

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

In the Matter of )  
 )  
Connect America Fund ) WC Docket No. 10-90  
 )  
ETC Annual Reports and Certifications ) WC Docket No. 14-58

**REPORT AND ORDER AND ORDER ON RECONSIDERATION**

**Adopted: February 23, 2017**

**Released: March 2, 2017**

By the Commission: Chairman Pai and Commissioner Clyburn issuing separate statements; Commissioner O’Rielly approving in part, dissenting in part and issuing a statement.

**TABLE OF CONTENTS**

	Para.
I. INTRODUCTION .....	1
II. BACKGROUND .....	4
III. REPORT AND ORDER .....	10
A. Comparing Bids of Different Performance Levels .....	10
1. Performance Tiers .....	19
2. Latency Tiers.....	31
3. Other Weights.....	35
4. Demonstration of Weight Eligibility.....	37
B. Access to Appropriate Phase II Levels for All States.....	40
C. Access to Service on Tribal Lands.....	51
D. Limited Adjustments to Interim Deployment Milestones.....	55
IV. ORDER ON RECONSIDERATION .....	59
A. Bid Ranking .....	60
B. Re-Auctioning High Latency Areas.....	64
C. Unlimited Monthly Usage.....	71
V. PROCEDURAL MATTERS.....	74
VI. ORDERING CLAUSES.....	77
APPENDIX - Final Regulatory Flexibility Analysis	

**I. INTRODUCTION**

1. With this Report and Order and Order on Reconsideration (Order), the Commission takes another step towards implementing the Connect America Phase II (Phase II) auction in which service providers will compete to receive support of up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas. The decisions we make in this Order aim to maximize the value the American people will receive for the universal service dollars we spend, balancing higher-quality services with cost efficiencies.

2. First, we resolve issues raised in the *Phase II Auction Order FNPRM*.<sup>1</sup> We adopt weights to compare bids among the service performance and latency tiers adopted in the *Phase II Auction Order*. Additionally, we decline to adopt specific preferences for certain states and Tribal lands in the Phase II auction and decline to adopt alternative interim deployment obligations for a subset of Phase II auction recipients. However, we do adopt preferences that will be implemented in the Remote Areas Fund auction for states where the Phase II offer of model-based support was declined, subject to certain conditions.

3. Second, we also consider several petitions for reconsideration of decisions made in the *Phase II Auction Order*. We deny a petition for reconsideration of the Commission's decision to score bids relative to the reserve price, grant a petition for reconsideration of the Commission's decision to retain the option to re-auction certain areas served by high latency bidders if a set subscription rate is not met, and grant a petition for reconsideration of the Commission's decision to require bidders in the Above-Baseline and Gigabit performance tiers to offer an unlimited monthly usage allowance.

## II. BACKGROUND

4. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost program within the universal service fund and the intercarrier compensation system to focus support on networks capable of providing voice and broadband services.<sup>2</sup> The Commission created the Connect America Fund,<sup>3</sup> and concluded that support in price cap areas would be provided through a combination of “a new forward-looking model of the cost of constructing modern multi-purpose networks” and a competitive bidding process (Phase II support).<sup>4</sup> Specifically, the Commission decided to award support in states declined by the incumbent price cap carriers through a competitive bidding process and sought comment on proposed rules governing the Phase II competitive bidding process, including options regarding basic auction design and the application process.<sup>5</sup>

5. In the *April 2014 Connect America Order*, the Commission decided that extremely high-cost census blocks nationwide would be eligible for the Phase II auction, and the Commission adopted certain rules regarding participation in the competitive bidding process, the term of support, and eligible telecommunications carrier designations.<sup>6</sup>

6. In 2015, ten price cap carriers accepted over \$1.5 billion in annual Phase II model-based support to provide broadband to nearly 7.3 million consumers in 45 states and the Commonwealth of the Northern Mariana Islands. Nearly \$175 million in annual Phase II model-based support was declined.<sup>7</sup>

7. In May 2016, the Commission adopted a framework and rules for the Phase II auction, including the public interest obligations, the budget, the eligible areas, the eligibility requirements, and

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<sup>1</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6020-27, paras. 205-29 (2016) (*Phase II Auction Order and/or FNPRM*).

<sup>2</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd sub nom.*, In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

<sup>3</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17710, para. 123.

<sup>4</sup> *Id.* at 17725, para. 156.

<sup>5</sup> *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17732, 18085-108, paras. 178, 1189-1295.

<sup>6</sup> *Connect America Fund et al.*, Report and Order et al., 29 FCC Rcd 7051, 7060-66, paras. 29-47 (2014) (*April 2014 Connect America Order and/or FNPRM*).

<sup>7</sup> Press Release, FCC, Carriers Accept Over \$1.5 Billion in Annual Support from Connect America Fund to Expand and Support Broadband for Nearly 7.3 Million Rural Consumers in 45 States and One Territory (Aug. 27, 2015), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2015/db0827/DOC-335082A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2015/db0827/DOC-335082A1.pdf).

post-auction obligations and oversight measures.<sup>8</sup> The Commission also provided basic guidance about the auction process.<sup>9</sup> Additionally, the Commission adopted a framework and rules for the Remote Areas Fund auction to ensure that it could move expeditiously to implement the Remote Areas Fund for those areas that remain unserved with broadband after the Phase II auction.<sup>10</sup> The Commission also sought comment on a number of issues, including how to apply weights to the different service tiers, measures to achieve the public interest objective of ensuring appropriate support for all states, measures to achieve the public interest objective of expanding broadband on Tribal lands, and issues relating to interim deployment milestones for providers that have already deployed the infrastructure they intend to use to fulfill their Phase II obligations.<sup>11</sup>

8. In January 2017, the Commission released an order conditionally waiving the Phase II auction program rules to allocate Connect America Phase II support in Connect America-eligible areas in New York in coordination with New York's New NY Broadband Program.<sup>12</sup> Specifically, we concluded that funding up to the amount of Connect America Phase II model-based support that Verizon declined in New York—\$170.4 million in total support—would be available to applicants selected in New York's New NY Broadband Program in accordance with the framework we set forth in that order.<sup>13</sup>

9. Next, we intend to release a Commission-level public notice that will seek comment on specific details regarding the mechanics of the Phase II auction, including the auction format and reserve prices.<sup>14</sup> After consideration of the record, the Commission will announce the final details for the Phase II auction in a public notice and will also announce Phase II auction-specific deadlines and dates.

### III. REPORT AND ORDER

#### A. Comparing Bids of Different Performance Levels

10. *Background.* In the *Phase II Auction Order*, the Commission established four technology-neutral performance tiers with varying speed and usage allowances.<sup>15</sup> Specifically, for the Minimum performance tier, the Commission will accept bids from entities that commit to offer broadband speeds of at least 10 Mbps downstream and 1 Mbps upstream and offer a minimum usage allowance of 150 GB per month.<sup>16</sup> For the Baseline performance tier, the Commission will accept bids from entities that commit to offer broadband speeds of at least 25 Mbps downstream and 3 Mbps upstream and offer a minimum usage allowance of 150 GB per month or a usage allowance that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher.<sup>17</sup> For the Above-Baseline performance tier, the Commission will accept bids

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<sup>8</sup> See generally *Phase II Auction Order*.

<sup>9</sup> *Id.* at 5975-79, paras. 80-90

<sup>10</sup> *Id.* at 6018-20, paras. 195-204. The Commission did not decide a number of issues that will need to be resolved before the Remote Areas Fund can be implemented, including the public interest obligations and term of support, noting that such issues will be decided once it has observed the outcome of the Phase II auction. *Id.* at 6020, para. 204.

<sup>11</sup> *Phase II Auction FNPRM*, 31 FCC Rcd at 6020-27, paras. 205-29.

<sup>12</sup> *Connect America Fund; ETC Annual Reports and Certifications*, Order, FCC 17-2 (Jan. 26, 2017) (*New York Auction Order*).

<sup>13</sup> *Id.* Verizon declined \$28.4 million in annual Connect America Phase II model-based support for a six-year term—\$170.4 million total over the course of the Connect America Phase II model-based support term.

<sup>14</sup> *Phase II Auction Order*, 31 FCC Rcd at 5976, para. 83.

<sup>15</sup> *Id.* at 5957, para. 15.

<sup>16</sup> *Id.* at 5958, para. 19.

<sup>17</sup> *Id.* at 5959, paras. 24-25.

from entities that commit to offer broadband speeds of at least 100 Mbps downstream and 20 Mbps upstream. Finally, for the Gigabit performance tier, the Commission will accept bids from entities that commit to offer broadband speeds of at least 1 Gbps downstream and 500 Mbps upstream.<sup>18</sup> In the *Phase II Auction Order*, the Commission required bidders in the Above-Baseline and Gigabit performance tiers to offer an unlimited monthly usage allowance. In the Order on Reconsideration below, we reconsider the unlimited data allowance requirement and instead require bidders in these tiers to offer a monthly usage allowance of at least 2 terabytes (TB) per month.

11. For each of these four performance tiers, bidders will designate one of two latency performance levels: 1) low latency or 2) high latency. For the low latency tier, bidders must commit to meet a minimum latency standard of 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds.<sup>19</sup> Recognizing that some bidders may not be able to meet this latency standard, the Commission also determined that bidders designating high latency performance will be required to meet a minimum two-part standard for latency for both their voice and broadband services: 1) 95 percent or more of all peak period measurements of network round trip latency at or below 750 milliseconds, and 2) with respect to voice performance, a score of four or higher using the Mean Opinion Score (MOS).<sup>20</sup>

12. The Commission decided that bids in all tiers would be considered simultaneously, so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards.<sup>21</sup> The Commission stated a preference for higher speeds over lower speeds, higher usage over lower usage allowances, and low latency over high latency and decided that weights would be used to account for these preferences.<sup>22</sup> Specifically, bids would be scored relative to the reserve price for the areas subject to the bid, with lower bids selected first, taking into account the weights.<sup>23</sup>

13. In the *Phase II Auction FNPRM*, the Commission sought comment on how bids should be weighted to achieve its goals of providing households in the relevant high-cost areas with access to high quality broadband services, while making the most efficient use of finite universal service funds.<sup>24</sup> The Commission proposed establishing weights that represent the relative benefits of each service tier,<sup>25</sup> and sought comment on various proposals for how to weight bids with different performance obligations.<sup>26</sup>

14. *Discussion.* We now adopt weights for the Phase II auction performance and latency tiers that will account for the value of higher speeds, higher usage allowances, and low latency, but that will also balance these preferences against our objective of maximizing the effectiveness of our funds to serve consumers across unserved areas with our finite budget.

15. We first clarify that weights are positive values that will be added to a particular bid-price-to-reserve price ratio to arrive at a score. Mathematically,  $S = 100 \times B/R + T + L$ , where  $S$  is the bid's score,  $B$  is the current bid price,  $R$  is the reserve price,  $T$  is the weight assigned to the bid's

<sup>18</sup> *Phase II Auction Order*, 31 FCC Rcd at 5960, para. 27.

<sup>19</sup> *Id.* at 5960, para. 29.

<sup>20</sup> *Id.* at 5960-61, para. 30.

<sup>21</sup> *Id.* at 5957, para. 17.

<sup>22</sup> *Id.* at 5976-77, paras. 84-85.

<sup>23</sup> *Id.*

<sup>24</sup> *Phase II Auction FNPRM*, 31 FCC Rcd at 6021-23, paras. 206-16.

<sup>25</sup> *Id.* at 6022, para. 212.

<sup>26</sup> *Id.* at 6022-23, paras. 213-215.

associated tier of service, and  $L$  is the weight assigned to the bid's associated latency.<sup>27</sup> Because the Phase II auction will be a reverse auction, higher service tiers will accordingly have lower weights.<sup>28</sup>

16. Specifically, we will weight bids so that Minimum performance tier bids will have a 65 weight; Baseline performance tier bids will have a 45 weight; Above Baseline performance tier bids will have a 15 weight; and Gigabit performance tier bids will have zero weight. Moreover, high latency bids will have a 25 weight and low latency bids will have zero weight added to their respective performance tier weight.

17. The following charts summarize our adopted approach:

Performance Tier	Speed	Usage Allowance	Weight
<b>Minimum</b>	≥ 10/1 Mbps	≥ 150 GB	65
<b>Baseline</b>	≥ 25/3 Mbps	≥ 150 GB or U.S. median, whichever is higher	45
<b>Above Baseline</b>	≥ 100/20 Mbps	2 TB	15
<b>Gigabit</b>	≥ 1 Gbps/500 Mbps	2 TB	0

Latency	Requirement	Weight
<b>Low Latency</b>	≤ 100 ms	0
<b>High Latency</b>	≤ 750 ms & MOS of ≥ 4	25

18. A number of commenters proposed different ways to apply weights. Some parties also suggested using positive weights, while others suggested negative weights, and some suggested a mix of both. By adding increasing weight as speed and usage allowances decrease and latency increases, we conclude that our approach is a straight-forward representation of the fact that we value higher speeds and usage allowances and lower latency, and should be easier for bidders to understand and simpler for us to implement.<sup>29</sup> Moreover, a number of parties suggested that we use percentage weights but suggested various ways to apply the percentage.<sup>30</sup> We conclude that our overall approach of adding the weight to

<sup>27</sup> For a given area, we note that  $R$  is the highest reserve price available to any service tier. The specific reserve prices for each tier in each eligible area will be set in the forthcoming Commission-level public notice, but no reserve price will exceed the Connect America Cost Model (CAM) support amount for that area.

<sup>28</sup> As a simplified example, consider bidders in an area with a reserve price of \$160. The first bidder asks for \$120 (a score of  $100 \times \$120 / \$160 = 75$ ) to offer Baseline service (+45) with high latency (+25). That bid's score would be  $75 + 45 + 25 = 145$ . A second bidder asks for \$140 ( $100 \times \$140 / \$160 = 87.5$ ) to offer Baseline service (+45) with low latency (+0). That bid's score would be  $87.5 + 45 + 0 = 132.5$ . In that round of the auction, the second bidder would be declared to have the preliminary winning bid.

<sup>29</sup> See, e.g., Comments of Hughes Network Systems, LLC, WC Docket No. 10-90 et al., at 3 (filed Jul. 21, 2016) (Hughes July 2016 Comments) (suggesting that the Commission not weight bids in the minimum tier to avoid the need to apply negative and positive weights).

<sup>30</sup> See, e.g., Comments of Crocker Telecommunications, LLC, WC Docket No. 10-90 et al., at 1 (filed Jul. 18, 2016) (Crocker July 2016 Comments) (suggesting a "multiplicative formula" of (bid/reserve price multiplied by the

(continued....)

the bid-to-reserve price ratio appropriately applies the weights uniformly across all areas, thereby increasing competition and giving providers in all eligible areas opportunities to win.<sup>31</sup> We also decline to adopt the approach we suggested in the *Phase II Auction FNPRM* whereby the weight would be subtracted directly from the dollar amount placed by the bidder.<sup>32</sup> We are persuaded by commenters who suggest such an approach would have a disproportionate impact on bidders that place bids for smaller dollar amounts.<sup>33</sup>

### 1. Performance Tiers

19. Our weighting scheme for the performance tiers is designed to balance our finite budget with the reality that, in some areas, speeds of 10/1 Mbps may be the limit of what is achievable in the near term but will still offer significant benefits to currently unserved areas, including the potential that service providers may choose to increase speeds to meet consumer demand once they have made the initial investment of deploying to certain areas. At the same time, the weights we implement also attempt to leverage our finite budget to achieve speeds that are scalable to meet the evolving needs of consumers over the 10-year term and the broader community in areas where it is cost-effective to do so.

20. The record regarding the weights that the Commission should adopt for the different performance tiers varies, with parties arguing for weights as low as 5 and as high as 100 between tiers, and relying on several different methodologies for establishing the weights. To sift through these proposals and establish a reasonable range of weights to choose from, we rely on the following propositions.

21. *First*, we start with the principle that the Connect America Phase II auction must indeed be an auction, not simply a procurement process. We want this to be a competitive auction where every bidder has the opportunity to exert competitive pressure on all other bidders, and weighting increments of

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weights); Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 4-5 (filed July 21, 2016) (WISPA July 2016 Comments) (“[T]he system must use *relative* weights as a *percentage* of the applicant’s bid, not real dollars”) (emphasis in the original); Reply Comments of Bloosurf, LLC, WC Docket No. 10-90 et al., at 2 (filed Aug. 5, 2016) (Bloosurf Aug. 2016 Reply) (agreeing with the “percentage approach” proposed by WISPA); Letter from Rebekah P. Goodheart, Counsel for the Association of Missouri Electric Cooperatives, Midwest Energy Cooperative, HomeWorks, Alger Delta & Great Lakes Energy et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3 (filed Jan. 19, 2017) (Rural Coalition Jan. 19, 2017 *Ex Parte* Letter) (suggesting that the weights be calculated as “a percentage with reference to the reserve price”); Letter from Thomas Cohen, Counsel to the America Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 n.3 (filed Jan. 30, 2017) (ACA Jan. 30, 2017 *Ex Parte* Letter).

<sup>31</sup> See also ACA Jan. 30, 2017 *Ex Parte* Letter at 2 n.3 (“[B]asing the results of weighting on the reserve price—as opposed to basing weights on a percentage of bid price—will lead to a greater certainty by bidders in knowing the value of their bids and therefore greater participation in the auction, which will drive prices to more cost-effective levels”). Our approach has the same effect of calculating a percentage with reference to the reserve price. See *Id.*; Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 3.

<sup>32</sup> *Phase II Auction Order*, 31 FCC Rcd at 6021, para. 210 n.406. We disagree that this decision requires another a round of comments given that the example we provided in the *Phase II Auction Order* was merely illustrative and did not intend to signal that the Commission had decided to adopt a formula that would require that the bid weight be directly subtracted from the bid. See Reply Comments of Crocker Telecommunications, LLC, WC Docket No. 10-90 et al., at 1 (filed Aug. 5, 2016) (Crocker Aug. 2016 Reply); Reply Comments of Percipio Industries, LLC, WC Docket No. 10-90 et al., at 4 (filed Aug. 5, 2016) (Percipio Aug. 2016 Reply).

<sup>33</sup> See, e.g., WISPA July 2016 Comments at 4-5. See also Letter from Stephen E. Coran, Counsel to the Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 4 (filed Jan. 31, 2017) (WISPA Jan. 31, 2017 *Ex Parte* Letter); Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (filed Feb. 2, 2017) (Hughes Feb. 2, 2017 *Ex Parte* Letter) (proposing that the Commission instead apply the weight as a percentage of the bid).

100 or more would effectively result in each tier always winning over bids placed in lower tiers, which may provide an incentive for bidders in higher tiers to inflate their bids. The Commission already decided that all bids would be considered simultaneously, and we would not realize the benefits of competition if one type of bid effectively always wins over another regardless of the bids' support amounts.<sup>34</sup> Or, as we put it in the *New York Auction Order*, an “absolute preference” for “one type of technology or speed” would be fiscally irresponsible “when more cost-effective, reasonably comparable options may be available.”<sup>35</sup>

22. *Second*, we take that principle one step further and conclude that every bidder — no matter the service tier or latency — must have the opportunity to exert competitive pricing pressure on every other bidder. In other words, the total band of weights must be less than 100. This principle should maximize the competitive pressure all bidders bring to bear, ensuring that even the highest-tier services take into account the bang-for-the-buck they are delivering to consumers nationwide. It also ensures that we examine our weights holistically, so that the accumulation of weights does not lead to untoward and unexpected consequences.

23. *Third*, we conclude that the weights we assign should strive to reflect the value of higher-speed and lower-latency services to consumers. The purpose of the Connect America Phase II auction is to maximize the value we can bring for consumers through the use of scarce universal service funds—in effect, the weights recognize that consumers can and do spend more to receive higher quality services. Accordingly, we reject claims to set weights that normalize the deployment costs for the performance tiers based on technology.<sup>36</sup> We see no reason to spend scarce universal service funds to pay for more-expensive services just because they are more expensive. Indeed, the value to a consumer of a fiber-based service is not its cost but the faster speeds and lower latencies it offers—and the goal of the Commission is and must be to minimize (not maximize) the cost of such services. Moreover, adding a separate weight to account for technology costs would be contrary to our objective to maximize our cost-effective budget because it could result in paying more for higher cost technologies when it might be more cost-effective to support lower cost technologies.<sup>37</sup> And given the challenges of determining representative costs for each type of technology, such an approach is likely to add complexity to auction process and could lead to delay. In a similar vein, we reject claims to weight bids in correlation to the respective download speeds.<sup>38</sup> Such an approach would have the effect of heavily weighting the Gigabit performance tier, without any evidence that consumers do indeed value that service in proportion to its speed or would be willing to spend 100 times more for such service than for service at the Minimum performance tier.

24. *Fourth*, we conclude that adopting minimal weights between each tier would be

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<sup>34</sup> *Phase II Auction Order*, 31 FCC Rcd at 5976, para. 84.

<sup>35</sup> *New York Auction Order*, FCC 17-2 at 16-17, paras. 42-43.

<sup>36</sup> See, e.g., Comments of the American Cable Association, WC Docket No. 10-90 et al., at 5-6, 8-9 (filed July 21, 2016) (ACA July 2016 Comments); Letter from Geoffrey G. Why, Counsel to Southern Tier, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. at 3 (filed Sept. 21, 2016) (Southern Tier Sept. 21, 2016 *Ex Parte* Letter) (proposing to base weights on network deployment costs using a “least expensive proxy”).

<sup>37</sup> See ACA July 2016 Comments at 8-9 (proposing a separate weight to account for deployment costs). See also Reply Comments of ViaSat, Inc., WC Docket No. 10-90 et al., at 10 (filed Aug. 5, 2016) (ViaSat Aug. 2016 Reply) (“[T]he relative cost efficiency of satellite broadband service demonstrates vividly why the Commission should fully leverage the valuable contribution that satellite broadband providers can make in achieving the objectives of [Connect America] . . .”).

<sup>38</sup> See Crocker July 2016 Comments at 2 (suggesting a weight of one percent (10 Mbps/1000 Mbps) for the Minimum tier, a weight of 2.5 percent (25 Mbps/1000 Mbps) for the Baseline tier, a weight of 10 percent (100 Mbps/1000 Mbps) for the Above-Baseline tier, and a weight of 100 percent (1000 Mbps/1000 Mbps) for the Gigabit tier).

inappropriate. Consumers clearly value higher speed and lower latency services, and minimal weighting could deprive rural consumers of the higher-speed,<sup>39</sup> lower latency services that are common in urban areas. Indeed, such an approach would likely result in bids in lower tiers prevailing, leaving all consumers with minimum service even though some service providers might be able to offer increased speeds for marginally more support.<sup>40</sup> Additionally, the upcoming Remote Areas Fund auction will provide an opportunity to ensure that all Americans at least have the opportunity to receive some broadband service. For purposes of the Phase II auction, our aim is to maximize consumer welfare given the limited budget we have. We disagree with commenters that suggest that giving bids placed in the Gigabit tier anything other than a minimal preference violates our statutory duty to support reasonably comparable services because Gigabit services are not widely available in urban areas.<sup>41</sup> We are not persuaded that we must only support services that have “through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers . . . .”<sup>42</sup> First, this is only one of several factors we must consider when establishing the definition of supported services. Second, the Communications Act of 1934, as amended (the Act) makes clear that universal service is an “evolving level” of services, and thus we must consider the fact that through the auction we will be providing support to voice and broadband services over a 10-year term.<sup>43</sup> At the same time, we disagree with arguments suggesting that it is a violation our statutory duty to promote access to services that are reasonably comparable to those services offered in urban areas if we awarded support to bids committing to provide a minimum of 10/1 Mbps speeds given the 10-year support term and the fact that most urban areas have access to higher speeds.<sup>44</sup> Instead, we find that we are reasonably and responsibly leveraging the Phase II auction to make significant steps towards achieving our overarching statutory responsibility to support reasonably comparable services for all consumers. We have adopted a range of performance

<sup>39</sup> See, e.g., Reply Comments of the American Cable Association, WC Docket No. 10-90 et al., at 3-4 (filed Aug. 5, 2016) (ACA Aug. 2016 Reply); Comments of the Fiber to the Home Council Americas, WC Docket No. 10-90 et al., at 5-6 (filed July 21, 2016) (FTTH Council July 2016 Comments). But see Comments of ITTA—The Voice of Mid-Size Communications Companies, WC Docket No. 10-9 et al., at 4-7, 9-10 (filed July 21, 2016) (ITTA July 2016 Comments); Comments of the United States Telecom Association, WC Docket No. 10-90 et al., at 4 (filed July 21, 2016) (USTelecom July 2016 Comments); Reply Comments of Hughes Network Systems, LLC, WC Docket No. 10-90 et al., at 3 (filed Aug. 5, 2016) (Hughes Aug. 2016 Reply); Letter from Stephen E. Coran, Counsel to Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., 2-3 (filed Feb. 16, 2017) (WISPA Feb. 16, 2017 *Ex Parte* Letter) (suggesting that consumers may be unwilling to subscribe to high-speed packages due to the high prices of such services). Service providers are required to offer at least one broadband package that meets the Commission’s requirements, including that the service be offered at or below a reasonably comparable rate to those offered in urban areas. But they are also permitted to offer other packages for other speeds and usage allowances at lower prices. See *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15687, para. 120 (2014) (*December 2014 Connect America Order*) (requiring that eligible telecommunications carriers make the reasonably comparable rate certification “for one of their broadband service offerings that satisfies all of the Commission’s requirements”).

<sup>40</sup> See Joint Reply Comments of The National Rural Electric Cooperative Association and the Utilities Technology Council, WC Docket No. 10-90 et al., at 7-8 (filed Aug. 5, 2016) (NRECA and UTC Aug. 2016 Reply) (noting “the Commission should not assume that coverage and quality are mutually exclusive”).

<sup>41</sup> See, e.g., WISPA July 2016 Comments at 4; USTelecom July 2016 Comments at 3-4; Comments of the Rural Wireless Association, WC Docket No. 10-90 et al., at 3 (filed July 21, 2016) (RWA July 2016 Comments).

<sup>42</sup> Reply Comments of the United States Telecom Association, WC Docket No. 10-90 et al., at 5 (filed Aug. 5, 2016) (USTelecom Aug. 2016 Reply) (citing 47 U.S.C. § 254(c)(1)(B)). See also WISPA Jan. 31, 2017 *Ex Parte* Letter at 7 (claiming that “[i]t follows that ‘reasonably comparable’ service would be ‘the highest speed adopted by a majority’”).

<sup>43</sup> 47 U.S.C. § 254(c)(1).

<sup>44</sup> See, e.g., ACA Aug. 2016 Reply at 3-4; Crocker Aug. 2016 Reply at 1-2; Letter from Thomas Cohen, Counsel to the America Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (filed Feb. 6, 2017).



tiers with increasing weights, starting with speeds and usage allowances we have deemed reasonably comparable in the near term and with maximum speeds and usage allowances that are scalable to meet the needs of consumers at the end of the 10-year term.

25. With those principles in mind, we review the weight of the record. Most parties proposing within these parameters suggest increment values somewhere between 5 and 60. Parties arguing for smaller weight increments between speed tiers with a focus on the lower speed tiers suggest that our focus should be on maximizing the number of locations that have access to services that are reasonably comparable to those offered in urban areas, and that giving a heavy preference to higher speed and usage allowance tiers would be an inefficient use of the finite budget, favoring high speeds and usage allowances at the expense of leaving many without service.<sup>45</sup> They argue that heavily weighting bids or assigning any weight to bids committing to a Gigabit performance tier would violate our statutory duty to support reasonably comparable services,<sup>46</sup> and they claim that consumers are more concerned with having access to service at reasonable prices than subscribing to expensive high speed packages.<sup>47</sup> They suggest that if consumers' needs evolve and they begin to demand higher speeds, carriers will have an incentive to increase the speeds they offer as deployment costs go down.<sup>48</sup> Supporters of narrow weights also claim that such weights would promote efficiency by challenging bidders seeking to offer services in the higher tiers to place more cost-effective bids.<sup>49</sup>

26. By contrast, other parties argue that higher speeds and usage allowances should have heavier weights so these bids are more likely to prevail.<sup>50</sup> Some of these parties suggest that the speeds in the Minimum and Baseline performance tiers would not be sufficient to constitute reasonably comparable services.<sup>51</sup> They argue that the Commission should focus on supporting "future proof" networks given

<sup>45</sup> See, e.g., RWA July 2016 Comments at 2-4; Comments of Verizon, WC Docket No. 10-90 et al., at 4 (filed July 21, 2016) (Verizon July 2016 Comments); USTelecom July 2016 Comments at 2-3; WISPA July 2016 Comments at 3; WISPA Aug. 2016 Reply at 4; Hughes Aug. 2016 Reply at 3; Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Feb. 16, 2017) (ViaSat Feb. 16, 2017 *Ex Parte* Letter); Letter from Jonathan Banks, Senior Vice President Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Feb. 9, 2017) (USTelecom Feb. 9, 2017 *Ex Parte* Letter); Letter from Jennifer, A. Manner, Senior Vice President, Regulatory Affairs, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Feb. 14, 2017) (Hughes Feb. 14, 2017 *Ex Parte* Letter).

<sup>46</sup> See, e.g., WISPA July 2016 Comments at 4; USTelecom July 2016 Comments at 3-4; RWA July 2016 Comments at 3.

<sup>47</sup> See, e.g., ITTA July 2016 Comments at 4-7, 9-10; USTelecom July 2016 Comments at 4; Hughes Aug. 2016 Reply at 3.

<sup>48</sup> See, e.g., ITTA July 2016 Comments at 9

<sup>49</sup> *Id.* at 8.

<sup>50</sup> See, e.g., Bloosurf Aug. 2016 Reply at 3 (suggesting incremental weight of 100 between the tiers); Comments of Broad Valley, WC Docket No. 10-90, at 1 (filed July 21, 2016) (Broad Valley July 2016 Comments) (suggesting that the Above-Baseline tier "be scored substantively above the Minimum and Baseline tiers"); Crocker July 2016 Comments at 2-3 (arguing for a "strong bias" for higher speeds); Percipio Aug. 2016 Reply at 4 (suggesting that "any bid under the reserve price in a Tier should beat any bid in any lower tier"); Comments of Southern Tier Wireless, Inc., WC Docket 10-90 et al., at 2 (Southern Tier July 2016 Comments) (suggesting "weighting that begins at -100 for the minimum tier, provides a weight of 0 in the baseline tier, and 100 in the 100 mbps tier"); Letter from Rebekah P. Goodheart, Counsel to the Association of Missouri Electric Cooperatives, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Feb. 14, 2017) (Rural Coalition Feb. 14, 2017 *Ex Parte* Letter); Letter from Thomas Cohen, Counsel to the America Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 4 (filed Feb. 17, 2017) (ACA Jan. 30, 2017 *Ex Parte* Letter).

<sup>51</sup> See, e.g., ACA July 2016 Comments at 3-4; Broad Valley July 2016 Comments at 1; Crocker Aug. 2016 Reply at 1-3; FTTH Council July 2016 Comments at 6; Percipio Aug. 2016 Reply at 4; ACA Jan. 30, 2017 *Ex Parte* Letter at 9.

that speeds that are reasonably comparable today may not be reasonably comparable throughout the 10-year support term.<sup>52</sup> They also suggest that certain technologies that may be more cost-effective today are likely to be more expensive in the long term because such networks will need to be upgraded to meet consumers' needs,<sup>53</sup> and that it would be more efficient to support speeds that can be leveraged by entire communities.<sup>54</sup> They claim that if higher tier bids are not given sufficient weight, bidders able to offer such services will be less likely to participate, and bidders in lower tiers could win without having to place cost-effective bids.<sup>55</sup> Some of these commenters argue that higher speeds should be given a near absolute preference, while others argue for more moderate increments between the tiers.<sup>56</sup>

27. Taking into account these principles and the record, we find that increments of 15–30 between performance tiers appropriately balance the concerns of these potential bidders, and their representatives, by adopting increments that are within a reasonable range of the increments proposed by both sets of commenters.<sup>57</sup> Based on our predictive judgment, we conclude that this approach is likely to promote competition both within and across areas by giving all service providers the opportunity to place competitive bids, regardless of the technology they intend to use to meet their obligations.<sup>58</sup> Our weights

<sup>52</sup> See, e.g., ACA July 2016 Comments at 5-6 n.14; NRECA and UTC Aug. 2016 Reply at 5; Comments of NTCA—The Rural Broadband Association, WC Docket No. 10-90 et al., at 4-9 (filed July 21, 2016) (NTCA July 2016 Comments); Southern Tier Wireless Comments at 2; Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 4, 5-7.

<sup>53</sup> See, e.g., Rural Coalition Feb. 14, 2017 *Ex Parte* Letter at 5; Crocker July 2016 Comments at 2; Joint Comments of the National Rural Electric Cooperative Association and the Utilities Technology Council, WC Docket No. 10-90 et al., at 7-8 (filed July 21, 2016) (NRECA and UTC July 2016 Comments); NRECA and UTC Aug. 2016 Reply at 6-7; NTCA July 2016 Comments at 4-9.

<sup>54</sup> See, e.g., NTCA July 2016 Comments at 9; Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2, n.4 (filed Feb. 6, 2017) (ACA Feb. 6, 2017 *Ex Parte* Letter); Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 7.

<sup>55</sup> See, e.g., ACA Aug. 2016 Reply at 4; ACA Feb. 6, 2017 *Ex Parte* Letter at 2.

<sup>56</sup> Compare Crocker July 2016 Comments at 2 (suggesting a weight of 200 for the Gigabit tier, a weight of 100 for the Above-Baseline tier, a weight of 0 for the Baseline tier, and a weight of -50 for the Minimum tier) with Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 3 (suggesting a weight of -60% for the Gigabit tier, -15% for the Above-Baseline tier, 0 for the Baseline tier, and +10% for the Minimum tier).

<sup>57</sup> An agency is entitled to substantial deference when drawing these types of lines. See *WorldCom, Inc. v. FCC*, 238 F.3d 449, 461-62 (D.C. Cir. 2001) (“The relevant question is whether the agency’s numbers are within a zone of reasonableness, not whether its numbers are precisely right) (internal quotation marks omitted); see also *Covad Comm. Co. v. FCC*, 450 F.3d 528, 541 (D.C. Cir. 2006) (explaining that courts are “generally unwilling to review line-drawing performed by the Commission unless a petitioner can demonstrate that lines drawn ... are patently unreasonable, having no relationship to the underlying regulatory problem”) (internal quotation marks omitted); *Alliance for Community Media v. FCC*, 529 F.3d 763, 780 (6th Cir. 2008) (recognizing that “administrative lines need not be drawn with mathematical precision”) (internal quotation marks omitted).

<sup>58</sup> See Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Jan. 12, 2017) (ACA Jan. 12, 2017 *Ex Parte*) (recommending “that a key objective of any method should be to maximize participation in the process”). Some commenters have offered predictions of possible auction outcomes based on various formulas and weights. We do not find these predictions to be persuasive. They appear to be based on unsupported assumptions about hypothetical bids associated with different technologies. See Letter from Jonathan Banks, Senior Vice President Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. (filed Feb. 9, 2017) (USTelecom Feb. 9, 2017 *Ex Parte* Letter) (illustrating possible locations served using hypothetical distribution of winning bids). Or they are based on formulas and weights we do not adopt here. See Letter from Thomas Cohen, Counsel to the American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Feb. 17, 2017) (ACA Feb. 17, 2017 *Ex Parte*) (submitting analysis of possible auction outcomes based on weights in the record); Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 4, Exs. B & C (filed Feb. 21, 2017) (ViaSat Feb. 21, 2017 *Ex Parte* Letter) (submitting comparison of ACA’s predictions about auction results with ViaSat’s).

appropriately recognize the value to rural consumers of higher speeds and higher usage allowances, but bids placed in the higher tiers will not necessarily win because of the generally greater costs of deploying a higher capacity network at higher speeds. Bids placed for lower speeds and usage allowances will still have the opportunity to compete for support, but will have to be particularly cost-effective to compete with higher tier bids.

28. We are not convinced by suggestions that we should adopt weights that are based on metrics derived from consumer preference data.<sup>59</sup> Commenters proposed several competing data sources and methodologies in an attempt to substantiate their proposed weights as “objective,” but we decline to adopt any of these proposals.<sup>60</sup> We conclude that establishing weights based on specific data is likely to be a drawn out and complicated process that may further delay the Phase II auction and may not produce an improved outcome in the auction.<sup>61</sup> Moreover, a consumer’s decision to subscribe to a particular service may be based on numerous variables and does not necessarily suggest that one level of service should be valued by a particular percentage over another level of service in areas where consumers currently have no options for service.<sup>62</sup> We are not persuaded that our decision to adopt weights that are not derived from specific data is “arbitrary.”<sup>63</sup> Instead, we adopt weights between each tier that recognize the value of increased speeds and usage allowances and select weights that fall within the range of weights proposed by parties in the record that do not seek to give any one tier an absolute preference.

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<sup>59</sup> See, e.g., ACA July 2016 Comments at 7 (suggesting that the Commission should “weight performance tiers based on consumer preference for different types (performance) of broadband service in urban areas over the 10-year term” and suggesting that “the most straightforward and transparent approach” would be to develop the weight based on subscription data); FTTH Council July 2016 Comments at 4 (suggesting “that the bid weighting mechanisms should be based primarily on consumer preferences and needs for broadband service throughout the duration of the program” and suggesting various ways “to determine consumer preferences and needs”); Comments of ViaSat, Inc., WC Docket No. 10-90 et al., at 4-6 (filed July 21, 2016) (ViaSat July 2016 Comments) (recommending “that the Commission ground . . . weights in empirical data that reflect the actual preferences of consumers”). Cf. Rural Coalition Feb. 14, 2017 *Ex Parte* Letter (urging the Commission “to evaluate, on a technology-by-technology basis, Form 477 data on actual take rates in order to gain a more accurate picture of consumer preferences”).

<sup>60</sup> Compare FTTH Council July 2016 Comments at 5-7 (suggesting that consumer preference and need data indicate that the Gigabit tier should be heavily weighted) with ITTA July 2016 Comments at 6-8 (observing that rural consumers’ broadband adoption rates “are reacting at least in significant part to price sensitivity” and suggesting the budget should be targeted towards maximizing deployment rather than speeds) and ViaSat July 2016 Comments at 5-6 (suggesting the Commission “draw upon market data showing that higher speeds have far more of an impact than lower latency on consumer perceptions of broadband service quality” and noting that “consumer satisfaction with satellite broadband service has been rising”). See also NRECA and UTC July 2016 Comments at 9 (noting that “any analysis of the possible factors would, themselves, be ‘weighted’ to achieve a party’s preferred outcome”); Southern Tier July 2016 Comments at 2 (noting that “[s]ubscriber data from [F]orm 477 or other sources . . . offer numerous opportunities for incumbents to bias”).

<sup>61</sup> See, e.g., NRECA and UTC July 2016 Comments at 9 (noting that using Form 477 data to determine weights “could be time consuming”); Southern Tier July 2016 Comments at 2 (suggesting that “[s]ubscriber data from [F]orm 477 or other sources will take far too long to analyze”).

<sup>62</sup> See, e.g., Broad Valley July 2016 Comments at 2 (noting that because “most of the support locations are truly unserved today and thus fundamentally different from existing served areas, using Form 477 subscribership data from served/urban locations appears misguided”); Hughes Aug. 2016 Reply at 4 (noting significant questions about “whether [it] is true” that “consumers nationwide were performing the same kind of balancing of performance and cost that the Commission must perform in order to weight bids” and that “nationwide or urban subscribership statistics have no relevance to any particular geographic area available for bid in the auction”); NRECA and UTC July 2016 Comments at 9 (noting that “Form 477 data have limited relevance to the Phase II auction”); Southern Tier July 2016 Comments at 2 (“Data at the tract level (especially in other states) as reported on [Form 477] by the incumbents will not be indicative of the on-the-ground situation of unserved households”).

<sup>63</sup> See ACA Aug. 2016 Reply at 6.

29. We are not persuaded that some of the other proposals parties made in the record regarding how to approach weighting the different tiers would be consistent with our objectives and statutory duties. First, we disagree with the suggestion that we should only weight bids in higher tiers if sufficient funding is available to fund all bids at the Baseline performance tier.<sup>64</sup> While this approach might permit us to serve more consumers, we would lose out on the opportunity to balance our other objective of funding service that will achieve reasonable comparability for the long term. Section 254 of the Act makes clear that universal service requires an evolving level of service.<sup>65</sup>

30. Second, we are not convinced that we should fund extremely high-cost locations only after we have funded all bids for high-cost locations.<sup>66</sup> When it decided to include the extremely high-cost census blocks in the Phase II auction, the Commission explicitly recognized that in some areas a service provider might be able to make a business case to serve extremely high-cost areas efficiently even though the Connect America Cost Model has determined an area to be extremely high-cost.<sup>67</sup> The Commission has explained that, because extremely high-cost areas are interspersed among high-cost areas, including extremely high-cost census blocks in the Phase II auction enables parties to build integrated networks that span both types of areas as appropriate.<sup>68</sup> The approach gives bidders the flexibility to decide how to most efficiently upgrade or extend their networks. It would contradict this rationale to refuse to fund bids in extremely high-cost areas until high-cost area bids have been awarded because such an approach would assume that bids in high-cost areas would be more cost-effective.<sup>69</sup>

## 2. Latency Tiers

31. We also conclude that our decision to adopt a weight of 25 for high latency bids appropriately balances our objective of using our finite budget in a cost-effective manner, but also supporting services that will meet consumers' needs. The Commission decided in the *Phase II Auction Order* to open the Phase II auction to participation from satellite providers "in the interest of making this auction as competitive as possible."<sup>70</sup> It adopted objectively measured latency performance standards to ensure that consumers received an appropriate level of service.<sup>71</sup>

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<sup>64</sup> See Hughes July 2016 Comments at 3.

<sup>65</sup> 47 U.S.C. § 254 (c)(1).

<sup>66</sup> See Reply Comments of Southern Tier Wireless, Inc., WC Docket No. 10-90 et al., at 1 (filed Aug. 5, 2016) (Southern Tier Aug. 2016 Reply).

<sup>67</sup> *April 2014 Connect America Order*, 29 FCC Rcd at 7060-61, para. 31.

<sup>68</sup> *Id.* at 7060, para. 30.

<sup>69</sup> We are not convinced by arguments that suggest that the Commission's decision to include extremely high-cost locations in the Phase II auction will necessarily result in "poor outcomes for many consumers in eligible areas that are likely to receive bids from non-satellite broadband providers." ACA Aug. 2016 Reply at 5. See also Letter from James Lathrop, Town Manager, Town of New Shoreham, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3 (filed Jan. 18, 2017) (New Shoreham Jan. 18, 2017 *Ex Parte* Letter) (suggesting that using percentage weights would "skew[] apportionment of funds to a smaller number of locations with high model support numbers"). The Commission already decided to cap the reserve price for extremely high-cost locations so that support is not diverted to only extremely high-cost areas. *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90. Moreover, because the Commission decided to score bids relative to the reserve price, only cost-effective bids relative to other bids nationwide that are placed by bidders that can make a business case to serve these areas at or below the capped amount will be awarded support. *Id.* at 5977, para. 85.

<sup>70</sup> *Phase II Auction Order*, 31 FCC Rcd at 5962, para. 33. For similar reasons we are not persuaded by arguments that we should not use the Phase II auction budget to support satellite providers given they have already decided to launch satellites. First, we note that the Commission has already made a decision to permit satellite providers to participate in the Phase II auction to maximize competition for the Phase II auction, and the parties making these claims have not properly petitioned us to reconsider this decision. Second, even if they had submitted a proper petition for reconsideration, we would decline to reconsider this decision based on the parties' arguments. See

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32. Commenters propose a wide range of weights in the record for the latency tiers, from weights as high as 100 to weights as low as 10, with commenters proposing weights lower than 100 suggesting a weight within the range of 10 to 75. Because they propose latency tier weights relative to their proposed performance tier weights, we similarly consider weights for the latency tiers relative to the weights we adopted for the performance tiers above. We are not persuaded by commenters that argue that low latency services should be heavily weighted or by comments suggesting that low latency services should always win over high latency services.<sup>72</sup> Thus, we conclude a weight of 100 or 75 would be too

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Bloosurf Aug. 2016 Reply at 1-2; Crocker Aug. 2016 Reply at 2; Percipio Aug. 2016 Reply at 3-4. We are persuaded by satellite providers' claims that they need support to make it economically feasible to dedicate capacity to serve high-cost areas; due to capacity constraints, they would forgo other business opportunities if they choose to focus their satellites on high-cost areas instead of serving more densely-populated areas that would likely have more subscribers. *See, e.g.,* ViaSat Feb. 16, 2017 *Ex Parte* Letter at 2 & Exh. B; Hughes Feb. 14, 2017 *Ex Parte* Letter at 1-2; ViaSat July 2016 Comments at 8; Letter from John P. Janka, Counsel to ViaSat, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Feb. 21, 2017) (ViaSat Feb. 21, 2017 *Ex Parte* Letter).

<sup>71</sup> *Phase II Auction Order*, 31 FCC Rcd at 5961-62, para. 32. We note that high latency bidders are required to meet the minimum 750 millisecond measurement *and* a MOS of four requirement. Accordingly, we decline to adopt NTCA's proposal that we should further deprioritize high latency bidders that use the MOS in place of the millisecond measurement. *See* NTCA July 2016 Comments at 10. Instead, such bids would be deemed non-compliant with the latency standards previously adopted by the Commission. We also decline to reconsider the latency standards adopted by the Commission. We note that commenters suggesting that we change the standards did not properly submit petitions for reconsideration. *See* 47 CFR § 1.429. But even if a petition had been properly submitted, we are not persuaded by the arguments presented. For example, Percipio claims that we should change the 750 millisecond roundtrip for 95 percent of measurements requirement for high latency bids to 400 ms citing an ITU recommendation "that a *one-way* delay of 400ms should not be exceeded for general network planning." Percipio Aug. 2016 Reply at 1-3 (emphasis added). But we have adopted a 750 millisecond *roundtrip* requirement, so that one-way latency would not exceed 400 milliseconds. We also require a MOS of four or higher in addition to the millisecond requirement to provide further assurance of voice quality. Similarly, we also would decline to reconsider the 100 millisecond requirement for low latency, if these arguments had been properly presented in a petition for reconsideration. *See* RWA July 2016 Comments at 4 (arguing that the "100 [millisecond] latency requirement is quite stringent"); NRECA and UTC July 2016 Comments at 7 (suggesting that the Commission adopt a "very low" latency tier of between 40 and 65 milliseconds). The Commission balanced the concern that some providers may not be able to meet this standard when it adopted an alternative latency tier for high latency providers. *Phase II Auction Order*, 31 FCC Rcd at 5960-61, paras. 30-31 (noting that "some bidders may not be able to meet" the 100 millisecond latency requirement). At the same time we reject proposals to create a very low latency tier. The 100 millisecond requirement is consistent with our other Connect America programs, and we are not persuaded that the benefits of requiring even lower latency would outweigh the added complexity for the Commission and bidders of an additional latency tier. *See, e.g., Connect America Fund et al.*, Report and Order et al., 31 FCC Rcd 3087, 3099, para. 28 (2016) (requiring rate-of-return carriers to certify that 95 percent or more of all peak period measurements of network round-trip latency are at or below 100 milliseconds); *Connect America Fund*, Report and Order, 28 FCC Rcd 15060, 15070-71, para. 23 (2013) (requiring price cap carriers accepting Phase II model-based support to meet the same requirement).

<sup>72</sup> Bloosurf Aug. 2016 Reply at 2 (claiming that "as long as there is a low latency bid at or below the reserve price, that bid should prevail over a bid relying on a non-terrestrial, high latency service delivery platform"); Broad Valley July 2016 Comments at 2 (stating that "any bid of low latency in the same service tier as a bid of high latency should win regardless of the bid amount"); Crocker July 2016 Comments at 2-3 ("In areas where there are low latency and high latency bids competing within the same service tier, we strongly advocate that the low latency bid wins, unless there is an overwhelming price differential."); ITTA July 2016 Comments at 10-11 (suggesting that high latency bids "should be subject to significantly reduced weighting"); Southern Tier July 2016 Comments at 3-4 (proposing "a weight of 100 for low latency services" and encouraging the Commission "to adopt auction rules and weightings that allow low latency solutions to prevail in all situations where that is an option"); USTelecom July 2016 Comments at 6-7 (suggesting a weighting of -75 points for high latency bidders); Verizon July 2016 Comments at 5 ("The Commission should set the weights such that a high latency bid will be awarded support only in exceptional

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high. While many commenters raise concerns about high latency services,<sup>73</sup> the Commission already took such concerns into account when deciding to adopt objective performance requirements so that high latency providers can participate.<sup>74</sup> We are not persuaded that high latency providers should have to partner with terrestrial providers in order to participate competitively in the Phase II auction.<sup>75</sup> Indeed, by choosing to adopt alternative latency requirements for high latency providers, the Commission has already rejected the concept that this is the only way high latency providers can be competitive. While we welcome such partnerships,<sup>76</sup> we conclude that it serves the public interest to permit service providers to determine how they are best able to place a competitive bid, either by leveraging their own network or partnering with other providers.<sup>77</sup>

33. Commenters suggesting weights below 75 argue for a range of weights between 10 and 45 relative to their own various performance tier proposals.<sup>78</sup> Similarly, based on the weights we have

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circumstances . . . .”); WISPA July 2016 Comments at 7 (proposing a “minus 75 percent adjustment” for high latency bids).

<sup>73</sup> See, e.g., Bloosurf Aug. 2016 Reply at 2 (noting “issues of voice quality and reliability when voice is provided over broadband networks that have high latency and known service outages several times a year”); Crocker Aug. 2016 Reply at 3-4 (noting concerns about 911 availability, including biannual sun outages); FTTH Council July 2016 Comments Attach. at 4 (submitting a paper that finds “satellite networks, because of their high latency and inability to scale, cannot adequately support today’s real-time interactive applications”); ITTA July 2016 Comments at 11 (claiming that “the high latency performance level may substantially impede the consumer’s experience with a variety of applications”); NRECA and UTC July 2016 Comments at 8-9 (suggesting that “the high latency option is detrimental to interactive applications such as voice and the Mean Opinion Score (MOS) scheme is inherently suspect”); NTCA July 2016 Comments at 6 (noting “inherent limitations such as latency and weather interference hinder widespread reliance on satellite technology for next-generation communications services as consumer demand evolves”); Percipio Aug. 2016 Reply at 3 (suggesting that “[t]he inclusion of high latency voice telephony services has created a very dangerous opportunity for low latency, traditional voice telephony to be replaced with high latency, voice telephony over satellite broadband networks” and noting that “emergency services will also be unavailable during twice yearly, recurring network sun outages”); Southern Tier July 2016 Comments at 2-4 (noting weather concerns, solar outages, and consumer dissatisfaction); USTelecom July 2016 Comments at 6-8 (citing “[t]he impact of high latency on service offerings—particularly voice and telework services such as VPNs” and low satellite subscriptions); Verizon July 2016 Comments at 5 n.14 (suggesting that high latency “precludes use of VoIP and other interactive and highly interactive applications”).

<sup>74</sup> See Hughes Aug. 2016 Reply at 5 (suggesting that commenters “fail to note” that high latency bidders will be required to achieve a MOS of four or better); ViaSat Aug. 2016 Reply at 4-5 (“Tellingly, none of those parties explains why the performance requirements adopted by the Commission—including that geostationary-satellite-based service meet a MOS of four—do not ensure that end users will receive quality service.”).

<sup>75</sup> See WISPA July 2016 Comments at 7.

<sup>76</sup> *Phase II Auction Order*, 31 FCC Rcd at 5962, para. 33.

<sup>77</sup> We are also not persuaded by arguments that we should devalue high latency service because such providers are unable to meet the requirements we adopted for the Phase II offer of support. See, e.g., Verizon July 2016 Comments at 5. We find that such a comparison is irrelevant because the Phase II offer was made to one type of service provider so that they could leverage existing networks—incumbent price cap carriers that use terrestrial technologies to meet their obligations. For the Phase II auction, our objectives are different because we are focused on relying on market forces to use our budget cost-effectively while also balancing this goal with supporting services that meet consumers’ needs.

<sup>78</sup> See, e.g., Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Feb. 14, 2017) (suggesting a weight of -45% for high latency bids); Hughes July 2016 Comments at 5 (suggesting a weight of -10% for low latency bids); NRECA and UTC July 2016 Comments at 7 (suggesting a weight of 30 for low latency bids); Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 3 (suggesting a weight of 25 for high latency bids); New Shoreham Jan. 18, 2017 *Ex Parte* Letter at 3 (suggesting a weight of 10 for high latency bids).

adopted for the performance tiers above, we conclude that a weight of 25 would reasonably maximize competition.<sup>79</sup> A weight of 25 is appropriate because a bidder placing a low latency bid in the Gigabit performance tier will not necessarily win, which will add pressure on such bidders to make more cost-effective bids. A Minimum performance high latency bidder will have cumulative weight of 90 (65 for the Minimum performance tier; 25 for the high latency bid), which will provide a reasonable opportunity for high latency bidders to make competitive bids in the lower performance tiers.<sup>80</sup>

34. Relative to the performance tiers we have adopted, we also conclude that a weight of 25 is more appropriate than a narrower weight like 10 or 15, given the arguments in the record about the benefits of low latency services, especially in areas where the Phase II auction recipient is the only voice provider.<sup>81</sup> We conclude that like the weighting approach we have adopted for the performance tiers, adopting a moderate weight will take a significant step towards ensuring consumers throughout the country have access to reasonably comparable services pursuant to our statutory duty, while also balancing the realities of our finite budget and the high costs of providing voice and broadband to these unserved areas. We reject arguments that we should adopt a narrower weight for latency than we have adopted for speed tiers to account for claims that consumers value higher speeds over lower latency.<sup>82</sup> First, the performance tier weighting we have adopted already accounts for the value of higher speeds given that, as speeds increase, the weights will decrease. Second, while high latency providers suggest that consumers' satisfaction with high latency services has improved so that it is comparable to some cable services, some consumers have chosen high latency services over low latency services, and that terrestrial providers emphasize speed and price over latency in their marketing materials,<sup>83</sup> these claims do not address the concerns raised by commenters about the inherent limitations of high latency services—particularly for interactive, real-time applications and voice services given that high latency providers may be the only voice providers in the area.<sup>84</sup> We are not persuaded that we should use consumer data to establish the bidding weight between low and high latency bids.<sup>85</sup> As we explained

<sup>79</sup> See *supra* note 57. See also ViaSat Aug. 2016 Reply at 8 (“It follows that any weighting should *not* preclude satellite broadband providers from meaningfully participating in the reverse auction”) (emphasis in the original).

<sup>80</sup> See, e.g., RWA July 2016 Comments at 5 (“Lower latency bids should receive a modest weight that recognizes the benefit low latency provides, but that does not otherwise exclude competitive bids”).

<sup>81</sup> See, e.g., Crocker Aug. 2016 Reply at 3-4; Percipio Aug. 2016 Reply at 2-3.

<sup>82</sup> See, e.g., Hughes Feb. 2, 2017 *Ex Parte* Letter at 2 (citing ViaSat July 2016 Comments at 5-6).

<sup>83</sup> See, e.g., ViaSat July 2016 Comments at 5-6. *But see* NTCA Aug. 2016 Reply at 4 (“While providers may use advertised speeds as a primary marketing tool, this is in part because consumers today take it as a given that their high-speed broadband will enable voice, video, and other advanced applications.”).

<sup>84</sup> See, e.g., USTelecom July 2016 Comments at 7 (citing HughesNet’s website that states “[r]unning a VPN client over satellite is not an ideal configuration,” and that customers choosing to run a VPN over satellite, could see data speeds reduced “by as much as 50-75%.”); Southern Tier July 2016 Comments at 2-4 (noting that “network reliability may become a factor during heavy rain, ice, or snow conditions,” and that “solar outages” may cause disruptions); ACA Jan. 30, 2017 *Ex Parte* Letter at 10 & n.32 (quoting the Commission’s 2016 Broadband Progress Report that noted “[L]atency is an important measurement of broadband network performance because it significantly impacts the performance of interactive, real-time applications”). *But see* ViaSat Feb. 16, 2017 *Ex Parte* Letter at 2, Exh. A (arguing that over 90 percent of current Internet traffic is not latency-sensitive).

<sup>85</sup> See, e.g., ACA July 2016 Comments at 7-8 (suggesting that weights should be determined “by reference to consumer subscription to broadband services that provide low latency or high latency capabilities, and then projected for future demand”); FTTH Council July 2016 Comments at 7-8 (suggesting the Commission “measure consumer preferences and needs for different latencies by surveying or otherwise reviewing and analyzing consumers’ use of various latency-sensitive applications (e.g. two-way voice) and the technologies (broadband services) they use to access these applications”); ViaSat July 2016 Comments at 6 (“[M]arket data and market acceptance of satellite broadband services strongly suggest that it would be appropriate to weight bids offering higher speeds more heavily than bids offering lower latency”).

above, such an approach has the potential to be highly subjective, and the process would likely be complex and time-consuming. Moreover, the fact that parties subscribe to more low latency services in urban areas could be due to a number of factors and does not necessarily suggest that a high latency service would not meet the needs of consumers living in otherwise unserved high-cost areas.

### 3. Other Weights

35. Finally, we are not persuaded that we should adopt other types of weights that have been proposed in the record. Generally, we find that the more weights we adopt to effectuate various perceived policy preferences, the more we move away from the objective of maximizing the reach of our budget by awarding bids based on cost-effectiveness. Moreover, additional weights add more complexity to the auction design and, in turn, this increased complexity could drive down interest and participation in the Phase II auction. In addition, we explain above why the weights we have adopted serve the public interest because they help us balance other important objectives, like ensuring that consumers have access to reasonably comparable services. Parties proposing that we adopt other types of weights to advance other objectives have not demonstrated similarly compelling public interest benefits.

36. For example, we decline to adopt weights that would improve a bid's ranking if it covers small areas.<sup>86</sup> We note that in some cases, service providers may be able to take advantage of economies of scale by bidding on larger areas, and in those instances bids for larger areas may be more cost-effective. But we also decline to adopt weights that would give a preference to bids that included 75 percent or more funded locations within a state.<sup>87</sup> We note that there could be instances when it is more cost-effective for a number of carriers to offer service within a state. Similarly, we decline to adopt weights to give a preference to small bidders.<sup>88</sup> Our focus is on maximizing the effectiveness of our funds to serve consumers nationwide. While we encourage small bidders to participate in the Phase II auction and have adopted eligibility requirements to facilitate their participation,<sup>89</sup> we are not persuaded that giving a preference to smaller bidders will necessarily achieve our objectives when it is possible that a larger bidder may be able to make a more cost-effective bid in a higher performance or lower latency tier. Rather than artificially give a preference to smaller or larger bids or to small bidders, we prefer to rely on the cost-effectiveness scores of bids to determine how our budget can best be maximized to serve the most consumers with service that is reasonably comparable to service offered in urban areas.

### 4. Demonstration of Weight Eligibility

37. If unqualified bidders are able to participate in the auction and divert support from qualified bidders able to offer service meeting the Commission's requirements then consumers would ultimately be harmed. In the *Phase II Auction Order*, the Commission required bidders to submit with their short-form applications any information required to establish their eligibility for weights adopted by the Commission.<sup>90</sup> Now that we have adopted weights for the performance and latency tiers, we are persuaded that in some circumstances it may serve the public interest to require potential bidders to submit evidence that demonstrates that they can meet the service requirements associated with the tiers in

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<sup>86</sup> See, e.g., Broad Valley July 2016 Comments at 3.

<sup>87</sup> See, e.g., Crocker July 2016 Comments at 3 (noting that it supported a weight of 100 for this purpose only if its other proposals for service and latency tiers were adopted).

<sup>88</sup> See, e.g., Comments of the American Cable Association, WC Docket No. 10-90 et al., at 15 (filed Jan. 18, 2012); Reply Comments of RCA—The Competitive Carriers Association, WC Docket No. 10-90 et al., at 10 (filed Feb. 17, 2012)..

<sup>89</sup> See, e.g., *Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127 (expanding the issuing bank eligibility requirements for letters of credit noting that “this approach achieves an appropriate balance between encouraging the participation in the auction, particularly of small entities”).

<sup>90</sup> See 47 CFR § 54.315(a)(5); *Phase II Auction Order*, 31 FCC Rcd at 5981, para. 98.



which they intend to bid.<sup>91</sup> We conclude that such an approach is likely to provide further assurance that Phase II auction support will be awarded to qualified bidders. In a future Commission-level public notice after opportunity for further comment, we intend to: 1) specify what evidence or other information must be submitted, 2) establish the conditions for when such information must be submitted, 3) adopt the applicable standards that bidders must demonstrate, 4) set procedures for reviewing and validating the submitted information, and 5) adopt any additional penalties if capabilities are misrepresented.<sup>92</sup>

38. While we already require that potential bidders make certain showings in their short-form applications,<sup>93</sup> we are not persuaded by claims that this information will offer sufficient assurance that potential bidders are qualified to meet the applicable tier requirements in all circumstances.<sup>94</sup> Instead, given the varying capabilities of the technologies that we expect bidders will propose to use to meet their obligations,<sup>95</sup> we conclude there may be circumstances where it will serve the public interest for the Commission to make an independent, objective decision regarding potential bidders' capabilities and also require bidders to demonstrate they have undergone the necessary due diligence to ensure they can meet the applicable requirements before bidding in particular tiers. We also disagree with claims that the technical showings we require in the long-form application will sufficiently address our concerns because we will not have access to this information until winning bidders have already been selected.<sup>96</sup>

39. Finally, we reject suggestions that the Commission intended to adopt the same eligibility process it adopted for the rural broadband experiments or that the Commission would need to reconsider the eligibility requirements it has already adopted in the *Phase II Auction Order* to require potential bidders to submit additional evidence in their short-form applications.<sup>97</sup> Instead, the Commission made clear that potential bidders would be required to submit any information or documentation required to establish their eligibility for bidding weights adopted by the Commission.<sup>98</sup> Moreover, eligibility considerations are different in the Phase II auction context than they were for the rural broadband experiments. The intent of the rural broadband experiments was to award support to discrete

<sup>91</sup> Rural Coalition Feb. 14, 2017 *Ex Parte* Letter at 5-6; ACA Jan. 30, 2017 *Ex Parte* Letter at 10-11; Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 7-9.

<sup>92</sup> See, e.g., Rural Coalition Jan. 19, 2017 *Ex Parte* Letter at 7-9 (suggesting that the Commission require potential bidders in the Above-Baseline and Gigabit tiers to demonstrate they can meet a certain standard for every location in relevant census blocks, use "objective criteria" and rely on an independent third party to review the information submitted, and adopt penalties for potential bidders that misrepresent their capabilities); ACA Jan. 30, 2017 *Ex Parte* Letter at 11 (proposing that the Commission establish rebuttable "minimum criteria and engineering assumptions" for each of the tiers).

<sup>93</sup> See, e.g., 47 CFR § 54.315(a)(2), (6), and (7) (requiring that potential bidders submit with their short-form a certification that they are financially and technically qualified to meet the service standards for each tier and area where they seek support, demonstrate that they have access to sufficient spectrum to the extent applicable, and submit certain operational and financial information).

<sup>94</sup> See WISPA Jan. 31, 2017 *Ex Parte* Letter at 9-10.

<sup>95</sup> Parties have raised concerns regarding the potential limitations of certain technologies. See, e.g., Letter from Michael R. Romano, Senior Vice President, Industry Affairs & Business Development, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (Feb. 13, 2017) (attaching a technical paper describing the capabilities and limitations of 5G wireless); ACA Jan. 30, 2017 *Ex Parte* Letter at 10, n.32 (quoting ADTRAN's concerns about the limitations of fixed wireless networks); NTCA July 2016 Comments at 7 (raising concerns about shared capacity for both satellite providers and wireless networks).

<sup>96</sup> 47 CFR § 54.315(b)(2)(iv) (requiring that winning bidders submit a description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram certified by a professional engineer); WISPA Jan. 31, 2017 *Ex Parte* Letter at 9-10.

<sup>97</sup> WISPA Jan. 31, 2017 *Ex Parte* Letter at 9, 11.

<sup>98</sup> 47 CFR § 54.315(a)(5); *Phase II Auction Order*, 31 FCC Rcd at 5981, para. 98.

experiments. If a bidder was found to be unqualified after being announced as a winning bidder, the relevant service area would be made eligible for Phase II if the Commission determined that the area remained unserved. By contrast, one of the main objectives of the Phase II auction is to maximize coverage. As we explained above, selecting bidders that are later determined to be unqualified will thwart this objective because the areas included in the unqualified winning bid and other areas covered by bids that would have otherwise been selected will lose an opportunity to be served through the Phase II auction.

**B. Access to Appropriate Phase II Levels for All States**

40. *Background.* In the *Rural Broadband Experiments FNPRM*, the Commission explained that it wished to further explore how to best maximize the reach of its existing Connect America budget and leverage non-federal funding to extend broadband to as many households as possible.<sup>99</sup> Accordingly, it sought comment on creating inducements for state action to assist in the expansion of broadband by adopting bidding credits for bidders that are leveraging governmental support from non-federal sources or for states that are net donors to the fund.<sup>100</sup>

41. In the *Phase II Auction Order*, the Commission noted concerns that had been raised by states regarding the need for an efficient and equitable allocation of Phase II funds, particularly where Phase II support was declined.<sup>101</sup> The Commission also recognized and applauded state-based initiatives to advance broadband deployment.<sup>102</sup>

42. In the *Phase II Auction FNPRM*, the Commission sought comment on measures to achieve the public interest objective of ensuring appropriate support for all of the states.<sup>103</sup> Specifically, it sought comment on establishing weights that would provide a preference to declined states, creating a backstop of funds that could be used to ensure an equitable distribution of funding to declined states, reserving funding in the Remote Areas Fund for any state that did not receive support equal to the funding declined in the statewide election process, setting a ceiling for the aggregate total of winning bids in any given state, or adopting alternative auction procedures such as prioritizing the selection of bids for declined states until a specified floor is met.<sup>104</sup>

43. *Discussion.* Although we decline to adopt state-based preferences or ceiling in the Connect America Phase II auction, we are persuaded that we should reserve funding in the Remote Areas Fund for any state that did not receive support equal to the funding declined in the statewide election process, subject to the conditions described below. We continue to recognize the importance of connecting consumers in areas that would have been reached had the Phase II offer been accepted and to provide sufficient universal service funds to do so. Accordingly, we intend to observe the outcome of the Phase II auction, and will adopt a process for the Remote Areas Fund to ensure that states receive an equitable distribution of funds. In order to ensure service is extended expeditiously to areas not supported in the Phase II auction, we also reaffirm that the Commission will seek to commence the Remote Areas Fund auction no later than one year after the commencement of the Phase II auction.

44. Specifically, once we have had the opportunity to observe the results of the Phase II auction we will prioritize bids in the Remote Areas Fund auction that are placed in such declined states until we have awarded enough support to make up the difference between the total Phase II declined

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<sup>99</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8801, para. 97 (2014) (*Rural Broadband Experiments Order and/or FNPRM*).

<sup>100</sup> *Rural Broadband Experiments FNPRM*, 29 FCC Rcd at 8801-02, paras. 97-101.

<sup>101</sup> *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 86.

<sup>102</sup> *Id.*

<sup>103</sup> *Phase II Auction FNPRM*, 31 FCC Rcd at 6023-25, paras. 217-24.

<sup>104</sup> *Id.*

support and the total support that was awarded in the state by the Phase II auction, to the extent possible based on bids placed, remaining eligible areas, and budget available.<sup>105</sup> To ensure that support is targeted to commercially reasonable bids, we anticipate that only bids that are at or below the reserve price would be eligible for this preference. Any implementation details will be adopted when we finalize the procedures for the Remote Areas Fund auction after observing the outcome of the Phase II auction.

45. We acknowledge that this approach may mean that some areas in declined states have to wait longer to get service than if support was awarded through the Phase II auction. Nevertheless, on balance we conclude this approach serves the public interest because it reasonably enables us to achieve our objectives by first using the Phase II auction to maximize our budget by prioritizing cost-effective bids and then targeting support to areas that remain unserved in the Remote Areas Fund.<sup>106</sup> Indeed, the areas where support has been declined are, according to our cost model, lower cost than the extremely high-cost areas that are eligible nationwide. While it is possible that some areas that would have received support if we implemented preferences in the Phase II auction may be left unserved after the Phase II auction,<sup>107</sup> it is also possible that bidders will be attracted to serve these lower-cost areas and will be awarded support through the Phase II auction to the extent that they place cost-effective bids when compared to the reserve price and bids nationwide.

46. For these reasons, we conclude that this approach is preferable to adopting weights for the Phase II auction for states where Phase II auction support was declined,<sup>108</sup> or adopting other measures like support thresholds, ceilings, or rankings in the Phase II auction.<sup>109</sup> Instead, the possibility that state

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<sup>105</sup> Cf. NRECA and UTC July 2016 Comments at 10 (suggesting that “monies could be set aside for [declined] states” in the Remote Areas Fund auction). We reserve the right to modify this approach on a state-by-state basis if we determine that the Phase II auction has resulted at a minimum in supporting service to the percentage of consumers in the state that would have been served if the Phase II offer had been accepted.

<sup>106</sup> See WISPA July 2016 Comments at 8-10 (“[T]he Commission should conduct a nationwide auction to achieve cost-effectiveness without artificial constraints that will lead to the rejection of more cost-effective bids in some states in order to accept less cost-effective bids in other states”); ITTA July 2016 Comments at 11 (noting “that the Commission’s overarching policy goal in addressing these questions should still be to maximize the number of locations served via the auction, regardless of how individual states fared when incumbents were offered model-based support,” but also acknowledging the “conflicting policy goal[]” that “a state’s consumers should not be penalized based on its incumbent carrier’s/carriers’ decision(s) not to accept state-wide, model-based support”).

<sup>107</sup> See, e.g., Verizon July 2016 Comments at 5-6 & n.17 (suggesting that “[b]ecause the ‘ratio of bid to reserve’ ranking method will in some instances support higher bids, e.g., bids for extremely high cost locations, over lower bids, e.g., bids for declined states’ high cost locations, it will deplete the limited budget more rapidly and leave more locations in the declined territories without broadband service”).

<sup>108</sup> See, e.g., Joint Comments of the Massachusetts Department of Telecommunications and Cable and the Massachusetts Broadband Institute, WC Docket No. 10-90 et al., at 4-6 (filed July 21, 2016) (Mass. DTC and MBI July 2016 Comments); Comments of the Pennsylvania Public Utility Commission, WC Docket No. 10-90 et al., at 3-5, 12 (filed July 21, 2016) (PA PUC July 2016 Comments), 12; Reply Comments of the Pennsylvania Department of Community and Economic Development and the Rural Development Council, WC Docket No. 10-90 et al., at 3-4 (filed Aug. 5, 2016) (PA DCED and RDC Aug. 2016 Reply).

<sup>109</sup> See, e.g., ITTA July 2016 Comments at 11-12 (suggesting “the Commission could adopt a modest per-state reserve floor based on the amount of model-based support declined in each state”); USTelecom July 2016 Comments at 8 (suggesting that the Commission “consider a funding threshold of 25 percent of funds allocated by the Connect America Cost Model and a methodology that would keep this amount in the state in which it was originally offered”); Verizon July 2016 Comments at 6-7 (proposing that the Commission “rank bids for the declined territories ahead of other bids until the Commission has awarded support to a threshold percentage of bidding-eligible locations in the declined territory or has awarded support in the amount of the [Connect America Phase] II offer to the declined territory, whichever occurs first”); New Shoreham Jan. 18, 2017 *Ex Parte* Letter at 4 (suggesting that the Commission “determine each state’s pro-rata share of the available \$215 million based on the per state percentage of total declined funds,” award funding “in each state up to the ceiling of the state’s pro-rata share,” and then award “any per-state shortfall” to the remaining areas based on cost-effectiveness).

preferences in the Phase II auction could divert funding from more cost-effective and higher service quality bids in the Phase II auction, and the added complexity they would introduce to the Phase II auction, outweigh the potential benefits. We conclude that any inequitable distribution issues would be better addressed after the Phase II auction, after bidders have had the opportunity to place cost-effective competitive bids in all states.

47. We disagree with commenters that argue that the Commission should not implement any preferences for states where Phase II model-based support was declined.<sup>110</sup> Instead, the Commission has acknowledged that an incumbent price cap carrier's decision to decline Phase II model-based support does not diminish our universal service obligation to connect consumers in areas that would have been reached had the offer been accepted and to provide sufficient universal service funds to do so.<sup>111</sup> To the extent unserved areas remain in declined states after cost-effective bids have been awarded in the Phase II auction and bidders are willing to serve those areas with support equal to or less than the relevant reserve price, we conclude that it is reasonable to spend at least as much support through the Phase II and Remote Areas Fund auctions that we were willing to spend through the Phase II offer of support to address a similar number of unserved consumers in these states. And as we explained above, we are using this approach as a backstop, once we have had the opportunity to select bids based on cost-effectiveness and service quality through the Phase II auction.

48. We are not persuaded that we should adopt weights or any other kind of preferences for states where the state has either provided state broadband funding or has committed to co-invest funds for winning Phase II auction bids,<sup>112</sup> or where the state is a net payer to the universal service fund.<sup>113</sup> First, as noted above, these proposals would add additional complexity to the Phase II auction, both for the Commission in designing and executing an auction that would incorporate these preferences and for bidders that may face difficulty in putting together a cost-effective bid that accounts for such preferences.<sup>114</sup> Second, if a state has implemented a broadband program, Phase II bidders could use those funds to supplement the funds they are seeking from the federal Connect America program, thereby lowering their bids so that they are more competitive.<sup>115</sup> The state's contribution to a project will already effectively lower the amount of support a bidder needs from the federal universal service fund. Third, our universal service programs are designed to target areas where there is not a business case for service providers to offer reasonably comparable services at reasonably comparable rates. By virtue of the geography of each state, some states have more of these areas than others and thus require more support to achieve our universal service objectives. It would contradict our statutory responsibility to connect all Americans with reasonably comparable services if we were to target federal universal service support to

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<sup>110</sup> See, e.g., WISPA July 2016 Comments at 8-10.

<sup>111</sup> *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 86.

<sup>112</sup> See, e.g., PA PUC July 2016 Comments at 12; PA DCED and RDC Aug. 2016 Reply at 3-4; Southern Tier Aug. 2016 Reply at 2.

<sup>113</sup> See, e.g., Comments of the California Public Utilities Commission, WC Docket No. 10-90 et al., at 5-6 (filed Sept. 2, 2014).

<sup>114</sup> For example, the record is not well developed on what value those weights should be, what should constitute a sufficient amount of state support that a state would need to offer for the bidding credit to apply, and what kind of commitment we should require of states that intend to co-invest funds. See, e.g., ITTA July 2016 Comments at 12-13 (noting that “weighting bids in part based on the undefined ‘meaningful commitment’ standard would add significant complexity and political complications to an already complex, long overdue, undertaking”).

<sup>115</sup> Comments of the American Cable Association, WC Docket No. 10-90 et al., at 3 (filed Sept. 2, 2014) (noting that “applicants who receive or are eligible to receive non-[f]ederal funds already have a significant incentive to participate to leverage their support”).

certain states for the sole reason that their ratepayers contribute more into the universal service fund than the states receive from all disbursement programs in the aggregate.<sup>116</sup>

49. We are not convinced that we should set up a separate mechanism to allocate support directly to declined states—either in lieu of those states participating in the Phase II auction or for those states that do not receive a certain level of support in the Phase II auction—or work in partnership with the states to choose winning projects based on specified criteria.<sup>117</sup> Not only would this cause further delay in getting support to those areas because we would need to establish rules for a new mechanism,<sup>118</sup> it would also contradict our decision to allocate unclaimed Phase II support using market-based mechanisms—the Phase II auction and the Remote Areas Fund auction. For all the reasons explained above, we continue to conclude that requiring bidders to compete for support rather than using more subjective measures to select awardees will lead to a more efficient use of our finite budget.

50. While we acknowledge that we conditionally waived the Phase II auction program rules to make available *up to* an amount of support that is equivalent to the amount of support Verizon declined in New York to be allocated in partnership with New York’s New NY Broadband Program, we did not guarantee that carriers in New York would be awarded the full \$170.4 million if winning bidders were not authorized for this amount by the Commission in coordination with New York’s program.<sup>119</sup> Moreover, such support will be allocated to service providers rather than directly to the state. Such bidders are required to compete for funds through New York’s broadband program and will only be eligible to be authorized for Phase II support if they are selected as winning bidders and if New York commits a matching amount of support at the minimum. We also find that the public interest considerations in that context are different than the considerations here. Our decision to allocate up to \$170.4 million in coordination with New York’s program was premised on the fact that New York had committed a significant amount of state support and had already established a program that is compatible with the objectives of Connect America Phase II and that will lead to faster build out and potentially higher speeds than if we had waited for the Phase II auction to allocate the support.<sup>120</sup> Working in partnership with New York also meant that we could eliminate potential overlaps between the two programs that could otherwise thwart our Connect America objectives.<sup>121</sup> No other state has demonstrated that they have adopted a similar program that would achieve the same or similar public interest benefits.

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<sup>116</sup> 47 U.S.C. § 254(b)(3); Reply Comments of the Office of Broadband Development Minnesota Department of Employment and Economic Development, WC Docket No. 10-90 et al., at 3 (filed Sept. 17, 2014) (“[A]vailable resources must be viewed from the perspective of achieving federal broadband goals and should go to the most beneficial projects regardless of whether the state of origin is a net donor or a net recipient to the federal [universal service fund]”).

<sup>117</sup> See, e.g., Mass. DTC and MBI July 2016 Comments at 7-8 (suggesting that the Commission set up a targeted grant program if a state is not awarded the declined support amount in the Phase II auction and direct support to successful Broadband Technology Opportunities Program grantees); PA PUC July 2016 Comments at 13-14 (suggesting that the Commission “cooperatively work” with the state “in identifying broadband projects that can be deployed in a sustainable fashion in the eligible census blocks where [Connect America] Phase II model support continues to be unclaimed after the contemplated auction and bidding process”); PA PUC Aug. Reply at 3-6 (stating that it “does not oppose” a “proposal that willing carriers, meeting certain criteria, should directly receive [Connect America Phase] II monies for the *same* eligible census blocks” that were eligible for the Phase II offer and that such a process “can be done in lieu of the carrier having to participate in the competitive bidding auction process.”).

<sup>118</sup> See, e.g., Mass DTC and MBI July 2016 Comments at 8, n.30 (acknowledging that for its proposed backstop grant program “[c]learly, numerous details would need to be addressed in a Further Rulemaking”).

<sup>119</sup> *New York Auction Order*, at 15, para. 38.

<sup>120</sup> *Id.* at 7-14, paras. 19-34.

<sup>121</sup> *Id.* at 8-9, para. 21.

### C. Access to Service on Tribal Lands

51. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission sought comment on whether to establish special provisions to help ensure service to Tribal lands, including a 25 percent bidding credit.<sup>122</sup> In the Mobility Fund Phase I and Tribal Mobility Fund Phase I auction, the Commission adopted a 25 percent bidding credit for tribally-owned or -controlled bidders.<sup>123</sup> In the rural broadband experiments, the Commission adopted a 25 percent Tribal bidding credit for entities that bid to serve only Tribal lands.<sup>124</sup> In the *Phase II Auction FNPRM*, the Commission sought comment on several possible auction procedures to advance the goal of expanding access to broadband on Tribal lands.<sup>125</sup> For example, the Commission sought comment on adopting weights for Tribal entities that bid in the auction or for any bid seeking to serve Tribal lands.<sup>126</sup>

52. *Discussion.* While we remain committed to promoting deployment on Tribal lands, we decline to adopt a Tribal-specific preference for Tribal entities or entities choosing to serve Tribal lands in the Phase II auction. For the reasons described above, we conclude that it serves the public interest to award Phase II support to the most cost-effective bids, subject to the performance and latency weights we adopt above. The Commission's decision to score a bid's cost-effectiveness relative to the reserve price will ensure that service providers that place cost-effective bids that commit to serve Tribal lands will be competitive.<sup>127</sup> Furthermore, the Connect America Cost Model used to set reserve prices already takes into consideration many factors causing varying deployment costs.<sup>128</sup> With this approach, the auction is able to use a market-based mechanism to award support for the purposes of connecting all consumers, including those on Tribal lands. Our action today does not preclude us from adopting preferences for Tribal entities or entities serving Tribal lands in the Remote Areas Fund auction if Tribal lands remain unserved after the Phase II auction and after we have had the opportunity to observe the outcome of the Phase II auction.<sup>129</sup>

53. It is unclear at this time what the effect of a Tribal bidding credit would be given our decision to adopt weights for service and latency tiers. We conclude that it serves the public interest to maximize our budget by first determining whether the Commission's recent policy decisions will result in cost-effective competitive bids on Tribal lands in the Phase II auction. If not, the Commission will be able to observe bidders' behavior in the Phase II auction to determine how to best implement a targeted preference that will encourage deployment on Tribal lands that remain unserved.<sup>130</sup>

<sup>122</sup> *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18091-92, para. 1219.

<sup>123</sup> See 47 CFR § 54.1004(c); *USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 490.

<sup>124</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8784, para. 44.

<sup>125</sup> *Phase II Auction FNPRM*, 31 FCC Rcd at 6026, paras. 227-28.

<sup>126</sup> *Id.* at 6026, para. 227.

<sup>127</sup> *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 85.

<sup>128</sup> See, e.g., Comments of Native Public Media, WC Docket No. 10-90 et al., at 2 (filed July 21, 2016) (Native Public Media July 2016 Comments) (noting that "[t]raditional carriers decline to serve Tribal lands that occupy some of the remotest parts of America, because they will not recover the cost of building broadband infrastructure in those areas").

<sup>129</sup> We also note that few parties submitted comments supporting adoption of a Tribal bidding credit in the record despite the Commission seeking comment on this issue in two separate instances. See, e.g., Letter from Douglas J. Minster, Vice President, Government and Regulatory Affairs, ATN International, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al, at 1-2 (filed Feb. 16, 2017); Hughes July 2016 Comments at 5-6; Native Public Media July 2016 Comments at 3-4; Comments of Hopi Telecommunications, Inc., WC Docket No. 10-90 et al., at 9-10 (filed Jan. 18, 2012).

<sup>130</sup> If the Commission ultimately adopts a preference for Tribal entities for the Remote Areas Fund auction, the Commission will address potential eligibility requirements for bidders that intend to use such preferences at that

(continued....)

54. We are not persuaded that Tribal governments should instead select the service providers that will be serving Tribal lands or that Tribally-owned or -controlled carriers should have the right of first refusal.<sup>131</sup> Our paramount goal must be to maximize the value of the universal service dollars we are spending on behalf of consumers—including those on Tribal lands—and creating artificial barriers to competing for support or deploying service on Tribal lands will only serve to delay the build out of high-quality services that rural Americans on Tribal lands want and need. Such an approach would be contrary to our decision to conduct a competitive bidding process in these areas to select service providers that will efficiently use support to offer reasonably comparable services. Moreover, eligible Tribally-owned or -controlled carriers will have the opportunity to participate in the Phase II auction and potentially win support if they place competitive bids.

#### **D. Limited Adjustments to Interim Deployment Milestones**

55. *Background.* In the *Phase II Auction Order*, the Commission adopted a six-year build-out deadline by which Phase II auction recipients must commercially offer service meeting the relevant requirements to the required number of locations.<sup>132</sup> The Commission also adopted interim milestones—recipients must offer the required services to 40 percent of the requisite number of locations by the end of the third year of funding authorization, and an additional 20 percent in subsequent years.<sup>133</sup> The Commission noted that the interim milestones may not be appropriate for non-terrestrial providers or providers that already deployed the infrastructure they intend to use to fulfill their Phase II obligations.<sup>134</sup>

56. In the *Phase II Auction FNPRM*, the Commission sought comment on adopting alternative service milestones for such providers, suggesting that they may have, for example, already launched the required satellite and would need only to deploy customer premises equipment to meet their service obligations.<sup>135</sup> The Commission sought comment on whether alternative interim service milestones should be adopted and, if so, which specific milestones to adopt.

57. *Discussion.* We conclude that it would not serve the public interest to adopt alternative interim service milestones for non-terrestrial service providers or service providers that already have deployed the infrastructure they intend to use to fulfill their Phase II obligations. We expect that determining whether a recipient has sufficiently built out its network and thus would be subject to the alternative milestones would be a subjective and possibly time-consuming fact-specific inquiry.<sup>136</sup> Also, tracking and verifying different milestones for a subset of Phase II auction recipients that are based on the timing of consumer requests would complicate the Commission and USAC's oversight responsibilities.<sup>137</sup>

(Continued from previous page) \_\_\_\_\_

time. See Native Public Media July 2016 Comments at 5-6 (suggesting potential eligibility requirements for Tribal bidding credits).

<sup>131</sup> See, e.g., Comments of the National Tribal Telecommunications Association, WC Docket No. 10-90 et al, at 36-37 (filed Jan. 18, 2012).

<sup>132</sup> *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Phase II Auction FNPRM*, 31 FCC Rcd at 6026-27, para. 229 (citing Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes Network Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 11, 2015) (Hughes Dec. 11, 2015 *Ex Parte* Letter).

<sup>136</sup> See, e.g., ViaSat July 2016 Comments at 7-9 (noting that “the assumption that satellite providers ‘have already deployed significant amounts of infrastructure necessary to meet the service commitments,’ and therefore could deploy service to rural areas with minimal cost and time, is simply inaccurate”).

<sup>137</sup> See, e.g., Hughes Dec. 11, 2015 *Ex Parte* Letter (stating that it has “no objection to satellite-based awardees being required to serve any location in their award areas in a reasonably quick timeframe throughout the term of the award (e.g., within 14 days from the date of customer request”).

Additionally, subjecting such providers to more aggressive interim milestones could potentially undermine both their incentives to participate in the Phase II auction and their willingness to take steps to deploy facilities prior to being awarded Phase II auction support.<sup>138</sup>

58. We conclude that these considerations outweigh the public interest benefits of the potential that in some circumstances recipients will offer the required services faster if they have to meet more aggressive milestones. Indeed, carriers that have deployed infrastructure already have an incentive to meet their obligations quickly.<sup>139</sup> First, carriers will want to supplement universal service support with customer revenue. Second, Phase II auction recipients are required to maintain an open and renewed letter of credit only until they have certified they have met their 100 percent service milestone and that certification has been verified.<sup>140</sup> As a result, Phase II auction recipients may choose to accelerate the rate at which they offer the required services so that they can close out their letter of credit sooner.

#### IV. ORDER ON RECONSIDERATION

59. In this Order on Reconsideration we consider several petitions for reconsideration of decisions made in the *Phase II Auction Order*.<sup>141</sup> First, we deny a petition for reconsideration of our decision to score bids relative to the reserve price. Second, we grant a petition for reconsideration of our decision to retain the option to re-auction certain areas served by high latency bidders if a set subscription rate is not met. Finally, we grant a petition for reconsideration of our decision to require bidders in the Above-Baseline and Gigabit performance tiers to offer an unlimited monthly usage allowance.

##### A. Bid Ranking

60. *Background.* In the *Phase II Auction Order*, the Commission decided that bids in the Phase II auction would be scored relative to the reserve price for the areas subject to the bid with lower bids selected first, taking into account the performance and latency weights that we adopted in the accompanying Report and Order.<sup>142</sup> The Commission found that this approach is more likely to ensure that winning bidders are selected across a wide range of states.<sup>143</sup>

61. Verizon submitted a petition for reconsideration that, among other issues, requested that the Commission reconsider its decision to score bids relative to the reserve price.<sup>144</sup> Instead, Verizon requests that the Commission score bids based on a dollar per location methodology, claiming that such an approach would “maximize[] the number of locations that can be served with the limited auction budget . . . .”<sup>145</sup>

62. *Discussion.* We decline to reconsider the decision to score bids relative to the applicable reserve price. While one of our objectives is to maximize the number of locations that are served with our

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<sup>138</sup> See ViaSat July 2016 Comments at 9.

<sup>139</sup> No party submitted comments in response to the *FNPRM* that supported the adoption of alternative interim milestones.

<sup>140</sup> 47 CFR 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 123.

<sup>141</sup> There are still a number of petitions for reconsideration that remain pending that the Commission expects to address in a future order.

<sup>142</sup> *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 85.

<sup>143</sup> *Id.*

<sup>144</sup> Verizon Petition for Reconsideration, WC Docket No. 10-90 et al., at 2-3 (filed Aug. 8, 2016) (Verizon Aug. 2016 Petition).

<sup>145</sup> *Id.* at 2.



finite budget and ranking bids based on the dollar per location would achieve that goal,<sup>146</sup> we have also made clear that we are focused on adopting an auction design that balances this objective with other goals, including efficiently and effectively allocating support among the states.<sup>147</sup> We conclude that ranking bids relative to the reserve price reasonably balances these objectives.

63. As the Commission explained in the *Phase II Auction Order*,<sup>148</sup> it made the decision to adopt this bid-to-reserve price ratio methodology to prevent support from disproportionately flowing to those states where the cost to serve per location is, relatively speaking, lower than other states. It is our statutory duty to support universal service, which includes “[c]onsumers in all regions of the Nation,” not just those living in denser areas.<sup>149</sup> By ranking bids relative to the reserve price, we will be providing an opportunity for bidders across the country to make competitive bids while also working to maximize our available funds by awarding support to the most cost-effective bids nationwide. Awarding support to those areas where there are more locations might mean that we would get “more bang for the buck” by serving more locations with our budget,<sup>150</sup> but that approach might also preclude us from taking advantage of efficiencies in cases where service providers are able to serve areas with fewer locations but with support that is far below the applicable reserve price. While we acknowledge that we could instead choose to award support to denser areas in the Phase II auction and address the remaining areas in the Remote Areas Fund auction,<sup>151</sup> we conclude that on balance the public interest will be served by giving consumers nationwide the opportunity to be served sooner if cost-effective bids are placed in those areas.<sup>152</sup> We note that our decision to cap reserve prices for extremely high-cost areas will help ensure that our budget is not disproportionately diverted to these extremely high-cost areas. Support will only be awarded to service providers that can make a business case to serve these areas with support below the capped amount and that submit cost-effective bids relative to other bids nationwide.<sup>153</sup>

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<sup>146</sup> *Id.*; Opposition and Comments of Hughes Network Systems, WC Docket No. 10-90 et al., at 5-6 (Sept. 2, 2016) (Hughes Sept. 2016 Opposition); Comments on Petitions for Reconsideration of the America Cable Association, WC Docket No. 10-09 et al., at 2-3 (filed Sept. 12, 2016) (ACA Sept. 2016 Reply).

<sup>147</sup> Verizon Reply to Oppositions, WC Docket No. 10-90 et al., at 2 (filed Sept. 12, 2016) (Verizon Sept. 2016 Reply) (suggesting that “directing auction support to higher-cost areas is at odds with the Commission’s goal”). *But see* Opposition of ViaSat, Inc., WC Docket No. 10-90 et al., at 4-5 (filed Sept. 2, 2016) (ViaSat Sept. 2016 Opposition) (noting that the Commission has already made the decision to adopt weights that would achieve other objectives).

<sup>148</sup> *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 85.

<sup>149</sup> 47 U.S.C. § 254(b)(3). *See also* ViaSat Sept. 2106 Opposition at 5 (citing section 254 and suggesting that “the Commission should adopt [Connect America] program rules, policies, and budgets that ensure the ubiquitous availability of high-quality broadband services in *all* areas of the country”) (emphasis in the original).

<sup>150</sup> Hughes Sept. 2016 Opposition at 5-6; Verizon Sept. 2016 Reply at 2. *But see* Opposition to Petitions for Reconsideration of the Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 2 (filed Sept. 2, 2016) (WISPA Sept. 2016 Opposition) (noting that “bidding on certain lower-cost areas may be more robust and lower bids, relative to the reserve price”).

<sup>151</sup> Verizon Sept. 2016 Reply at 3.

<sup>152</sup> Above, we address measures to ensure that through the Phase II auction and the Remote Areas Fund auction in states where Phase II support was declined will receive at least the amount of support that was declined in that state assuming bids are placed by qualified bidders at or below the relevant reserve prices, subject to conditions. *See* Verizon Aug. 2016 Petition at 3 (claiming that the ratio of bid to reserve approach will have a “disproportionate impact on the states in which the price cap [carrier] declined the [Phase II] offer”); *supra* Section III.B. There, the public interest considerations are different because we determined it was in the public interest to wait to adopt specific measures to allocate support to certain states until we first gave all bidders the opportunity to place cost-effective bids.

<sup>153</sup> *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90. *See also* ACA Sept. 2016 Reply at 2-3 (noting the Commission’s decision to make extremely high-cost areas eligible for the Phase II auction).

**B. Re-Auctioning High Latency Areas**

64. *Background.* In the *Phase II Auction Order*, the Commission reserved the option of including certain areas served by a Phase II high latency recipient in the auction that will occur shortly before the end of the six-year term of support for the price cap carriers that accept model-based support (i.e., before the end of 2020).<sup>154</sup> Specifically, it concluded that if a high latency service has subscription levels that are more than 35 percent lower than the national average at the time, those areas would be made eligible for the Phase III auction.<sup>155</sup> If the Commission chose to exercise this option, the then-current recipient of support as well as other entities would be free to bid for support to serve the area.<sup>156</sup> Otherwise, the high latency service provider would receive support for a 10-year term like all other Phase II auction recipients.<sup>157</sup>

65. ViaSat submitted a petition for reconsideration urging the Commission to reconsider its decision to retain the option to re-auction areas served by high latency service providers.<sup>158</sup> ViaSat claims that retaining this option “would undermine the Commission’s efforts to encourage broad participation in the [Connect America Phase II] auction and drive efficient auction outcomes.”<sup>159</sup>

66. *Discussion.* We reconsider the Commission’s decision with regard to re-auctioning areas served by high latency bidders where there is low subscribership. Instead, all authorized Phase II auction recipients will have a full 10-year term of support if they comply with the terms and conditions of Phase II support. While the Commission had adopted the subscriber standard to give high latency providers something objective and quantifiable that they could track to determine if the areas they serve would be placed in the Phase III auction,<sup>160</sup> after further reflection, we are persuaded that this approach does not necessarily reflect the quality of that service or the value to consumers.

67. First, we agree that it may be difficult for high latency service providers to obtain enough subscribers to meet the 35 percent threshold given that by the end of the third year of support, Phase II auction recipients will only be required to offer service to 40 percent of the required number of locations and may not have focused on adoption efforts while working on deploying their networks.<sup>161</sup> And even if we were to push this option to later in the support term, it would be difficult to determine an appropriate timeframe at this point without knowing the timing for any subsequent auctions. Second, consumers may decide not to subscribe to a service for any number of reasons, and we are persuaded by comments that suggest that many of the factors that are related to low adoption are likely to be present in more rural high-cost areas of the country.<sup>162</sup>

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<sup>154</sup> *Phase II Auction Order*, 31 FCC Rcd at 5962, para. 34.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> Petition for Reconsideration and Clarification of ViaSat, Inc., WC Docket No 10-90 et al, at 2-5 (filed Aug. 8, 2016) (ViaSat Aug. 2016 Petition).

<sup>159</sup> Reply of ViaSat, Inc., WC Docket No. 10-90 et al., at 2-3 (filed Sept. 12, 2016) (ViaSat Sept. 2016 Reply).

<sup>160</sup> WISPA Sept. 2016 Opposition at 8 (noting that the 35 percent is a “definitive standard”).

<sup>161</sup> ViaSat Aug. 2016 Petition at 4 (claiming that in areas where recipients have “initiated service, they will be in the very early stages of driving adoption (consistent with adoption curves in other areas, which typically see subscription rates growing slowly over time)”; ViaSat Sept. 2016 Reply at 5.

<sup>162</sup> See, e.g., ViaSat Aug. 2016 Petition at 3-4 (noting low adoption rates due to low incomes, age, education and disability); Hughes Sept. 2016 Opposition at 2-3 (explaining that “the most rural and remote parts of the country” have “the lowest adoption rates nationwide”); ViaSat Sept. 2016 Reply at 4 n.12.

68. While commenters suggest that they have had success in encouraging broadband adoption in high-cost areas,<sup>163</sup> they do not address our timing concerns. Moreover, such a general statement about their success does not provide us with adequate assurance that high latency providers would have the same experience in the areas they are awarded support absent service quality issues.<sup>164</sup> In fact, if we use a low adoption rate as the measure to determine if service is meeting consumers' needs, it would seem to follow that we should also re-auction areas served by low latency service providers that have low subscribership.<sup>165</sup> For these reasons, we conclude that subscribership is not an appropriate measure for determining whether a high latency service is meeting the needs of consumers.

69. We are also sympathetic to claims that even if we were to come up with an alternative objective and quantifiable standard, by simply retaining the option to shorten a high latency service provider's support term we will create uncertainty for such bidders.<sup>166</sup> We would be asking high latency providers to commit significant resources to deploy at a minimum 40 percent of their network while reserving the option to take away their support and potentially fund a competitor in that same area. Such conditions may mean that high latency providers will not participate in the auction or will inflate their bids to compensate for the risk, which would undermine the Commission's decision to include high latency providers in the Phase II auction to maximize the budget by increasing competition.<sup>167</sup>

70. On balance, we are persuaded that these harms outweigh the public interest benefits of having the opportunity to include areas served by high latency bidders in a subsequent auction prior to the end of the 10-year term. As we discussed above,<sup>168</sup> we acknowledge that some parties have significant concerns about whether high latency services will meet the needs of consumers. Nevertheless, we conclude that the performance standards we have adopted for high latency bidders will offer sufficient protection to consumers living in areas served by a high latency bidder. Moreover, as we explain above, recognizing these concerns we have adopted weights that give a preference to low latency bids to achieve a reasonable balance between using our budget cost-effectively to maximize the deployment of service to unserved consumers with service quality. We conclude that the potential that we would undermine competition by retaining the option to re-auction certain service areas could throw off this balance and

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<sup>163</sup> Opposition of NTCA—The Rural Broadband Association, WC Docket No. 10-90 et al., at 5-6 (filed Sept. 2, 2016) (NTCA Sept. 2016 Opposition); Rural Coalition Feb. 14, 2017 *Ex Parte* Letter at 4 n.8. NTCA's suggestion that we consider all broadband speeds in determining subscribership rates does not address our fundamental concerns that subscribership rates may not necessarily reflect service quality. *See id.* at 6 n.18.

<sup>164</sup> ViaSat Sept. 2016 Reply at 5 & n.14.

<sup>165</sup> *Compare* WISPA Sept. 2016 Opposition at 8 (“In cases where high-latency service is deemed by consumers to be of insufficient quality, as measured by consumer adoption using a specific benchmark, the Commission has an obligation to American ratepayers to recognize that continuing to fund such service would disserve the public interest”) with ViaSat Sept. 2016 Reply at 4 (suggesting that the “false assumption” that adoption “necessarily reflect[s] higher consumer satisfaction and program efficiency is inherently flawed” and that the “natural conclusion” of such an assumption is “that *all* [Connect America]-supported services . . . should be evaluated to ensure program efficiency and consumer satisfaction across-the-board”) (emphasis in the original).

<sup>166</sup> ViaSat Sept. 2016 Reply at 2-3 (explaining that “even the *possibility* of a reauction would create significant uncertainty”) (emphasis in the original).

<sup>167</sup> ViaSat Aug. 2016 Petition at 5 (“[S]atellite broadband bidders would face significant risk and uncertainty, not faced by bidders using any other technology, if they were to participate in the reverse auction under threat of this early termination of funding”); Hughes Sept. 2016 Opposition at 5 (“[T]he threat of re-auction would undermine satellite broadband providers' incentives to bid, and to bid aggressively, in the [Connect America] Phase II auction, knowing that their awards may be revoked in a few years anyway”). *See also Phase II Auction Order*, 31 FCC Rcd at 5962, para. 33 (“[W]e are willing to entertain bids from entities that can only provide high latency, in the interest of making this auction as competitive as possible.”).

<sup>168</sup> *See supra* Section III.A.2.

potentially thwart our ability to leverage the Phase II auction to further our statutory objective of supporting reasonably comparable services nationwide within our finite budget.<sup>169</sup>

### C. Unlimited Monthly Usage

71. In order to encourage robust bidding, we grant Verizon's request for reconsideration of the Commission's prior decision to require bidders in the Above-Baseline and Gigabit performance tiers to offer an unlimited monthly usage allowance.<sup>170</sup> Instead, we will require bidders in these tiers to offer a monthly usage allowance of at least 2 terabytes (TB) per month.

72. As Verizon explains, a requirement of unlimited data could discourage bidding on those tiers, because a potential bidder would have to factor in additional investments and operating expenses to accommodate a small number of customers whose very high usage would be responsible for a disproportionate share of demand.<sup>171</sup> Rather than require unlimited usage, Verizon argues that the Commission could set a very high allowance, which would provide a greater usage allowance than the baseline tier but still permit providers to address true outliers that increase the cost of providing rural broadband service.<sup>172</sup> We are persuaded by Verizon's argument that requiring bidders to offer unlimited usage would raise the cost of providing higher performance services in rural areas and could discourage bidding in these tiers.

73. Therefore, instead of requiring bidders in the Above-Baseline and Gigabit performance tiers to offer unlimited data allowances, we will require bidders in these tiers to offer a monthly usage allowance of at least 2 terabytes (TB) per month. We find that a 2 TB usage allowance is sufficiently high to ensure that rural America is not left behind, and will enable more bidders to offer higher performance services in rural areas. Although Verizon originally suggested that recent urban rate survey data shows that many urban providers have usage limits for services of 100 Mbps or more that range from 250 GB to 1,000 GB (1 TB) per month, it more recently suggested a usage allowance of 1 TB per month. Verizon cited usage limits from last years' urban rate survey data, and we find it reasonable to adopt a higher usage limit for a 10-year term of support. A data allowance of 250 GB was the lower end of the range for comparable services from this year's urban rate survey data.<sup>173</sup> We therefore disagree with WISPA's suggestion that a usage tier of only 250 GB for the Above-Baseline tier is sufficient for a 10-year support term. Nor do we agree with WISPA's argument there should not be any usage limits for the Gigabit tier.<sup>174</sup> WISPA did not raise any substantive arguments to counter Verizon's arguments about the additional costs of requiring unlimited usage in high-cost areas. We are therefore persuaded that an unlimited usage cap could impose additional costs on bidders that may discourage them from offering services that exceed our Baseline performance requirements in rural areas. As always, Phase II winners will be free to offer an array of service plans, including those with unlimited usage.

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<sup>169</sup> See 47 USC § 254(b)(3).

<sup>170</sup> Verizon Aug. 2016 Petition at 4-5.

<sup>171</sup> Verizon Aug. 2016 Petition at 4-5 (claiming recent urban rate survey data shows that many urban providers have usage limits for services of 100 Mbps or more that range from 250 GB to 1,000 GB per month); see also Opposition and Comments of the United Telecom Association, WC Docket No. 10-90 et al., at 8-10 (filed Sept. 2, 2016) (agreeing with Verizon that the Commission should reconsider the unlimited usage requirement); Verizon Sept. 2016 Reply, at 4 (at a minimum retain the unlimited usage requirement only for the gigabit tier).

<sup>172</sup> Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al., at 3 (filed Feb. 15, 2017) (Verizon Feb. 15, 2017 *Ex Parte* Letter) (suggesting a usage allowance of 1 terabyte per month).

<sup>173</sup> See Fixed Broadband Monthly Data Usage Estimation Methodology for 2017 Usage Allowance, <https://www.fcc.gov/general/urban-rate-survey-data-resources>.

<sup>174</sup> WISPA Sept. 2016 Opposition at 2 (not objecting to lowering the usage cap to 250 GB per-month for the Above-Baseline tier).

**V. PROCEDURAL MATTERS****A. Paperwork Reduction Act Analysis**

74. This document does not contain new information collection requirements subject to the PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

**B. Congressional Review Act**

75. The Commission will send a copy of this Report and Order and Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>175</sup>

**C. Final Regulatory Flexibility Analysis**

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

**VI. ORDERING CLAUSES**

77. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), 403, and 405, and sections 1.1, 1.427, and 1.429 of the Commission’s rules, 47 CFR §§ 1.1, 1.427, and 1.429, that this Report and Order and Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register. It is our intention in adopting these rules that if any of the rules that we retain, modify, or adopt herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

78. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission’s rules, 47 CFR § 1.429 the Petition for Reconsideration filed by Verizon on August 8, 2016 is DENIED IN PART to the extent described herein.

79. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission’s rules, 47 CFR § 1.429 the Petition for Reconsideration filed by ViaSat, Inc. on August 8, 2016 is GRANTED IN PART to the extent described herein.

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

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

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<sup>175</sup> See 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary  
Federal Communications Commission

## APPENDIX

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA)<sup>1</sup> as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in November 2011 (*USF/ICC Transformation FNPRM*), the Further Notice of Proposed Rulemaking adopted in July 2014 (*Rural Broadband Experiments FNPRM*), and the *Further Notice of Proposed Rulemaking* adopted in May 2016 (*Phase II Auction FNPRM*).<sup>2</sup> The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM*, the *State Action FNPRM*, and the *Phase II Auction FNPRM*, including comment on the IRFAs. The Commission did not receive any relevant comments in response to these IRFAs. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

**A. Need for, and Objective of, the Order**

2. With this Report and Order and Order on Reconsideration (Order), the Commission takes another step towards implementing the Connect America Phase II (Phase II) auction in which service providers will compete to receive support of up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas. The decisions we make in this Order aim to maximize the value the American people will receive for the universal service dollars we spend, balancing higher-quality services with cost efficiencies.

3. First, we resolve issues raised in the *Phase II Auction Order FNPRM*.<sup>4</sup> We adopt weights to compare bids among the service performance and latency tiers adopted in the *Phase II Auction Order*. Additionally, we decline to adopt specific preferences for certain states and Tribal lands in the Phase II auction and decline to adopt alternative interim deployment obligations for a subset of Phase II auction recipients. However, we do adopt preferences that will be implemented in the Remote Areas Fund auction for states where the Phase II offer of model-based support was declined, subject to conditions.

4. Second, we also consider several petitions for reconsideration of decisions made in the *Phase II Auction Order*. We deny a petition for reconsideration of the Commission's decision to score bids relative to the reserve price and grant a petition for reconsideration of the Commission's decision to retain the option to re-auction certain areas served by high latency bidders if a set subscription rate is not met.

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

5. There were no comments raised that specifically addressed the proposed rules and policies presented in the *USF/ICC Transformation FNPRM* IRFA, the *Rural Broadband Experiments*

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18364-95, paras. 1-97 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd sub nom.*, In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014); *Connect America et al.*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8838-61, paras. 1-65 (2014) (*Rural Broadband Experiments FNPRM*); *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6078-6103, paras. 1-80 (2016) (*Phase II Auction Order and/or FNPRM*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6020-27, paras. 205-29 (2016) (*Phase II Auction Order and/or FNPRM*).

*FNPRM* IRFA, or the *Phase II Auction FNPRM* IRFA.<sup>5</sup> Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

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

6. Pursuant to the Small Business Jobs Act of 2010,<sup>6</sup> 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. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply**

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>7</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>8</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>9</sup> 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 Small Business Administration (SBA).<sup>10</sup>

8. *Total Small Entities.* Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.<sup>11</sup> First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States.<sup>12</sup> In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>13</sup> Nationwide, as of 2007, there were approximately 1,621,215 small organizations.<sup>14</sup> Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>15</sup> Census Bureau data

<sup>5</sup> See *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18333-34, paras. 38-39.

<sup>6</sup> 5 U.S.C. § 604(a)(3).

<sup>7</sup> See *id.* § 603(b)(3).

<sup>8</sup> See *id.* § 601(6).

<sup>9</sup> See *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.”

<sup>10</sup> See *id.* § 632.

<sup>11</sup> See *id.* §§ 601(3)-(6).

<sup>12</sup> See SBA, Office of Advocacy, *Frequently Asked Questions*, [http://www.sba.gov/sites/default/files/FAQ\\_March\\_2014\\_0.pdf](http://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf).

<sup>13</sup> 5 U.S.C. § 601(4).

<sup>14</sup> *Indep. Sector, The New Nonprofit Almanac and Desk Reference* (2010).

<sup>15</sup> 5 U.S.C. § 601(5).



for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.<sup>16</sup> We estimate that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.”<sup>17</sup> Thus, we estimate that most governmental jurisdictions are small.

9. *Broadband Internet Access Service Providers.* The rules adopted in the Order apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,<sup>18</sup> which has an SBA small business size standard of 1,500 or fewer employees.<sup>19</sup> These are also labeled “broadband.” The latter are within the category of All Other Telecommunications,<sup>20</sup> which has a size standard of annual receipts of \$32.5 million or less.<sup>21</sup> These are labeled non-broadband. Census data for 2012 shows that there were 3,117 firms in the first category that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>22</sup> For the second category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>23</sup> Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities.

10. The broadband Internet access service provider industry has changed since this definition was introduced. The data cited above may therefore include entities that no longer provide broadband

<sup>16</sup> See SBA, Office of Advocacy - Frequently Asked Questions, [https://www.sba.gov/sites/default/files/FAQ\\_March\\_2014\\_0.pdf](https://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf) (last visited Aug. 31, 2016). U.S. Census Bureau, Statistical Abstract of the United States: 2012, Section 8, page 267, tbl. 429, <https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf/> (data cited therein are from 2007).

<sup>17</sup> The 2011 Census data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local organizations were small, in 2011 we note that there were a total of 729 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. See U.S. Census Bureau, American Fact Finder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Mar. 4, 2016). If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 89,327 are small. 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. See U.S. Census Bureau, City and Town Totals Vintage: 2011, <http://www.census.gov/popest/data/cities/totals/2011/index.html> (last visited Aug. 31, 2016). If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. Census Bureau, Statistical Abstract of the United States: 2012, Section 8, page 267, tbl. 429, <https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf/> (data cited therein are from 2007).

<sup>18</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012%20NAICS%20Search>.

<sup>19</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>20</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517919 All Other Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012%20NAICS%20Search>.

<sup>21</sup> 13 CFR § 121.201, NAICS code 517919.

<sup>22</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>23</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).

Internet access service, and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Final Regulatory Flexibility Analysis.

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>24</sup> The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.<sup>25</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>26</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

12. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>28</sup> The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

13. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>29</sup> According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>30</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>31</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>32</sup>

<sup>24</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>25</sup> See 13 CFR § 120.201, NAICS Code 517110.

<sup>26</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>27</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>28</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>29</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>30</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>31</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

14. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>33</sup> Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>34</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>35</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>36</sup> Of this total, 70 have 1,500 or fewer employees.<sup>37</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by the adopted rules.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>38</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>39</sup> Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>40</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

16. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS Code category for prepaid calling card providers is Telecommunications Resellers. This 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. Mobile virtual networks operators (MVNOs) are included in this industry.<sup>41</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>42</sup> U.S. Census data for 2012 show that 1,341 firms provided resale services during that year.

(Continued from previous page) \_\_\_\_\_

<sup>32</sup> *Id.*

<sup>33</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>34</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>39</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>40</sup> *Id.*

<sup>41</sup> <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

<sup>42</sup> 13 CFR § 121.201, NAICS code 517911.

Of that number, 1,341 operated with fewer than 1,000 employees.<sup>43</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>44</sup> All 193 carriers have 1,500 or fewer employees.<sup>45</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by the rules adopted.

17. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>46</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>47</sup> Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>48</sup> Of this total, an estimated 211 have 1,500 or fewer employees.<sup>49</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted.

18. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>50</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>51</sup> Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>52</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>53</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the rules adopted.

19. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>54</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000

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<sup>43</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>44</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>45</sup> *Id.*

<sup>46</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>47</sup> *Id.*

<sup>48</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>49</sup> *Id.*

<sup>50</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>51</sup> *Id.*

<sup>52</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>53</sup> *Id.*

<sup>54</sup> 13 CFR § 121.201, NAICS code 517110.

employees.<sup>55</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>56</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>57</sup> Consequently, the Commission estimates that most Other Toll Carriers that may be affected by our rules are small.

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, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>58</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.<sup>59</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.<sup>60</sup> Of this total, an estimated 261 have 1,500 or fewer employees.<sup>61</sup> Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

21. *Cable and other Subscription Programming*.<sup>62</sup> This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or

<sup>55</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>56</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>57</sup> *Id.*

<sup>58</sup> NAICS Code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

<sup>59</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>60</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>61</sup> *Id.*

<sup>62</sup> In 2014, “Cable and Other Subscription Programming,” NAICS Code 515210, replaced a prior category, now obsolete, which was called “Cable and Other Program Distribution.” Cable and Other Program Distribution, prior to 2014, were placed under NAICS Code 517110, Wired Telecommunications Carriers. Wired Telecommunications Carriers is still a current and valid NAICS Code Category. Because of the similarity between “Cable and Other Subscription Programming” and “Cable and other Program Distribution,” we will, in this proceeding, continue to use Wired Telecommunications Carrier data based on the U.S. Census. The alternative of using data gathered under Cable and Other Subscription Programming (NAICS Code 515210) is unavailable to us for two reasons. First, the size standard established by the SBA for Cable and Other Subscription Programming is annual receipts of \$38.5 million or less. Thus to use the annual receipts size standard would require the Commission either to switch from existing employee based size standard of 1,500 employees or less for Wired Telecommunications Carriers, or else would require the use of two size standards. No official approval of either option has been granted by the Commission as of the time of the release of the *FY 2015 NPRM*. Second, the data available under the size standard of \$38.5 million dollars or less is not applicable at this time, because the only currently available U.S. Census data for annual receipts of all businesses operating in the NAICS Code category of 515210 (Cable and other Subscriptions Programming) consists only of total receipts for all businesses operating in this category in 2007 and of total annual receipts for all businesses operating in this category in 2012. Hence the data do not provide any basis for determining, for either year, how many businesses were small because they had annual receipts of \$38.5 million or less. See [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_5112&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_5112&prodType=table).

fee basis. 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. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>63</sup> The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees.<sup>64</sup> The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees.<sup>65</sup> Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

22. *Cable Companies and Systems.* The Commission has developed its own small business size standards 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.<sup>66</sup> Industry data shows that there were currently 660 cable operators.<sup>67</sup> Of this total, all but ten cable operators nationwide are small under this size standard.<sup>68</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>69</sup> Current Commission records show 4,421 cable systems nationwide.<sup>70</sup> Of this total, 3,936 cable systems have less than 20,000 subscribers, and 485 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

23. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, 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 are approximately 52,403,705 cable video subscribers in the United States today.<sup>71</sup> Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>72</sup> Based on available data, we find that all but nine incumbent cable operators

<sup>63</sup> <https://www.census.gov/agi-bin/ssd/naics/naicsrch>.

<sup>64</sup> 13 CFR 121.201, 20116 NAICSs Code 515210.

<sup>65</sup> [http://factfinder.census.gov/faces/table/services/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/table/services/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>66</sup> 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the Cable Television Consumer Protection And Competition Act of 1992: Rate Regulation*, MM Docket No. 92-266, MM Docket No. 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408, para. 28 (1995).

<sup>67</sup> NCTA, Industry Data, Number of Cable Operators and Systems, <http://www.ncta.com/Statistics.aspx> (visited Oct. 20, 2016). Depending upon the number of homes and the size of the geographic area served, cable operators use one or more cable systems to provide video service. See *Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, MB Docket No. 12-203, Fifteenth Report, 28 FCC Rcd 10496, 10505-6, para. 24 (2013) ("15<sup>th</sup> Annual Competition Report").

<sup>68</sup> See SNL Kagan, "Top Cable MSOs – 12/12 Q"; available at <http://www.snl.com/InteractiveX/TopCableMSOs.aspx?period=2012Q4&sortcol=subscribersbasic&sortorder=desc>.

<sup>69</sup> 47 C.F.R. § 76.901(c).

<sup>70</sup> The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on Oct. 20, 2016. A cable system is a physical system integrated to a principal headend.

<sup>71</sup> See SNL KAGAN at [www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx](http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx).

<sup>72</sup> 47.901(f) and notes ff. 1, 2, and 3.

are small entities under this size standard.<sup>73</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>74</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, 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.* “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. 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. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.<sup>75</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>76</sup> For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million.<sup>77</sup> Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

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

25. The Report and Order and Order on Reconsideration do not impose any specific reporting, recordkeeping, or compliance requirements for entities, including small entities. Instead, the Report and Order adopts or declines to adopt measures that will affect all bidders participating in the Phase II auction. For example, the Report and Order adopts weights for the Phase II auction technology-neutral service and latency tiers,<sup>78</sup> and indicates that the Commission will seek comment on requiring potential bidders to establish their eligibility for such weights. The Report and Order declines to take further action to give a preference to certain states, Tribal bidders, or other types of bids in the Phase II auction. However, the Report and Order does adopt a preference for certain states in the Remote Areas Fund auction where the Phase II offer of model-based support was declined, subject to conditions. The Report and Order also declines to subject entities that have already deployed a network capable of meeting their Phase II obligations to different interim build-out milestones than the interim build-out milestones that were adopted in the *Phase II Auction Order*.<sup>79</sup>

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<sup>73</sup> See SNL KAGAN at [www.snl.com/Interactivex/TopCable\\_MSOs.aspx](http://www.snl.com/Interactivex/TopCable_MSOs.aspx).

<sup>74</sup> 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(f) of the Commission's rules. See 47 CFR § 76.901(f).

<sup>75</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>76</sup> 13 C.F.R. 121.201; NAICs Code 517919.

<sup>77</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC0751SSSZ4, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 517919, available at [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ1&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table).

<sup>78</sup> *Phase II Auction Order*, 31 FCC Rcd at 5957, para. 15.

<sup>79</sup> *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

26. The Order on Reconsideration declines to reconsider the Commission's decision to score bids relative to the reserve price by instead ranking bids on a dollar-per-location basis. In the Order on Reconsideration the Commission also decides that all Phase II auction recipients will have a 10-year support term, thereby reconsidering the Commission's decision to retain the option to shorten the support term of certain high latency bidders that are unable to meet a set subscribership threshold.<sup>80</sup>

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

27. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>81</sup> We have considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to the *USF/ICC Transformation FNPRM*, the *Rural Broadband Experiments FNPRM* and the *Phase II Auction FNPRM* and their IRFAs, in reaching its final conclusions and taking action in this proceeding.

28. Generally, the decisions that we made in this Order will apply in equal force to all Phase II auction bidders, including small bidders. Thus, the decisions made in this Order generally do not impose unique burdens or benefits on small bidders. For example, our decision to adopt weights for the performance and latency tiers that will not grant an absolute preference to any kind of service is unlikely to uniquely impact small bidders, but it is likely to help maximize participation by making it possible for all entities, including small entities, to be competitive if they place a cost-effective bid. Additionally, like all bidders in the Phase II auction, to the extent smaller bidders choose to bid in less populated areas, they may benefit from the Commission's decision to retain a bid ranking method that will score bids relative to the applicable reserve price rather than a dollar per location basis.

29. In the Order, we do decline to adopt proposals for other weights or preferences in the Phase II auction, including a preference specifically for small entities. We conclude that such an approach would not further our objective of maximizing the effectiveness of our funds to serve consumers nationwide. Nevertheless, recognizing the important role that small entities can play in bringing voice and broadband services to unserved consumers, the Commission has already adopted specific eligibility requirements for the Phase II auction in an effort to facilitate the participation of small entities.<sup>82</sup>

30. We also indicate in the Order that we are persuaded that in some circumstances it may serve the public interest to require potential bidders to submit evidence that demonstrates that they can meet the service requirements associated with the tiers in which they will bid in their short-form applications. The Commission will seek comment on this issue and will consider the unique challenges faced by small entities in submitting any required information.

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<sup>80</sup> *Phase II Auction Order*, 31 FCC Rcd at 5962, para. 34.

<sup>81</sup> 5 U.S.C. § 603(c).

<sup>82</sup> *See, e.g., Phase II Auction Order*, 31 FCC Rcd at 5979, 5993, paras. 89, 127 (explaining the importance of adopting a minimum geographic area for bidding that will ensure "all interested bidders, including small entities, have the flexibility to design a network that matches their business model and the technologies they intend to use," and expanding the issuing bank eligibility requirements for letters of credit noting that "this approach achieves an appropriate balance between encouraging the participation in the auction, particularly of small entities").



**G. Report to Congress**

31. The Commission will send a copy of the Report and Order and Order on Reconsideration, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.<sup>83</sup> In addition, the Commission will send a copy of the Report and Order and Order on Reconsideration, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and Order on Reconsideration and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>84</sup>

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<sup>83</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>84</sup> *See id.* § 604(b).

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

Six years ago, the Commission promised to launch the Connect America Fund to support deployment of broadband in rural America. Our target for launching the competitive bidding phase was 2012, with funding to wind down in 2017.<sup>1</sup> Needless to say, the Commission fell behind schedule. And that's unfortunate because there is a real and growing digital divide in this country. Although high-speed Internet access is common in metropolitan areas, the rural-urban split is stark: 39% of rural Americans lack adequate access.

It's time to close the digital divide. That's why the first vote of my chairmanship was to partner with the State of New York to accelerate the deployment of broadband to people upstate who've waited far too long for it. That's why my first two meetings involved conversations with consumer advocates and small providers on ways to promote digital empowerment. And that's why we are moving forward today with our own competitive bidding process to bring the highest-quality broadband services at the lowest cost to the taxpayer to those many Americans who've been waiting.

The Connect America Fund Phase II (CAF-II) auction will offer almost \$2 billion to bidders to connect the unserved over the next decade. CAF-II incorporates rules that my colleagues, Commissioners Clyburn and O'Rielly, and I hammered out last year to induce new entrants to participate—competitive entrants like wireless Internet service providers, small-town cable operators, and electric utilities. And today, we adopt auction weights designed to give every bidder—no matter what technology they use—a meaningful opportunity to compete for federal funds, while ensuring the best value for the American taxpayer. We also take steps to ensure that the citizens of every state that was promised new, better, faster broadband service by the FCC back in 2015 will see that funding come through to their state, either in this auction—which I hope takes place as soon as possible—or in the Remote Areas Fund that will follow on its heels.

I would like to thank the superb staff of the Wireline Competition Bureau and Office of Strategic Planning & Policy Analysis who worked so diligently to prepare this order in record time: Talmage Cox, Katie King, Evan Kwerel, Paul Lafontaine, Heidi Lankau, Wayne Leighton, Carol Matthey, Alex Minard, Kris Monteith, and Ryan Palmer. This is a major milestone in our efforts to shrink the digital divide, and it wouldn't have been reached without you.

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<sup>1</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 0951, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17674, para. 25 (2011).

**STATEMENT OF  
COMMISSIONER MIGNON CLYBURN**

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58.

Thanks to today's action, we take another step forward in this agency's ongoing effort to close the broadband deployment gap. By auctioning off almost two billion dollars in universal service support to bring broadband to unserved and underserved communities, we do so in a manner that is as fair as possible to potential bidders, and puts #ConsumersFirst.

This Order carefully calibrates how we craft our auction decisions to enable robust competition, and obtain the best bang for our universal service bucks. It ensures that carriers have certainty throughout the term of support, makes changes so that the higher bid tiers meet the needs of consumers, and commits to moving forward with the remote areas fund, an issue that Commissioner O'Rielly and I have been pushing for a long time.

It would have been my preference to include a Tribal bidding credit in the item, so that some of the most challenging places to serve, would be more enticing to carriers seeking to participate in this auction. As I witnessed during my #ConnectingCommunities tour, there are many unique challenges to bringing broadband to Tribal lands, and I lament this missed opportunity to bring these communities much-needed connectivity.

But I want to commend Chairman Pai for bringing forward two significant broadband infrastructure items, so early in his term. I applaud the Chairman's determination, for getting broadband deployed to the American people, and I enthusiastically join in those efforts. But as we all know, infrastructure deployment is only part of this challenge.

We are charged by Congress, "to make available . . . to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service." I submit, that no network is truly available, nor will any effort shrink the chronic digital canyons that exist, until broadband service is both affordable and accessible. This, indeed is the full promise of our nation's universal service regime, and we should never overlook the fact that the first principle of universal service that Congress chose to enshrine in section 254 of the Communications Act, is quality service at affordable rates.

While we rightly debate how to weigh and structure this auction, we are ever mindful that a truly successful auction will feature robust bidding by many different service providers, using various technologies. We are hopeful for successful buildout timelines, and ultimately more homes being connected, but what we call ill-afford to ignore, is the fact that about half of homes passed in the poorest areas of this nation, will more than likely not sign up for service—and not because they do not want it or need it. They will not sign up, largely because they cannot afford it. When our own data pegs the cost for basic broadband at over \$75 a month, it is easy to understand why many families forego service, particularly if they make less than \$20,000 a year.

We will never truly address, nor will we ever successfully close the digital and opportunities divide in this country by simply by supporting a single broadband provider in an area and hoping to co-opt the line from a disembodied voice from Field of Dreams, that "if you build it, they will come." In wealthy areas, deployment with very little else, makes broadband truly "available" to the people who live there. In less prosperous communities, mere deployment, is but a technology bridge to nowhere.

So I am hopeful that in our continued work to comprehensively address the digital divide, we will bring as much firepower to the affordability and accessibility gaps, as we are bringing to tackling longstanding deployment challenges.

Last, but certainly not least, I want to thank the Wireline Competition Bureau staff for all of their hard work on this item. You have been very busy this month, and I appreciate all the thoughtful, data-driven work that went into developing this item.

**STATEMENT OF COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58

The order makes several important decisions that should bring us closer to starting the Connect America Fund (CAF) Phase II auction. I support the order on reconsideration, as well as the decisions to refrain from adopting additional bidding credits or preferences in this auction, including for particular states or Tribal lands. At the same, I do have strong disagreements with other aspects of the order.

When the Commission adopted the framework for the CAF Phase II auction last year, it was the result of many months of hard work and discussion to ensure that the framework would set the stage for a vibrant and competitive auction free from political interference or technology biases. Even as I led this effort, I observed that setting weights for the four service tiers, a decision deferred until now, would be critical to preserving the balance between broadband performance and cost-effectiveness. I made clear my goal was to maximize participation in the auction, in order to drive down subsidies and expand coverage to as many consumers as possible. And I cautioned that if the weighting skews the auction results such that a few communities receive Gigabit service, but many more have no access at all, then the auction will have failed to deliver on our obligations of universal service.

We received a number of proposals in the record. Not surprisingly, the proposals tended to lean in one direction or another depending on the filer's preferred technology. After conferring with staff, it became apparent that we could not predict with any certainty the impact of any particular proposal, especially given the rushed timeframe. However, it did seem that proposals with a narrower range were more likely to garner bidders from all tiers, promoting a robust auction and maximizing coverage. Unfortunately, this order adopts a broader range than what had even been circulated on White Copy, and now appears designed to favor the highest speed tiers at the expense of more people getting broadband. I support the goal of providing consumers with high-quality broadband service, but as I've said before, we should buy fewer Lamborghinis and more Chevys. The order also places a penalty on latency that is unreasonably severe given prior Commission action to set a tough but achievable latency standard that was specifically selected to ensure sufficient quality for most purposes, including voice calls. Additionally, the particular weights adopted in this order were decided at the last moment with what appears to be little to no factual basis, with merely a plea for deference. We have not had the benefit of public comment on this particular structure, and could end up in a position where we must reconsider them, something I would be very open to considering and reviewing.

I am concerned that the tiers adopted today will have the effect of spending a disproportionate amount of funding on services that far exceed what we can afford, and concentrating that funding in relatively low-cost areas. The impact of tipping the scales is far from trivial. According to one filing, it could mean the difference in serving hundreds of thousands of additional locations. Another commenter presented maps that showed, in stark detail, the parts of the country that may go unserved by CAF Phase II if the tiers have the effect of excluding certain technologies. This thinly disguised end run around the important principle of technology neutrality, heaps a heavier load on the already underfunded and barely conceptualized Remote Areas Fund (RAF) – and after having spent nearly all of our high-cost budget.

Moreover, the order further constrains the RAF by deciding to set aside subsidies for certain states. This decision is the unfortunate, yet inevitable, outgrowth of the recent New York order that I warned would happen. I realize that consumers in areas served by price cap carriers that declined the Commission's prior offer of funding need to be served. At the same time, there are unserved high-cost and extremely high-cost areas in other states that have been awaiting the promise of the Remote Areas Fund just as long, and it is equally important to connect consumers in these areas as well. The Commission's objective is to ensure that our high-cost programs promote broadband deployment to

consumers throughout the Nation – including those in areas that were declined and places that never received offers in the first instance. Differentiating amongst unserved consumers depending on whether they are in a territory of a carrier that received an offer of support does not serve that objective. That is particularly true when it comes to the RAF, which is the final backstop for unserved communities. Promising set asides is a quick way to guarantee inefficiency, waste and higher costs. More importantly, this isn't what the representatives from those states were seeking, so it doesn't actually solve anything.

Therefore, I approve in part and dissent in part.