulation activity the Rate-of-Return Carrier engaged in during the relevant measuring period. A Rate-of-Return Carrier should make this adjustment for its initial July 1, 2012, tariff filing, but the adjustment may result from a subsequent Commission or court ruling.

(2) *Adjustment for Merger, Consolidation or Acquisition*. Rate-of-return carriers subject to this section that merge with, consolidate with, or acquire, other rate-of-return carriers shall establish combined Base Period Revenue and interstate revenue requirement levels as follows:

(i) If the merger or acquisition is of two or more study areas, the Base Period Revenue and interstate revenue requirement levels of the study areas shall be added together to establish a new Base Period Revenue and interstate revenue requirement for the newly combined entity; or

(ii) If a portion of a study area is being acquired and merged into another study area, the Base Period Revenue and interstate revenue requirement levels of the partial study area shall be based on the proportion of access lines acquired compared to the total access lines in the pre-merger study area.

* * * * *

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, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Amend § 54.205 by revising paragraph (a) and adding paragraphs (c) and (d) to read as follows:

§ 54.205 Relinquishment of universal service

(a) * * * An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give notice to the state commission and to the Federal Communications Commission of such intention to relinquish. The notice to the Federal Communications Commission shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 09-197.

* * * * *

(c) Where a state authority permits an eligible telecommunications carrier to relinquish its designation, the former eligible telecommunications carrier must submit a copy of the state authority's order or other document permitting relinquishment to the Commission within 10 days of the state authority's decision.

(d) All notices to the Commission must be filed regardless of whether the eligible telecommunications carrier received or is receiving universal service support at the time of relinquishment.

3. Amend § 54.305 by revising paragraph (d)(1) and (d)(2) as follows:

§ 54.305 Sale or transfer of exchanges
* * * * *

(d) Transferred exchanges in study areas operated by rural telephone companies that are subject to the limitations on loop-related universal service support in paragraph (b) of this section may be eligible for a safety valve loop cost expense adjustment based on the difference between the rural incumbent local exchange carrier's index year expense adjustment and subsequent year loop cost expense adjustments for the acquired exchanges. Safety valve loop cost expense adjustments shall only be available to rural incumbent local exchange carriers that, in the absence of restrictions on high-cost loop support in paragraph (b) of this section, would qualify for high-cost loop support for the acquired exchanges under § 54.1310.

(1) * * * For the first year of operation, a loop cost expense adjustment, using the costs of the acquired exchanges submitted in accordance with § 54.1305 shall be calculated pursuant to § 54.1310 and then compared to the index year expense adjustment. Safety valve support for the first period of operation will then be calculated pursuant to paragraph (d)(3) of this section. The index year expense adjustment for years after the first year of operation shall be determined using cost data for the first year of operation of the transferred exchanges. Such cost data for the first year of operation shall be calculated in accordance with §§ 54.1305 and 54.1310. For each year, ending on the same calendar quarter as the first year of operation, a loop cost expense adjustment, using the loop costs of the acquired exchanges, shall be submitted and calculated pursuant to §§ 54.1305 and 54.1310 and will be compared to the index year expense adjustment.* * *

(2) * * * The index year expense adjustment shall be determined using cost data for the acquired exchange(s) submitted in accordance with § 54.1305 and shall be calculated in accordance with § 54.1310. For each subsequent year, ending on the same calendar quarter as the index year, a loop cost expense adjustment, using the costs of the acquired exchanges, will be calculated pursuant to § 54.1310 and will be compared to the index year expense adjustment. Safety valve support is calculated pursuant to paragraph (d)(3) of this section.

* * * * *

4. Amend § 54.310 by revising paragraph (c) to read as follows:

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

(c) *Deployment obligation*. * * * Recipients of Connect America Phase II support awarded through a competitive bidding process, including New York's New NY Broadband Program, must complete deployment to 40 percent of supported locations by December 31, 2022, to 60 percent of supported locations December 31, 2023, to 80 percent of supported locations by December 31, 2024, and to 100 percent of supported locations by December 31, 2025. Compliance shall be determined based on the total number of supported locations in a state. * * *

5. Amend § 54.313 by revising the title of the rule, paragraphs (a)(2), (a)(3), (a)(6), (i), and (j)(1), (j)(2), and adding subparagraphs (j)(3) and (4) to read as follows:

§ 54.313 Annual reporting requirements and quarterly performance reporting for high-cost recipients.

(a) * * *

(2) A certification that the pricing of the company's voice services during the prior calendar year is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the public notice issued by the Wireline Competition Bureau and the Office of Economics and Analytics

(3) A certification that the pricing of a service that meets the Commission's broadband public interest obligations during the prior calendar year is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau and the Office of Economics and Analytics, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support

* * *

(6) The results of quarterly network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology submission on the following dates per year:

(i) **By April 15th:** Filing and certification for network performance test results for first quarter testing.

(ii) **By July 15th:** Filing and certification for network performance test results for second quarter testing.

(iii) **By October 15th:** Filing and certification for network performance test results for third quarter testing.

(iv) **By January 15th:** Filing and certification for network performance test results for the previous fourth quarter testing.

* * *

(i) All reports pursuant to this section shall be filed with the Administrator.

(j) * * *

(1) Other than for certifications under paragraph (a)(6), in order for a recipient of high-cost support to continue to receive support for the following calendar year, or to retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. * * *

* * *

(2) *Grace period*. An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1 but within 4 business days will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to paragraph (a)(4) of this section have not missed the July 1 deadline in any prior year.

(3) For certifications under (a)(6), in order for a recipient of high-cost support to continue to receive support amount for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit information required under (a)(6) by the required dates set. Reductions in

support for late filings shall be calculated after the deadline under (a)(6)(iv) by adding the total days late for each quarter and dividing that number four (days late). Eligible telecommunications carriers that file their reports after the quarterly filing deadline will not receive a grace period for late filings, and shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that is one to seven days late, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that is 8 days late or more will have its support reduced on a pro-rata basis equivalent to the number of days late plus the minimum seven-day reduction.

(4) Any support reductions resulting from a failure to timely make required filing pursuant to this section shall be applied in the month following the notice of support reduction to the eligible telecommunications carrier from the Administrator or as soon as feasible thereafter.

* * * * *

6. Amend § 54.314 by revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers

(a) ***Certification***. States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. * * *

(b) ***Carriers not subject to State jurisdiction***. An eligible telecommunications carrier not subject to the jurisdiction of a State that desires to receive support pursuant to the high-cost program must file an annual certification with the Administrator stating that all federal high-cost support provided to such carrier was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. * * *

(c) ***Certification format***.

(1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with the Administrator of the high-cost universal mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section.

(d) ***Filing deadlines***.

(1) In order for an eligible telecommunications carrier to receive federal high-cost support, the state or the eligible telecommunications carrier, if not subject to the jurisdiction of a state, must file an annual certification, as described in paragraph (c) of this section, with the Administrator by October 1 of

each year. If a state or eligible telecommunications carrier files the annual certification after the October 1 deadline, the carrier subject to the certification shall receive a reduction in its support pursuant to the following schedule:

(i) An eligible telecommunications carrier subject to certifications filed after the October 1 deadline, but by October 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier subject to certifications filed on or after October 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(iii) Any support reductions resulting from a failure to timely make required filing pursuant to this section shall be applied in the month following the notice of support reduction to the eligible telecommunications carrier from the Administrator or as soon as feasible thereafter.

(2) Grace period. If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but within 4 business days, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(4) have not missed the October 1 deadline in any prior year.

7. Amend § 54.315 by revising paragraph (c)(4)(i) to read as follows:

§ 54.315 Application process for Connect America Fund phase II support distributed through competitive bidding

* * * * *

(c) * * *

(4) * * *

(i) Failure by a Phase II auction support recipient to meet its service milestones as required by § 54.310 will trigger reporting obligations and the withholding of support as described in § 54.320(d).

8. Amend § 54.316 by revising paragraphs (a), (b) and (c) and adding paragraph (d) to read as follows.

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

(a) * * *

(1) Recipients of high-cost support with defined broadband deployment obligations pursuant to § 54.308(a), (c) or § 54.310(c) shall provide to the Administrator information regarding the locations to which the eligible telecommunications carrier is offering broadband service in satisfaction of its public interest obligations, as defined in either § 54.308 or § 54.309.* * *

* * * * *

(b) Broadband deployment certifications. ETCs that receive support to serve fixed locations shall have the following broadband deployment certification obligations:

* * *

(4) Recipients of Connect America Phase II auction support, including recipients of support made available through the New York's New NY Broadband Program, shall provide, no later than March 1, 2023, and on March 1 every year thereafter ending March 1, 2026, a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations specified in § 54.309 to the required percentage of its supported locations in each state as set forth in § 54.310(c).

* * *

(7) Recipients of Uniendo a Puerto Rico Fund Stage 2 fixed and Connect USVI Fund fixed Stage 2 fixed support shall provide: no later than March 1 following each service milestone in § 54.1506, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specified in § 54.1507 to the required percentage of its supported locations in Puerto Rico and the U.S. Virgin Islands as set forth in § 54.1506. * * *

* * * * *

(c) *Filing deadlines*. In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designations, it must submit the annual reporting information by March 1 as described in paragraphs (a) and (b) of this section. ETCs that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

(1) An ETC that certifies after the March 1 deadline, but by March 8, will have its support reduced in an amount equivalent to seven days in support.

(2) An ETC that certifies on or after March 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;

(3) ***Grace period***. An ETC that certifies the information required by this section within 4 business days of March 1 will not receive a reduction in support if the ETC and its holding company, operating companies, and affiliates as reported pursuant to §54.313(a)(4) in their report due July 1 of the prior year, have not missed the deadline in any prior year.

(4) Any support reductions resulting from a failure to timely make required filing pursuant to this section shall be applied in the next month following the notice of support reduction to the eligible telecommunications carrier from the Administrator or as soon as feasible thereafter.

(d) Reporting Locations pursuant to paragraph (a)(1) after the March 1st annual deadline.

(1) An ETC that did not report and certify specific locations by March 1 of the year following the year in which the locations were deployed (late-reported locations) may report and certify those locations in a future year for the purpose of counting those locations toward fulfillment of future defined deployment obligations and/or for curing any noncompliance with such obligations in accordance with the terms of § 54.320. To do so, the ETC must indicate that the late-reported locations are being filed for this purpose.

(2) An ETC filing late-reported locations will be subject to a reduction in support calculated by multiplying the following numbers:

(a) the per diem per location support received by the ETC, subject to a maximum per-day, per-location reduction of seven dollars

(b) the number of days between the March 1 deadline for the reporting year in which the late-reported locations were deployed and the date that the ETC reported, certified, and indicated that the location should be counted toward defined deployment obligations, subject to a 15 day limit if the late-reported locations are filed as of the next reporting deadline after the locations should have been filed and at 30 day limit if the late-reported locations are filed at any time thereafter (for each instance of late reporting)

(c) the number of late-reported locations as a percentage of the total number of locations that the ETC filed for the reporting year in which the untimely filed location should have been reported

(3) If an ETC has not reported any untimely locations previously, the ETC is not subject to the reduction in support specified in (d)(2) of this rule section for a number of untimely reported locations deployed in any single year constituting 5% or less of the ETC's reported locations for the relevant reporting year

(4) If an ETC has not reported any late-reported locations previously and the ETC filed a timely annual report, the ETC may amend the annual filing to include additional locations within four business days of the reporting deadline without being subject to the reduction in support specified in (d)(2) of this rule section

(5) The reduction in support for the filing of the late-reported locations shall be applied in the next month following the notice of support reduction to the eligible telecommunications carrier from the Administrator or as soon as feasible thereafter.

9.. Amend § 54.701 by revising paragraphs (c) to read as:

§ 54.701 Administrator of universal service support mechanisms

* * * * *

(c) * * *

(1) * * *

(iii) The High Cost and Low Income Division, which shall perform duties and functions in connection with the high cost support mechanisms described in subparts J, K, M and O of this part, and the low income support mechanisms described in subpart E of this part, under the direction of the High Cost and Low Income Committee of the Board, as set forth in § 54.705(c).

10. Amend § 54.705 by revising paragraph (c) to read as:

§ 54.705 Committees of the Administrator's Board of Directors

* * * * *

(c) * * *

(1) Committee functions. The High Cost and Low Income Committee shall oversee the administration of the high cost and low income support mechanisms described in subparts J, K, M, O and E of this part. The High Cost and Low Income Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the high cost and low income support mechanisms

(ii) Development of applications and associated instructions as needed for the high cost and low income, support mechanisms;

* * *

(iv) Performance of audits of beneficiaries under the high cost and low income support mechanisms; and

(v) Development and implementation of other functions unique to the high cost and low income support mechanisms.

* * * * *

11. Amend subpart K to revise the title of the subpart to read as

Subpart K—Connect America Fund Broadband Loop Support for Rate-of-Return Carriers

12. Amend § 54.902 by revising paragraphs (a) and (b) to read as follows:

§ 54.902 Calculation of CAF BLS Support for Transferred Exchanges.

(a) In the event that a rate-of-return carrier receiving CAF BLS acquires exchanges from an entity that also receives CAF BLS, CAF BLS for the transferred exchanges shall be distributed as follows:
* * * * *

(b) In the event that a rate-of-return carrier receiving CAF BLS acquires exchanges from an entity receiving frozen support, model-based support, or auction-based support, absent further action by the Commission, the exchanges shall receive the same amount of support and be subject to the same public interest obligations as specified pursuant to the frozen, model-based, or auction-based program.

13. Amend § 54.903 by removing and reserving paragraph (a)(2).

14. Amend § 54.1301 by removing and reserving paragraph (b).

§ 54.1301 General

* * *

(b) The expense adjustment will be computed on the basis of data for a preceding calendar year.

15. Amend § 54.1302 by revising paragraph (a) to read as follows:

§ 54.1302 Calculation of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment for rate-of-return carriers

(a) * * * Beginning January 1, 2021, and each calendar year thereafter, the base amount of the nationwide loop cost expense adjustment shall be the annualized amount of the final six months of the preceding calendar year. The total amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment for the first six months of the calendar year shall be the base amount divided by two and for the second six months of the calendar year shall be the base amount divided by two, multiplied times one plus the Rural Growth Factor calculated pursuant to §54.1303.

* * * * *

16. Amend §54.1305 by revising paragraph (a) to read as follows:

§ 54.1305 Submission of information to the National Exchange Carrier Association (NECA)

(a) In order to allow determination of the study areas and wire centers that are entitled to an expense adjustment pursuant to § 54.1310, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) (established pursuant to part 69 of this chapter) with the information listed for each study area in which such incumbent LEC operates, with the exception of the information listed in paragraph (h) of this section, which must be provided for each study area. This information is to be filed with NECA by July 31st of each year. Rural telephone companies that acquired exchanges subsequent to May 7, 1997, and incorporated those acquired exchanges into existing study areas shall separately provide the information required by paragraphs (b) through (i) of this section for both the acquired and existing exchanges.
* * * * *

17. Amend § 54.1306 by removing and reserving for future use.

18. Amend § 54.1309 by removing and reserving paragraph (b)(1).

19. Amend §54.1310 by removing and reserving paragraph (c).

APPENDIX C

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support, Notice of Proposed Rulemaking* (*Administrative Notice*) released in May of 2022.[2] The Federal Communications Commission (Commission) sought written public comment on the proposals in the *Administrative Notice*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

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

2. In the *Report and Order* (*Order*), we adopt several changes to the Commission's rules that will improve the administration of the high-cost program to enhance its efficiency and efficacy, better safeguard USF, and streamline annual reporting and certification requirements for high-cost support recipients. First, we adopt our proposal to streamline the process for submitting annual high-cost information and certifications by requiring that such filings be made only with the Universal Service Administrative Company (USAC), rather than with both USAC and the Commission's Office of the Secretary. Second, we similarly adopt our proposal to require states that desire Eligible Telecommunications Carriers (ETCs) to receive high-cost support and ETCs not subject to state jurisdiction to file annual reports with USAC only. Third, we adopt our proposal to more closely align support reductions with an ETC's failure to certify locations by the deadlines established in the Commission's rules. Fourth, we modify the reporting requirements for performance testing to require all high-cost support recipients serving fixed locations to report and certify performance testing results on a quarterly basis, rather than annually. Fifth, we retain annual financial reporting for privately held rate-of-return carriers that receive Alternative Connect America Model (A-CAM) support or Alaska Plan support. Sixth, we adopt our proposal to modify our rules to create a consistent one-time grace period for all compliance filings with grace periods to "within four business days." Seventh, we modify the Commission's rules to adopt uniform deployment, certification, and location reporting deadlines for all Connect America Fund (CAF) Phase II auction support recipients. Eighth, we decline to amend section 54.316(a) of the Commission's rules to require ETCs receiving high-cost support and subject to defined deployment obligations to report the maximum speeds offered, advertised, or delivered to customers. Ninth, we adopt our proposal to amend section 54.316(a)(1) to more accurately reflect the deployed locations reporting obligations of support recipients. Tenth, we modify the Commission's voice and broadband rate certification rules to clarify the reporting period. We also amend section 54.316(a) to clarify that we will permit high-cost support recipients to report and certify late-reported locations in future annual deployment reports and to count these locations toward their defined deployment obligations.

3. In addition, the *Order* amends our rules to provide a simpler process for rate-of-return local exchange carriers (LECs) seeking to merge, consolidate, or acquire one or more rate-of-return study areas to calculate the new entity's Access Recovery Charge (ARC), Connect America Fund – Intercarrier Compensation (CAF ICC) support, and reciprocal compensation and switched access rate caps. We amend section 54.902 of our rules to better reflect the current state of the high-cost program. We modify the study area boundary process to require waivers for all study area boundary changes. The *Order* also

[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] *Connect America Fund: A National Broadband Plan for Our Future High-Cost Universal Service Support et. al.*, WC Docket No. 10-90, 14-58, 09-17, 16-271, RM 11868, Notice of Proposed Rulemaking, FCC 22-35, (rel. May 30, 2022) (*Administrative Notice*).

[3] 5 U.S.C. § 604.

eliminates optional quarterly line count reporting for Connect America Fund Broadband Loop Support (CAF BLS) support recipients and revises section 54.205 of the Commission's rules to require an ETC designated by a state authority and seeking to relinquish its ETC designation to provide advance notice to the Commission.

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

4. There were no comments filed that specifically addressed the proposed rules and policies presented in response to the IRFA.

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

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel 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.[4] The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

J. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. 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 that: (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]

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities 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 Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[10] These types of small

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[4] *Id*. § 604(a)(3).

[5] *Id.* § 604 (a)(4). The IRFA listed three small entity descriptions in error: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Semiconductor and Related Device Manufacturing, and Software Publishers. We have deleted these SEDS from the FRFA because these small entities do not receive USF support and would not be affected by the proposed rules.

[6] 5 U.S.C. § 601(6).

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

[8] 15 U.S.C. § 632.

[9] 5 U.S.C. § 601(3)-(6).

[10] SBA, Office of Advocacy, "What's New With Small Business?," https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf. (Mar. 2023)

businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[11]

8. 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] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[13] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[14]

9. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[15] U.S. Census Bureau data from the 2017 Census of Governments[16] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[17] Of this number, there were 36,931 general purpose governments (county,[18] municipal, and town or township[19]) with populations of

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[11] *Id*.

[12] 5 U.S.C. § 601(4).

[13] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[14] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[15] 5 U.S.C. § 601(5).

[16] 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[17] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[18] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[19] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

less than 50,000 and 12,040 special purpose governments—independent school districts[20] with enrollment populations of less than 50,000.[21] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[22]

10. *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.[23] Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.[24] By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.[25] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[26]

11. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[27] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[28] Of this number, 2,964 firms operated with fewer than 250 employees.[29] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged

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[20] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[21] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[22] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

[23] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[24] *Id.*

[25] *Id.*

[26] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[27] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[28] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[29] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

in the provision of fixed local services.[30] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[31] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers[32] is the closest industry with an SBA small business size standard.[33] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[34] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[35] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[36] Of this number, 2,964 firms operated with fewer than 250 employees.[37] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were fixed local exchange service providers.[38] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[39] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers[40] is the closest industry with an SBA small business size standard.[41] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[42] U.S. Census Bureau data for 2017 show that there were 3,054 firms

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[30] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf (2022 Monitoring Report).

[31] *Id.*

[32] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[33] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[34] Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[35] *Id.*

[36] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[37] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[38] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[39] *Id.*

[40] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[41] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[42] *Id.*

in this industry that operated for the entire year.[43] Of this number, 2,964 firms operated with fewer than 250 employees.[44] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 1,212 providers that reported they were incumbent local exchange service providers.[45] Of these providers, the Commission estimates that 916 providers have 1,500 or fewer employees.[46] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

14. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.[47] Wired Telecommunications Carriers[48] is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[49] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[50] Of this number, 2,964 firms operated with fewer than 250 employees.[51] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 3,378 providers that reported they were competitive local exchange service providers.[52] Of these providers, the Commission estimates that 3,230 providers have 1,500 or fewer employees.[53] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications

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[43] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[44] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[45] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[46] *Id.*

[47] Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

[48] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[49] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[50] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[51] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[52] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[53] *Id.*

Carriers[54] is the closest industry with a SBA small business size standard.[55] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[56] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[57] Of this number, 2,964 firms operated with fewer than 250 employees.[58] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 127 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 109 providers have 1,500 or fewer employees.[59] Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

16. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard.[60] 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.[61] Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.[62] Mobile virtual network operators (MVNOs) are included in this industry.[63] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[64] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[65] Of that number, 1,375 firms operated with fewer than 250 employees.[66] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 207 providers that reported

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[54] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[55] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[56] *Id.*

[57] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[58] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[59] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[60] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[61] *Id.*

[62] *Id*.

[63] *Id*.

[64] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[65] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[66] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

they were engaged in the provision of local resale services.[67] Of these providers, the Commission estimates that 202 providers have 1,500 or fewer employees.[68] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers[69] is the closest industry with a SBA small business size standard. 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.[70] Mobile virtual network operators (MVNOs) are included in this industry.[71] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[72] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[73] Of that number, 1,375 firms operated with fewer than 250 employees.[74] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 457 providers that reported they were engaged in the provision of toll services.[75] Of these providers, the Commission estimates that 438 providers have 1,500 or fewer employees.[76] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition 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. Wired Telecommunications Carriers[77] is the closest industry with a SBA small business size standard.[78] The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[79] U.S.

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[67] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[68] *Id.*

[69] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[70] *Id.*

[71] *Id*.

[72] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[73] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[74] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[75] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

[76] *Id.*

[77] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[78] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[79] *Id.*

Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.[80] Of this number, 2,964 firms operated with fewer than 250 employees.[81] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 90 providers that reported they were engaged in the provision of other toll services.[82] Of these providers, the Commission estimates that 87 providers have 1,500 or fewer employees.[83] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers[84] is the closest industry with a SBA small business size standard. 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.[85] Mobile virtual network operators (MVNOs) are included in this industry.[86] The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.[87] U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.[88] Of that number, 1,375 firms operated with fewer than 250 employees.[89] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 62 providers that reported they were engaged in the provision of prepaid card services.[90] Of these providers, the Commission estimates that 61 providers have 1,500 or

[80] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[81] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[82] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[83] *Id.*

[84] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517911 Telecommunications Resellers,*" https://www.census.gov/naics/?input=517911&year=2017&details=517911.

[85] *Id.*

[86] *Id*.

[87] *See* 13 CFR § 121.201, NAICS Code 517911 (as of 10/1/22, NAICS Code 517121).

[88] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517911, https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[89] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[90] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf.

fewer employees.[91] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[92] 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.[93] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[94] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[95] Of that number, 2,837 firms employed fewer than 250 employees.[96] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.[97] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[98] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

21. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.[99] The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources.[100] The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[101] The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small.[102] Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.[103] Of that number, 149 firms operated with revenue of less than

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[91] *Id.*

[92] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[93] *Id.*

[94] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[95] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[96] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[97] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[98] *Id.*

[99] *See* U.S. Census Bureau, *2017 NAICS Definition, "515210 Cable and Other Subscription Programming,"* https://www.census.gov/naics/?input=515210&year=2017&details=515210.

[100] *Id.*

[101] *Id.*

[102] *See* 13 CFR § 121.201, NAICS Code 515210 (as of 10/1/22, NAICS Code 516210).

[103] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePrevie

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$25 million a year and 44 firms operated with revenue of $25 million or more.[104] Based on this data, the Commission estimates that a majority of firms in this industry are small.

22. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[105] Based on industry data, there are about 420 cable companies in the U.S.[106] Of these, only seven have more than 400,000 subscribers.[107] In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[108] Based on industry data, there are about 4,139 cable systems (headends) in the U.S.[109] Of these, about 639 have more than 15,000 subscribers.[110] Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

23. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[111] For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice.[112] Based on industry data, only six cable system operators have more than 677,000 subscribers.[113]

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w=false. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

[104] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than $500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[105] 47 CFR § 76.901(d).

[106] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

[107] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited July 23, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

[108] 47 CFR § 76.901(c).

[109] S&P Global Market Intelligence, S&P Capital IQ Pro, U.S. MediaCensus, *Operator Subscribers by Geography* (last visited July 23, 2023).

[110] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited July 23, 2023).

[111] 47 U.S.C. § 543(m)(2).

[112] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, 16 FCC Rcd 2225 (CSB 2001) (*2001 Subscriber Count PN*). In this Public Notice, the Commission determined that there were approximately 67.7 million cable subscribers in the United States at that time using the most reliable source publicly available. *Id*. We recognize that the number of cable subscribers changed since then and that the Commission has recently estimated the number of cable subscribers to traditional and telco cable operators to be approximately 49.8 million. *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 80, para. 218, Fig. II.E.1. (2022) (2022 Communications Marketplace Report). However, because the Commission has not issued a public notice subsequent to the *2001 Subscriber Count PN,* the Commission still relies on the subscriber count threshold established by the *2001 Subscriber Count PN* for purposes of this rule. *See* 47 CFR § 76.901(e)(1).

[113] S&P Global Market Intelligence, S&P Capital IQ Pro, *Top Cable MSOs 12/21Q (*last visited July 23, 2023); S&P Global Market Intelligence, Multichannel Video Subscriptions, Top 10 (April 2022).

Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[114] Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.115 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.116 Providers of Internet services (e.g. dial-up ISPs) or Voice over Internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.117 The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.118 U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.119 Of those firms, 1,039 had revenue of less than $25 million.120 Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

25. Wired Broadband Internet Access Service Providers (Wired ISPs).121 Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.122 Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.123 The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.124 U.S. Census Bureau data for 2017 show

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[114] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. *See* 47 CFR § 76.910(b).

[115] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[116] *Id.*

[117] *Id*.

[118] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[119] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[120] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[121] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[122] *See* 47 CFR § 1.7001(a)(1).

[123] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[124] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

that there were 3,054 firms that operated in this industry for the entire year.125 Of this number, 2,964 firms operated with fewer than 250 employees.126

46. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 2,747 providers of connections over 200 kbps in at least one direction using various wireline technologies.127 The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's 2022 Communications Marketplace Report,128 we believe that the majority of wireline Internet access service providers can be considered small entities.

47. Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).129 Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"130 Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.131 Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).132. The SBA size standard for this industry classifies a business as small if it has 1,500 or

[125] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[126] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[127] *See* Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 *(IAS Status 2019)*, Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports. The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

[128] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

[129] Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

[130] Federal Communications Commission, Internet Access Services: Status as of June 30, 2019 at 27, Fig. 30 *(IAS Status 2019)*, Industry Analysis Division, Office of Economics & Analytics (March 2022). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports.

[131] *See* 47 CFR § 1.7001(a)(1).

[132] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

fewer employees.133 U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.134 Of that number, 2,837 firms employed fewer than 250 employees.135

48. Additionally, according to Commission data on Internet access services as of June 30, 2019, nationwide there were approximately 1,237 fixed wireless and 70 mobile wireless providers of connections over 200 kbps in at least one direction.136 The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's 2022 Communications Marketplace Report on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,137 as well as on terrestrial fixed wireless broadband providers in general,138 we believe that the majority of wireless Internet access service providers can be considered small entities.

49. Internet Service Providers (Non-Broadband). Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.139 The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.140 For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.141 Of those firms, 1,039 had revenue of less than $25 million.142 Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

50. All Other Information Services. This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).143 The SBA small business size standard for this

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[133] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[134] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[135] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[136] *See IAS Status 2019,* Fig. 30.

[137] *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

[138] *Id.* at 8, para. 22.

[139] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[140] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[141] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[142] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[143] *See* U.S. Census Bureau, *2017 NAICS Definition, "519190 All Other Information Services,"* https://www.census.gov/naics/?input=519190&year=2017&details=519190.

industry classifies firms with annual receipts of $30 million or less as small.144 U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.[145] Of those firms, 556 had revenue of less than $25 million.[146] Consequently, we estimate that the majority of firms in this industry are small entities.

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

51. In the *Order*, we adopt measures to improve the management, administration, and oversight of the high-cost program that may impact small entities, including: streamlining reporting and certification requirements; improving review of mergers between rate-of-return local exchange carriers; clarifying support for exchanges acquired by a CAF BLS recipient; establishing a streamlined process to merge jointly-owned study areas; improving the process to relinquish ETC status, and improving our audit program.

52. We revise section 54.313(i) of the Commission's rules to streamline the process for submitting annual high-cost information and certifications by requiring that such filings be made only with the USAC which administers the program, rather than both USAC and the Commission's Office of the Secretary.[147] We similarly revise section 54.314 of the Commission's rules to require that high-cost support recipients file annual reports with USAC only.[148] Additionally, we more closely align support reductions with an ETC's failure to certify locations by the deadlines established in the Commission's rules.[149] We also modify the reporting requirements for performance testing to apply to all high-cost support recipients serving fixed locations, not just those carriers that are not in compliance with speed and latency requirements. These carriers will be required to report and certify performance testing results on a quarterly basis instead of annually, and the Commission will allow for an additional week to file the report. Further, we modify our rules to create a consistent one-time grace period for all compliance filings to "within four business days." We update the Commission's rules to adopt uniform deployment, certification, and location reporting deadlines for all CAF Phase II auction support recipients (including recipients of support allocated through the New York's New NY Broadband program).[150] Section 54.316(a)(1) of the Commission's rules is amended to more accurately reflect the reporting obligations of support recipients in reporting deployed locations.[151] The Commission's voice rate certification rule is updated to require carriers submitting an annual FCC Form 481 to certify compliance with the annual voice and broadband benchmarks adopted for the preceding calendar year ending the last day of December rather than those benchmarks applicable to the year that the report is filed. We modify and

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[144] *See* 13 CFR § 121.201, NAICS Code 519190 (as of 10/1/22, NAICS Codes 519290).

[145] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[146] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than $100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[147] 47 CFR § 54.313(i).

[148] *Id*. § 54.314(a) - (d).

[149] *Id*. §§ 54.313(j), 54.314(d), 54.316(c).

[150] *Id*. §§ 54.310(c), 54.316(b)(4), 54.316(c)(2).

[151] *Id*. § 54.316(a)(1).

amend our rules to permit high-cost support recipients that have deployed locations in years prior to the annual reporting year to submit these locations (late-reported locations) and to count these locations toward their defined deployment obligations.[152]

53. We amend our rules to provide a simpler process for rate-of-return LECs seeking to merge, consolidate, or acquire one or more rate-of-return study areas to calculate the new entity's ARC, CAF ICC support, and reciprocal compensation and switched access rate caps. Section 51.917 is modified to provide guidance on calculating Base Period Revenues for rate-of-return study areas affected by a transaction, thereby permitting rate-of-return carriers to adjust their Base Period Revenues without the need for a waiver. Specifically, we revise section 51.917 of our rules to provide that when two or more entire rate-of-return study areas are merged, the LEC shall combine the Base Period Revenue and interstate revenue requirements of the merging study areas for purposes of calculating Eligible Recovery.[153] We modify section 51.909 to establish procedures for setting new rate caps for merging rate-of-return LECs and adopt a streamlined waiver process if the rates for the new combined study area would result in the new entity's CAF ICC support exceeding a certain threshold.[154] Specifically, for carriers that file their own tariffs, the new rate cap for each rate element shall be the weighted average of the preexisting rates in each of the affected study areas. Revising the waiver process will reduce costs and administrative burdens by eliminating the need for carriers, including small entities, to obtain individual waivers when certain conditions apply.[155]

54. We modify section 54.902(a) to limit eligibility for CAF BLS support to those transactions where the acquiring carrier would only be eligible to receive CAF BLS support for exchanges acquired from existing CAF BLS recipients,[156] and revise section 54.902(b) to include any model-based, auction-based, or frozen support.[157] We update the study area boundary process to require waivers for all study area boundary changes.[158] We eliminate optional quarterly line count reporting for CAF BLS support recipients, finding that the mandatory annual line count reporting set forth in sections 54.313(h)(5) and 54.903(a)(1) of the Commission's rules suffices for the purposes of setting per line caps. We revise section 54.205 of the Commission's rules to require an ETC designated by a state authority and seeking to relinquish its ETC designation to also provide advance notice to the Commission.[159] In addition, we require former ETCs designated by a state authority that have relinquished their designation to provide notice of such relinquishment within 10 days of the effective date of this rule modification. We adopt several minor changes to our rules to correct inaccuracies associated with subsequent rule changes.[160]

55. The record does not provide sufficient information to allow the Commission to determine whether small entities will be required to hire professionals to comply with its decisions. The Commission anticipates the approaches it has taken to implement the requirements will have minimal cost implications because we expect that much of the required information is already collected to ensure

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[152] *Id*. § 54.316(a).

[153] *Id*. § 51.917(c).

[154] *Id*. § 51.909(a)(7).

[155] *Order* at para. 38.

[156] 47 CFR § 54.902(a).

[157] *Id*. § 54.902(b).

[158] Adding new subsection 36 CFR § 36.4.

[159] 47 CFR § 54.205

[160] Because these are minor corrections to cross references or internal citations that do not change a party's legal obligations or rights, these changes are not subject to prior notice and comment requirements in the Administrative Procedure Act (APA). 5 U.S.C. § 553 (b)(3)(A) (statutory exemptions from APA notice and comment requirements).

compliance with the terms and conditions of support. Further, the changes we make to streamline waiver processes and eliminate duplicative filing requirements may reduce administrative costs and compliance requirements for small entities that may have smaller staff and fewer resources.

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

56. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities…including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."[161]

57. In reaching its final conclusions and through its actions in this proceeding, the Commission has considered the economic impact of, and alternatives to, proposals that may affect small entities. The rules that we adopt in the *Order* will benefit small and other entities by improving and streamlining annual reporting and certification, as well as by eliminating ambiguity and reducing administrative burdens. Additionally, we adopt consistent grace periods of four business days which will eliminate confusion for all entities from grace periods falling on a weekend or holiday. We also eliminate the need for rate-of-return LECs, most of which are small entities, that are involved in a merger, consolidation, or acquisition with another rate-of-return carrier to obtain a waiver of certain intercarrier compensation rules. For carriers that do not satisfy the criteria identified for transactions when waiver is not required, we adopt a streamlined CAF ICC merger approval process. Specifically, we modify section 54.314 to require the submission of annual certifications of the Commission's rules with USAC only, instead of USAC and the Commission. Revisions to section 54.316(a) clarify high-cost support recipients obligations for late-reported locations, addressing commenters concerns by modifying the support reduction and capping the duration multiplier if timely filing is made by the next deadline. We, however, decline to amend section 54.316(a) to require ETCs receiving high-cost support and subject to defined deployment obligations to report the maximum speeds offered or delivered to customers because similar information is collected through fulfillment of their Broadband Data Collection (BDC) responsibilities.

58. To the extent we retain certification and reporting requirements, 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. For example, we decline proposals to relieve privately held rate-of-return carriers that receive A-CAM support or Alaska Plan support of the requirement to file annually a report of the company's financial conditions and operations, because the public interest benefits evaluating the efficacy outweigh the burdens. We considered proposals that sought to apply the newly adopted Alaska rate benchmarks as suitable proxy for all insular territories in the United States, but decline to address them in the *Order* because they are not sufficiently related to the proposals in the *Administrative Notice*, and recommend that commenters submit a petition for rulemaking to address this issue.[162]

M. Report to Congress

59. The Commission will send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[163] In addition, the Commission will send a copy of

[161] *Id*. § 604(a)(6).

[162] *Order* at para. 54.

[163] 5 U.S.C. § 801(a)(1)(A).

the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.[164]

[164] *See Id.* § 604(b).