

**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
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Inter-carrier Compensation Regime	)	CC Docket No. 01-92

**REPORT AND ORDER, THIRD ORDER ON RECONSIDERATION, AND NOTICE OF  
PROPOSED RULEMAKING**

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

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**I. INTRODUCTION**

1. Universal service can—and must—play a critical role in helping to bridge the digital divide to ensure that rural America is not left behind as broadband services are deployed. The directive articulated by the Commission in 2011 remains as true today as it did then: “The universal service challenge of our time is to ensure that all Americans are served by networks that support high-speed Internet access.”<sup>1</sup> Though we have made progress for rural Americans living in areas served by our nation’s largest telecommunications companies, the rules governing smaller, community-based providers—rate-of-return carriers—appear to make it more difficult for these providers to serve rural America. As a result, approximately 11 percent of the housing units in areas served by rate-of-return carriers lack access to 10 Mbps downstream/1 Mbps upstream (10/1 Mbps) terrestrial fixed broadband service while 34 percent lack access to 25 Mbps downstream/3 Mbps upstream (25/3 Mbps).<sup>2</sup> It is time to

<sup>1</sup> See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17668, para. 5 (2011) (*USF/ICC Transformation Order and/or FNPRM*); *aff’d sub nom., In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*In re: FCC 11-161*).

<sup>2</sup> See Federal Communications Commission, *Broadband Deployment Data from FCC Form 477*, <https://www.fcc.gov/general/broadband-deployment-data-fcc-form-477> (published December 2016 FCC Form 477 data). FCC Form 477 fixed broadband deployment information is reported on a census block basis. Therefore, for purposes of these calculations, if a provider reports that it has deployed to a census block, we treat that census block as served.

close this gap and ensure that all of those living in rural America have the high-speed broadband they need to participate fully in the digital economy.

2. By improving access to modern communications services, we can help provide individuals living in rural America with the same opportunities that those in urban areas enjoy. Broadband access fosters employment and educational opportunities, stimulates innovations in health care and telemedicine and promotes connectivity among family and communities. And as important as these benefits are in America's cities, they can be even more important in America's more remote small towns, rural, and insular areas. Rural Americans deserve to reap the benefits of the internet and participate in the 21<sup>st</sup> century society—not run the risk of falling yet further behind.

3. Today, we take the next step in closing the digital divide through actions and proposals designed to stimulate broadband deployment in rural areas. To reach our objective, we must continue to reform our existing high-cost universal support programs. Building on earlier efforts to modernize high-cost universal service support, we seek to offer greater certainty and predictability to rate-of-return carriers and create incentives to bring broadband to the areas that need it most.

4. Specifically, in today's Report and Order we take several steps to increase broadband deployment in rural areas. First, to maximize available funding for broadband networks, we codify existing rules that protect the high-cost universal service support program from waste, fraud, and abuse by explicitly prohibiting the use of federal high-cost support for expenses that are not used for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended. We also adopt additional compliance obligations that will assist us in determining whether high-cost recipients comply with the requirement to spend high-cost funds only on eligible expenses. Additionally, for rate-of-return carriers, we adopt a presumption against recovery through interstate rates for specific types of expenses not used and useful in the ordinary course and identify other expenses that we presume are not used and useful unless customary for similarly situated companies. Second, in exchange for increased broadband deployment obligations, we offer additional high-cost support to those rate-of-return carriers that previously accepted model-based support. Next, to ensure stability in the contribution factor pending ongoing implementation of various high-cost reforms, we direct the Universal Service Administrative Company (USAC) to continue forecasting a uniform quarterly amount of high-cost demand pending further Commission action.

5. In the Third Order on Reconsideration, we resolve or clarify a number of issues raised in several petitions for reconsideration of the Commission's 2016 *Rate-of-Return Reform Order*.<sup>3</sup> Taken together, we expect that these actions will provide greater stability and certainty in the high-cost program and therefore spur additional broadband deployment to the areas that need it most.

6. Finally, in the Notice of Proposed Rulemaking (Notice), we consider further reforms to establish a budget that will allow for robust broadband deployment in rate-of-return areas while minimizing the burden that contributions to the Universal Service Fund (the Fund) place on ratepayers and to bring greater certainty and stability to rate-of-return high-cost funding, both in the near term and in the future. We also seek comment on additional reforms to increase broadband deployment, while promoting the efficient use of limited resources. For example, we seek comment on whether to fully fund existing A-CAM support recipients, afford a new opportunity for legacy providers to elect model-based support, and establish a minimum threshold of support for legacy providers that would not be subject to a budget cap. Lastly, we seek comment on other reforms, including, for example, exploring the need for caps on capital and operating expenses, using an auction process to address substantial competitive overlaps, and other options for simplifying the legacy rate-of-return mechanism.

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<sup>3</sup> See *Connect America Fund et al.*, WC Docket No. et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*Rate-of-Return Reform Order* or *Rate-of-Return Reform Further Notice*);

## II. BACKGROUND

7. Universal service is a foundational principle of the Communications Act of 1934 (Communications Act) and core to the mission of the Federal Communications Commission.<sup>4</sup> Section 254(b) of the Communications Act, as amended by the Telecommunications Act of 1996, directs the Commission to base policies for the preservation and advancement of universal service on several principles, including that “[q]uality services shall be available at just, reasonable, and affordable rates;” that “[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation;” that “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;” and that “there should be specific, predictable and sufficient . . . [support] mechanisms to preserve and advance universal service.”<sup>5</sup>

8. To fulfill the universal service mandate, the high-cost program provides support<sup>6</sup> to carriers that offer voice and broadband services in unserved and underserved areas of the country.<sup>7</sup> High-cost universal service support is designed to ensure that consumers in rural high-cost areas have access to modern communications capable of providing voice and broadband services, both fixed and mobile, at rates that are reasonably comparable to those in urban areas.<sup>8</sup> The high-cost support programs fulfill these goals by allowing eligible carriers who serve these areas to recover some of their costs of providing service.

9. In 2011, the Commission adopted the *USF/ICC Transformation Order*, which comprehensively reformed and modernized the high-cost program to support networks capable of providing both voice *and* broadband services.<sup>9</sup> Among other actions taken in the *USF/ICC Transformation Order*, the Commission adopted a new framework, known as the Connect America Fund (CAF), designed to achieve the purpose of the high-cost program. The Commission has worked to implement and refine the CAF with the adoption of various orders, further notices of proposed rulemakings, and public notices. Most notably for the actions we take today, in March 2016, the Commission adopted the *Rate-of-Return Reform Order*. The *Rate-of-Return Reform Order* made significant changes to support mechanisms for rate-of-return carriers. The most significant changes were providing rate-of-return carriers a voluntary path to model-based support and establishing for those carriers remaining on cost-based support a mechanism to receive support when a customer no longer subscribes to traditional regulated local exchange voice service (i.e. support for standalone broadband).

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<sup>4</sup> 47 U.S.C. § 151 (“For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination . . . a rapid, efficient, Nation-wide . . . communication service with adequate facilities at reasonable charges . . . there is created a commission to be known as the ‘Federal Communications Commission’”).

<sup>5</sup> 47 U.S.C. § 254(b).

<sup>6</sup> In this Report and Order, Third Order on Reconsideration, and Notice, we use the term “high-cost support” to encompass: legacy high-cost support, including high-cost loop support (HCLS); and Connect America Fund (CAF) support, including CAF broadband loop support (CAF BLS) (formerly interstate common line support (ICLS)). See 47 CFR §§ 51.917, 54.1301-1310; see also 47 U.S.C. § 254(b)(3).

<sup>7</sup> 47 CFR Part 54, subpart M.

<sup>8</sup> See 47 U.S.C. § 254(b)(3); *USF/ICC Transformation Order*, 26 FCC Rcd at 17672, para. 17; *Federal-State Board on Universal Service*, Order on Remand, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, Memorandum Opinion and Order, 18 FCC Rcd 22559, 22573, para. 25 (2003).

<sup>9</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17667, para. 1.

### III. REPORT AND ORDER

#### A. Eligible Expenses

10. In this Report and Order, we adopt reforms to ensure that high-cost universal service support provided to eligible telecommunications carriers (ETCs) is used only for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended pursuant to section 254(e) of the Act.<sup>10</sup> We also adopt reforms to ensure that the investments and expenses that rate-of-return carriers recover through interstate rates are reasonable pursuant to section 201(b) of the Act.<sup>11</sup> Our findings here do not prevent rate-of-return carriers from incurring any particular investment or expense, but simply clarify the extent to which investments and expenses may be recovered through federal high-cost support and interstate rates. The rules we adopt are prospective but the underlying obligations are preexisting and many of the rules we adopt today codify existing precedent. Our rules and the used and useful standard have long governed ETCs and rate-of-return carriers' behavior.<sup>12</sup> Nothing we do in this Report and Order is intended to undermine our precedent.

#### 1. High-Cost Support Recovery

11. *Background.*—Section 254(e) of the Telecommunications Act of 1996 specifies that “[a] carrier that receives . . . support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>13</sup> In considering the implementation of this provision in 1997, the Commission agreed with the “Joint Board’s recommendation that no additional guidelines are necessary to interpret section 254(e).”<sup>14</sup> The Commission thus declined to adopt “elaborate rules for compliance with section 254(e)” and instead decided to “rely upon state monitoring to ensure that universal service support is used as intended until competition develops.”<sup>15</sup> Accordingly, section 54.7(a) of the Commission’s rules simply mirrors the language in section 254(e).<sup>16</sup> The Commission did however state it would consider the need for additional action “if it [became] evident that federal monitoring is necessary to prevent the misuse of universal service support.”<sup>17</sup>

12. Only carriers designated as ETCs, by the relevant state public utility commission or, in limited circumstances, by the Commission, are eligible for high-cost support.<sup>18</sup> Section 254 of the Act

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<sup>10</sup> 47 U.S.C. § 254(e); see *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216-17, paras. 340-42 (seeking comment on proposal to prohibit certain expenses from recovery for ratemaking and universal service purposes).

<sup>11</sup> 47 U.S.C. § 201(b).

<sup>12</sup> See, e.g., 47 CFR § 54.7(a); *American Tele. & Telegraph Co.; The Associated Bell System Companies; Charges for Interstate Telephone Service*, AT&T Transmittal Nos. 10989, 11027, 11657, Docket No. 19129 (Phase II), Phase II Final Decision and Order, 64 FCC 2d 1, 38-39, paras. 111-15 (1977) (*AT&T Phase II Order*).

<sup>13</sup> 47 U.S.C. § 254(e).

<sup>14</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8877, para. 181 (1997) (*Universal Service Order First R&O*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432, 20482-83, paras. 95-96 (1999).

<sup>15</sup> *Universal Service Order*, 12 FCC Rcd at 8877, para. 181; 47 CFR § 54.314 (requiring states to certify annually “that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended”).

<sup>16</sup> 47 CFR § 54.7(a).

<sup>17</sup> *Universal Service Order*, 12 FCC Rcd at 8877, para. 181.

<sup>18</sup> 47 U.S.C. § 254(e); *id.* § 214(e)(2) (allocating primary responsibility for designating ETCs to each state commission); *id.* § 214(e)(6) (directing the Commission, upon request, to designate as an ETC “a common carrier

(continued....)

and section 54.7 of the Commission's rules make clear that a carrier that receives high-cost universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>19</sup> In addition, ETCs receiving high-cost support or states with ETCs receiving high-cost support must file an annual certification with USAC and the Commission stating that such support was used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>20</sup>

13. Our rules reflect the Commission's longstanding concern that carriers not receive more universal service support than necessary and that they have sufficient incentive to be prudent and efficient in their expenditures, including operating as well as capital expenses.<sup>21</sup> We have a duty to protect the public from waste, fraud, and abuse—a role that is especially important in the context of limited high-cost support, because overpayment to some carriers reduces the funding available to other providers.<sup>22</sup> In recent years, several waiver requests, audits, and enforcement actions have raised heightened concerns about the use of high-cost support for goods and services that are inconsistent with the requirements of section 254(e) of the Act and the Commission's rules to use such support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>23</sup>

14. In light of those concerns, the Commission released a public notice on October 19, 2015 reminding ETCs of their obligation to use high-cost support only for its intended purposes of maintaining

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providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission”).

<sup>19</sup> 47 CFR § 54.7(a); 47 U.S.C. § 254(e); see *USF/ICC Transformation Order*, 26 FCC Rcd at 17685, para. 64. By referring to “facilities” and “services” as distinct items for which federal universal service funds may be used, the Commission has interpreted section 254(e) as granting the Commission the flexibility not only to designate the types of telecommunications services for which support would be provided, but also to encourage the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) and any other universal service principle that the Commission may adopt under section 254(b)(7). *Id.* “Facilities” means “any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support.” *Id.*; 47 CFR § 54.201(e); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8813, para. 67 (1997) (*Universal Service First R&O*).

<sup>20</sup> 47 CFR § 54.314(a). ETCs not subject to state jurisdiction self-certify directly to the Commission and USAC. 47 CFR § 54.314(b).

<sup>21</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3124-26, paras. 95-104; *USF/ICC Transformation Order*, 26 FCC Rcd at 17741-47, paras. 210-26 (adopting “a framework for ensuring that companies do not receive more support than necessary to serve their communities” consisting of “benchmarks for prudent levels of capital and operating costs”); *id.* at 17747-48, paras. 227-233.

<sup>22</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3143-44, paras. 150-154 (discussing the “Budget Control Mechanism” and describing the reduction of support to ensure that in the aggregate disbursements of HCLS and CAF BLS do not exceed amounts budgeted for rate-of-return carriers); *USF/ICC Transformation Order*, 26 FCC Rcd at 17672, para. 18 (“We are today taking important steps to control costs and improve accountability in USF . . . [using] our predictive judgment as to how best to allocate limited resources at this time.”); see also *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3117, para. 80 (“[W]e adopt operating expense limits, capital expenditure allowances, and budgetary controls that will be applicable to the HCLS and CAF BLS mechanisms to ensure efficient use of our finite federal universal service resources.”).

<sup>23</sup> See *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, 31 FCC Rcd 12999 (2016) (*Sandwich Isles Order*); *Adak Eagle Enterprises, LLC and Windy City Cellular, LLC*; *Petitions for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, WT Docket No. 10-208, Order, 28 FCC Rcd 10194 (2013) (*Adak Order*); see also *Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., Albert S.N. Hee*, File No.: EB-IHD-15-00019603, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 12947, 12948, para. 3 n.7 (2016) (*Sandwich Isles NAL*) (confidential audit report incorporated by reference).

and extending communications service to rural, high-cost areas of the nation.<sup>24</sup> The *High-Cost Oct. 19, 2015 Public Notice* contained a non-exhaustive list of expenditures that cannot be recovered through the high-cost program because they are “not necessary to the provision of supported services.”<sup>25</sup> That list of ineligible expenses included: personal travel; entertainment; alcohol; food (including but not limited to meals to celebrate personal events); political contributions; charitable donations; scholarships; penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans or other payments; membership fees and dues in clubs and organizations; sponsorships of conferences or community events; gifts to employees; and personal expenses of employees, board members, family members of employees and board members, contractors or any other individuals affiliated with the ETC.<sup>26</sup> The Commission explained that, while ETCs are eligible to receive support to recover a portion of their costs relating to corporate operations,<sup>27</sup> those expenses must fall within the scope of the requirement of section 254(e) and the Commission’s rules that support be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>28</sup>

15. Several months later, the Commission released the *Rate-of-Return Reform Further Notice* initiating, among other things, a comprehensive review of the extent to which certain investments and expenses incurred by rate-of-return LECs may be included in the revenue requirement for ratemaking and the extent to which carriers may receive support for such expenses from the high-cost universal service support program.<sup>29</sup> The Commission observed that it had not comprehensively reviewed the continued reasonableness of its rules regarding permissible investments and expenses since the Telecommunications Act of 1996 was adopted, and market and regulatory conditions had changed substantially since that time.<sup>30</sup> The expansion of the broadband market has placed steady demands on the high-cost program and, coupled with a shrinking contribution base, the Commission found that it was more important than ever that these finite funds be used solely for their intended purposes.<sup>31</sup> In the *Rate-of-Return Reform Further Notice*, the Commission identified several additional categories of goods or services that were not previously explicitly prohibited from recovery through high-cost support that it proposed prohibiting going forward, including: artwork and other objects which possess aesthetic value; corporate aircraft, watercraft, and other motor vehicles designed for off-road use, except insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles travelling on roads; any vehicles for personal use; tangible property not logically related or necessary to the offering of voice or broadband services; childcare; cafeterias and dining facilities; and, housing allowances or other forms of mortgage or rent assistance for employees.<sup>32</sup> The Commission expressed concern that such expenses were not

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<sup>24</sup> See *All Universal Support High-Cost Support Recipients are Reminded that Support Must be Used for Its Intended Purpose*, WC Docket Nos. 10-90, 14-58, Public Notice, 30 FCC Rcd 11821 (2015) (*High-Cost Oct. 19, 2015 Public Notice*). The Commission explained that expenditure of legacy high-cost or Connect America support for any other purpose is misuse and may subject the recipient to recovery of funding, suspension of funding, action by the Enforcement Bureau pursuant to the Communications Act of 1934 or our rules, and/or prosecution under the False Claims Act. See 31 U.S.C. §§ 3729-3733.

<sup>25</sup> *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 11821-22. Corporate operations expenses are capped under the Commission’s high-cost support mechanism rules. See 47 CFR §§ 54.1308(a)(4)(ii)(A)-(C) (limiting corporate operating expense for purposes of HCLS); 47 CFR § 54.901(c)(1)-(2) (limiting corporate operating expense for purposes of CAF BLS (formerly ICLS)).

<sup>28</sup> *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11821-22.

<sup>29</sup> *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 339.

<sup>30</sup> *Id.* at 3212, para. 328.

<sup>31</sup> *Id.* at 3213, para. 329.

<sup>32</sup> *Id.* at 3217, para. 342.

necessary to the provision of supported services and sought comment on whether there was any reason that these expense categories should not be completely excluded from a carrier's high-cost support.<sup>33</sup>

16. *Discussion.*—Recent events by carriers involving large-scale abuses in the recovery of expenses that are unrelated to the provision of a universal service supported services give us cause to provide more specific rules for compliance with section 254(e).<sup>34</sup> We have a duty to the public to protect against waste, fraud, and abuse and ensure ETCs utilize finite universal service funds most effectively for their intended purpose.<sup>35</sup> Unrelated expenses detract from universal service goals. We find that section 254(e) provides that carriers can recover those expenses from high-cost support to the extent those expenses are used only for, directly related to, and incurred for the sole purpose of, the provision, maintenance, and upgrading of facilities and services for which the support is intended, i.e., supported voice and broadband.<sup>36</sup> The use by Congress of the word “only” to modify the description of the uses of universal service support indicates that such support must be used exclusively for providing, maintaining and upgrading of facilities and services, so that support is not used for purposes other than those “for which the support is intended.”<sup>37</sup> To the extent an expense is incurred in part for a recoverable business use and in part for a non-recoverable use, carriers may only recover from high-cost support that portion of expenses incurred for the provision, maintenance, and upgrading of facilities for which support is intended.<sup>38</sup>

17. Because the Commission establishes the contours of universal service programs under section 254, the statute vests it with the authority to determine the scope of expenditures “for which support is intended.”<sup>39</sup> Having reviewed the record, we now codify a simple, clear, and carefully defined,

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<sup>33</sup> *Id.* at 3217, para. 342-43.

<sup>34</sup> See generally *Sandwich Isles Order*, 31 FCC Rcd at 12999-13000, paras. 1-3; *Adak Order*, 28 FCC Rcd at 10201-2, paras. 22-24; see also *Sandwich Isles NAL*, 31 FCC Rcd at 12948-49, paras. 2-3.

<sup>35</sup> See *Blanca Telephone Company Seeking Relief from the June 22, 2016 Letter Issued by the Office of the Managing Director Demanding Repayment of a Universal Service Fund Debt Pursuant to the Debt Collection Improvement Act*, CC Docket No. 96-45, Memorandum Opinion and Order and Order on Reconsideration, FCC 17-162, para. 10 (rel. Dec. 8, 2017) (*Blanca Order*) (noting Commission authority to protect against waste, fraud and abuse); *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, para. 11 (universal service intercarrier compensation reform process guided by principles of fiscal responsibility and accountability, rooted in Communications Act); see also *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) (*Alenco*) (“The agency’s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service”); see Letter from Michael R. Romano, Senior Vice President, NTCA, and Derrick B. Owens, Vice President, WTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Dec. 20, 2017) (NTCA-WTA Dec. 20, 2017 Letter) (recognizing “that the consideration of providing additional budget resources to overcome the persistent and patent insufficiency of USF support would be buttressed by a rule that helps to further ensure that such resources go toward the business of deploying and delivering voice and broadband”).

<sup>36</sup> See *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822 (concluding that “expenditures that are not necessary to the provision of supported services therefore may not be recovered through universal service support”).

<sup>37</sup> See, e.g., *id.* at 11822 (concluding that “expenditures that are not necessary to the provision of supported services therefore may not be recovered through universal service support”). The legislative history provides little additional insight to help guide our interpretation, other than to clarify that carriers must use support “in the area for which the support is received.” See S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 132 (1996) (emphasis added). See also 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>38</sup> This is not only consistent with our interpretation of section 254(e), but also with the requirements of section 254(k), which provides “that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.” 47 U.S.C. § 254(k).

<sup>39</sup> See *In re: FCC 11-161*, 753 F.3d at 1046-47 (emphasizing that under section 254(e) of the Act, Congress intended to delegate to the Commission the task “to determine and specify precisely how USF funds may or must be used”); *Rural Cellular Assn. v. FCC*, 588 F.3d 1095, 1100 (D.C. Cir. 2009) (*Rural Cellular*) (finding that the Commission

(continued....)



non-exclusive, list of expense categories that are precluded from recovery via the high-cost programs of the Fund because we find they are not used “for the provision, maintenance and upgrading of facilities and services for which the support is intended.”<sup>40</sup> In codifying a list of ineligible expenses we incorporate, with some modifications, expense categories the Commission previously identified as ineligible for high-cost support in the *High-Cost Oct. 19, 2015 Public Notice* and in the *Rate-of-Return Reform Further Notice*,<sup>41</sup> and we provide guidance going forward on the eligibility of expenses on which the Commission sought comment in the *Rate-of-Return Reform Further Notice*.<sup>42</sup> We recognize that our approach differs from that proposed by the rural associations;<sup>43</sup> however, we find that our approach is more consistent with the statutory requirements that high-cost support be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>44</sup> To the extent we adopt new prohibitions on expenses that may be recovered from high-cost support, our rules apply on a prospective basis.<sup>45</sup>

18. We organize the types of goods and services as ineligible for support into three broad expense categories—personal expenses, expenses unrelated to operations, and corporate luxury goods—

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“enjoys broad discretion” when balancing a number of statutory objectives under section 254); *Alenco*, 201 F.3d at 620-21 (“The agency’s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service”); *id.* at 615 (finding that while “the FCC is required to obey statutory commands, the guiding principles reflect congressional intent to delegate difficult policy choices to the Commission’s discretion.”); *see also Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C. Cir. 1999) (“When an agency must balance a number of potentially conflicting [statutory] objectives... judicial review is limited to determining whether the agency’s decision reasonably advances at least one of those objectives and its decision making process was regular.”)

<sup>40</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7; *see* NTCA-WTA Dec. 20, 2017 Letter at 1 (supporting “clearly defined rules with respect to how expenses will or will not be supported as a prospective matter within” the USF budget); *id.*, Attach. (proposing rules codifying expenses ineligible for high-cost recovery); Letter from Michael R. Romano, Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (filed May 9, 2017) (NTCA May 9, 2017 Letter) (advocating for the Commission to “specify a simple, clear, and carefully defined list of expenses”); *id.*, Attach. (proposing rules codifying expenses ineligible for high-cost recovery that were revised by the NTCA-WTA Dec. 20, 2017 Letter).

<sup>41</sup> *See High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340 & n.819.

<sup>42</sup> *See Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3217, para. 342. We find that expenses on this list are wholly unrelated to the provision, maintenance, and upgrading of facilities and services for which support is intended. Therefore, support for those expenses cannot be necessary for, or used exclusively for, the provision, maintenance, and upgrading of those facilities and services.

<sup>43</sup> *See* NTCA-WTA Dec. 20, 2017 Letter, Attach. The proposal submitted by the rural associations contains no analysis of how its proposed list of eligible expenses comports with the statutory standard. *See id.*

<sup>44</sup> *See* 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>45</sup> For example, some new prohibited expenses that are prospective only include: artwork and other objects which possess aesthetic value; corporate aircraft, watercraft, and other motor vehicles designed for off-road use, except insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles travelling on roads; childcare; cafeterias and dining facilities; and housing allowances or other forms of mortgage or rent assistance for employees. *See* Appx. A; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3217, para. 342; *see also* NECA Comments at 5; WTA Comments at 4; ITTA Comments at 2; ERTA Comments at 3; NTCA-WTA Dec. 20, 2017 Letter, Attach. (proposing an amendment to section 54.303 of the Commission’s rules that would apply prospectively). By contrast, the Commission has previously stipulated that certain expenses may not be recovered through universal service support, including “personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the ETC.” *See Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340 & n.819; *High-Cost Oct. 19, 2015 Public Notice*, 31 FCC Rcd at 11822.

and within each broad category specify certain types of goods and services not eligible for support. We caution that this list is based on the record before us. As specified in our revised rules, this list is not a comprehensive list of expenses ineligible for high-cost support. This list provides a codified bright-line prohibition on seeking high-cost support for some types of expenses. However, we remind carriers that they are also prohibited from seeking support for *any* expenses that are not used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>46</sup> We intend to remain vigilant in protecting the Fund from waste, fraud, and abuse.

19. *Personal Expenses.*—Initially, we codify the existing prohibition on recovery from the high-cost program for personal expenses of employees, board members, family members of employees and board members, contractors, or any other individuals affiliated with the ETC, including but not limited to personal expenses for personal travel, personal vehicles, housing, such as rent, mortgages, or housing allowances, childcare, employee gifts, and entertainment-related expenses including food and beverage, regardless of whether such expenses are paid directly by the individual or indirectly by the carrier in the form of allowances or gifts.<sup>47</sup> Personal expenses are clearly not used for the provision of supported services and thus may not be recovered through high-cost support.<sup>48</sup> Furthermore, we caution recipients of high-cost support that recovering these types of expenses from high-cost support may constitute outright fraud, waste, and abuse on the Fund, subjecting employees, executives, and board members to personal civil and criminal liability.<sup>49</sup>

20. The Commission already explicitly excludes personal travel expenses from high-cost support recovery.<sup>50</sup> Personal travel expenses include airfare, car rentals, gas, lodging, and meals for personal use. Commenters overwhelmingly agree that personal travel is unrelated to the provision of a supported service and may not be recovered through high-cost support.<sup>51</sup> In response to concerns raised by commenters, we find that, in contrast to personal travel expenses, reasonable work-related travel expenses are recoverable to the extent they are used for the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended.<sup>52</sup> For example, if an ETC’s technician

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<sup>46</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>47</sup> *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822; see *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216-17, paras. 340-42.

<sup>48</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7; see Comments of Alexicon Telecommunications Consulting, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 6 (May 12, 2016) (Alexicon Comments); Comments of NTCA-The Rural Broadband Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 11 (May 12, 2016) (NTCA Comments); Comments of the National Exchange Carrier Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 3 (May 12, 2016) (NECA Comments); Comments of TCA, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 3 (May 12, 2016) (TCA Comments); Comments of Montana Telecommunications Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 6 (May 12, 2016) (MTA Comments); Comments of Sacred Wind Communications, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 3 (May 12, 2016) (SWC Comments); Comments of WTA – Advocates for Rural Broadband, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92 at 5 (May 12, 2016) (WTA Comments).

<sup>49</sup> See 47 U.S.C. § 220(d); 18 U.S.C. § 1001.

<sup>50</sup> *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822; see *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340.

<sup>51</sup> NTCA Comments at 11; Reply Comments of NTCA-The Rural Broadband Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 6 (June 13, 2016) (NTCA Reply); Alexicon Comments at 6-7; TCA Comments at 3; see WTA Comments at 5.

<sup>52</sup> See MTA Comments at 6 (distinguishing between personal travel which “arguably is not a recoverable expense” and “professional travel” which is an “essential function of a successful enterprise with regional and national interests”); NTCA Comments at 14 (“it is a common and accepted practice for firms of all kinds to reimburse reasonable food and entertainment expenses associated with the conduct of company business, including client or vendor meetings or attendance at board meetings.”) (citing Publication 535 (2016), Business Expenses, IRS,

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travels to repair a supported facility and such travel requires overnight accommodation, the ETC may recover that employee's reasonable hotel costs.

21. The Commission already explicitly excludes expenses for personal vehicles and housing for personal use from high-cost support recovery.<sup>53</sup> Commenters supported the continued exclusion.<sup>54</sup> For example, an ETC is prohibited from recovering from high-cost support the purchase of a vehicle and home for personal use. To the extent a vehicle is used for both legitimate business purposes and non-business purposes, an ETC may only recover from high-cost support that portion of expenses incurred in connection with the provision, maintenance, and upgrading of supported services and facilities for which high-cost support is intended.

22. Subject to the very narrow exception we describe below, the prohibition concerning housing for personal use precludes ETCs from using high-cost support to provide housing allowances for employees.<sup>55</sup> Some commenters claim that housing allowances are necessary to attract qualified employees and may be essential if affordable housing is not available in rural areas.<sup>56</sup> Another commenter asserts that housing allowances are not a common operating expenditure.<sup>57</sup> Regardless of whether such allowances are beneficial or commonly provided, they are not generally used for the provision, maintenance, and upgrading of facilities and services. Expenses for employee housing allowances are no different than other personal expenses for housing, which are disallowed,<sup>58</sup> and we codify this prohibition.

23. However, we recognize that it may be appropriate to seek high-cost support to recover the cost of providing temporary or seasonal lodging for employees providing service in remote areas with rugged terrain and extreme weather conditions where no other lodging is available.<sup>59</sup> We view this situation as analogous to *per diem* travel expenses for lodging, which can be a recoverable operating

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[https://www.irs.gov/publications/p535/ch11.html#en\\_US\\_2015\\_publink1000209148](https://www.irs.gov/publications/p535/ch11.html#en_US_2015_publink1000209148) (last visited Jan. 16, 2018) (IRS Pub. 535)); SWC Comments at 3; Comments of the United States Telecom Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 2 (May 12, 2016) (USTelecom Comments); *see also* 48 CFR § 31.205-46 (Federal *per diem* travel costs for transportation, lodging, means and incidental expenses).

<sup>53</sup> *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822; *see Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340.

<sup>54</sup> *See* WTA Comments at 8; *see also* Alexicon Comments at 6; NTCA Comments at 11; NECA Comments at 3; TCA Comments at 3; *see* Alexicon Comments at 6; MTA Comments at 6; SWC Comments at 3; WTA Comments at 5.

<sup>55</sup> *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3217, para. 342.

<sup>56</sup> MTA Comments at 8 (citing an example where no affordable housing exists in a resort town in Montana); Alexicon Comments at 7-8 (asserting that “housing allowances” are a cost involved in attracting and retaining qualified employees).

<sup>57</sup> WTA Comments at 8-9. WTA argues also that in some circumstances housing allowances would have an effective business purpose and could save money for the carrier and the Universal Service Fund. *Id.*

<sup>58</sup> *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822; *see supra* paras 19-22 (discussing personal expenses).

<sup>59</sup> *See* MTA Comments at 8 (citing an example of an area where there is no affordable housing by a resort in Montana so the company provides housing saving “environmental and travel costs”); WTA Comments at 9 (arguing that a carrier may need to send an employee to a remote part of its service area and a housing allowance may actually reduce operating expenses); Reply Comments of Alaska Telephone Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 5 (June 13, 2016) (discussing how in many rural areas there are no roads between sites in the harshest Alaskan environment) (ATA Reply).

expense when such travel meets the statutory test for recoverable expenses.<sup>60</sup> Reasonable temporary or seasonal lodging may only be recovered if used for the provision, maintenance, and upgrading of services and facilities for which high-cost support is intended.<sup>61</sup> Housing allowances outside of this very narrow exception are prohibited and are excluded from high-cost support.

24. Childcare expenses are not recoverable from high-cost support. Commenters argue that childcare is important to “attract and retain qualified employees.”<sup>62</sup> Another commenter asserts that the “vast majority” of rural incumbent LECs are “too small to afford childcare” which they do not provide.<sup>63</sup> Although the provision of childcare may be desirable and beneficial, such expenses are not used only for the provision, maintenance, and upgrading of supported facilities and services. Accordingly, such expenses are excluded from high-cost support.

25. It is undisputed that gifts to employees may not be recovered through high-cost support.<sup>64</sup> Gifts to employees are unrelated to the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended, and therefore are excluded from high-cost support.<sup>65</sup>

26. Entertainment and food and beverage expenses, including but not limited to expenses incurred for meals to celebrate personal events, such as weddings, births, or retirements, are explicitly not recoverable through high-cost support.<sup>66</sup> Some commenters agree that entertainment expenses in particular have not been recoverable in the past.<sup>67</sup> Other commenters disagree, claiming that recovering entertainment expenses incurred for “client or vendor meetings, or attendance at board meetings” is a “common and accepted practice.”<sup>68</sup> Some commenters maintain that they should be able to include food and beverage and entertainment expenses related to annual meetings, employee recognition, parties or

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<sup>60</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7. Thus, if, the housing allowance is for employees in remote, rugged, extreme weather climate areas, such as Alaska, where seasonal employees may be necessary to service a network, then the expenses may be related to the “provision, maintenance, and upgrading of facilities and services for which high-cost support is provided,” and the expense may be recovered from high-cost support.

<sup>61</sup> See 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>62</sup> See Alexicon Comments at 7 (“By providing for or contributing towards childcare, RLECs are better able to attract and retain qualified employees, which may be scarce in many areas.”); see also MTA Comments at 8-9.

<sup>63</sup> See WTA Comments at 8.

<sup>64</sup> NTCA Comments at 15 (acknowledging that “[q]uite simply, it would seem reasonable to exclude actual gifts from recovery via regulated rates or mechanisms”). But see MTA Comments at 8 (on the topic of gifts, states that “keeping productive employees is an absolutely essential—indeed the most essential—investment a company can make.”).

<sup>65</sup> See 47 U.S.C. § 254(e); 47 CFR § 54.7. The Commission has previously acknowledged that costs associated with gifts are problematic. One example is where a company spent significant resources for the purchase of crabs for company incentives. *Adak Order*, 28 FCC Rcd at 10202-03, n.79. Although by our action today gifts to employees are no longer recoverable from high-cost support, we acknowledge that this limitation does not extend to “cash or in-kind bonuses that a company treats as taxable compensation.” See NTCA Comments at 15-16. But see *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3218, para. 345 (seeking comment on how to address potential concerns regarding expenses associated with “comparatively high compensation portfolios” for “executives, those with close relationships to those executives, and a carrier’s other employees and contractors”).

<sup>66</sup> *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822; see *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340. Currently under section 32.6720(j), “food services (e.g., cafeterias, lunch rooms and vending facilities)” are recoverable in the revenue requirement as “general administrative services.” 47 CFR § 32.6720(j). We discuss below food services, as opposed to food, of the type captured by Account 6720.

<sup>67</sup> See Alexicon Comments at 6-7; USTelecom Comments at 2.

<sup>68</sup> NTCA Comments at 14.

picnics because such events build morale and improve service quality.<sup>69</sup> The question is whether these expenses are used only for the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended—not whether they are beneficial, desirable or common practice. Because these expenses do not meet our interpretation of what the statutory standard requires, we exclude them from high-cost support. As noted above, we acknowledge that meals provided during business-related travel may qualify as a reasonable *per diem* travel expense recoverable from high-cost support consistent with our interpretation of section 254(e).<sup>70</sup>

27. Finally, some commenters misread section 32.6720(j) of our rules as permitting universal service recovery for “food services (e.g., cafeterias, lunch rooms and vending facilities).”<sup>71</sup> While cafeterias and dining facilities should be recorded in corporate operations accounts (Account 6720), it does not follow that these expenses can be recovered from high-cost support.<sup>72</sup> Commenters argue that such costs are “insignificant and immaterial” and “offset by increased efficiencies.”<sup>73</sup> At the same time, some commenters acknowledge that the vast majority of rate-of-return carriers do not provide cafeterias and dining facilities.<sup>74</sup> Most rate-of-return carriers are able to serve their customers without having cafeterias and dining facilities for their employees precisely because these expenses are not solely related to the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>75</sup> Thus, consistent with our interpretation of section 254(e), ETCs may not recover from high-cost support expenses for food services and dining facilities, including cafeterias, lunch rooms, and vending facilities.

28. *Expenses Unrelated To Operations.*—We next codify the existing prohibitions on recovering support for expenses unrelated to operations—including political contributions, charitable donations, scholarships, membership fees and dues in clubs and organizations, sponsorships of conferences or community events, and penalties or fines for statutory or regulatory violations, penalties or fees for late payments on debt, loans, or other payments—from high-cost support.<sup>76</sup> ETCs calculate high-cost universal support, including high cost loop support (HCLS) and Connect America Fund Broadband Loop Support (CAF BLS) (formerly interstate common line support (ICLS)), based on their eligible

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<sup>69</sup> See WTA Comments at 10 (arguing that “parties and picnics help build morale and team spirit that improve service quality and reduce employee turnover” that are infrequent and do not constitute “a material or perceptible portion of high-cost disbursements”); see MTA Comments at 8 (arguing that “annual meetings or employee recognition for high performance [*sic*] valuable investments in human capital”).

<sup>70</sup> See *supra* 23; NTCA Comments at 14; SWC Comments at 3; USTelecom Comments at 2; see also, e.g., IRS Pub. 535; 48 CFR § 31.205-46.

<sup>71</sup> NTCA Comments at 12 (quoting 47 CFR § 32.6720(j)); see NECA Comments at 4 (citing 47 CFR § 32.6720(j)). Section 32.6720 (Account 6720) is an account for recording corporate operating expenses incurred in the provision of services which is used to calculate universal service support. See 47 CFR §§ 32.5999(e); 32.6720(j); 69.2(e); see also 47 CFR § 54.303(a)(2) (Eligible operating expenses for purposes of calculating universal service support are the sum of various expenses including “Limited Corporate Operations Expense”).

<sup>72</sup> See 47 CFR § 32.6720(j).

<sup>73</sup> WTA Comments at 8-9.

<sup>74</sup> *Id.*

<sup>75</sup> 47 CFR 32.6720(j); see NTCA Comments at 12 (quoting 47 CFR § 32.6720(j)); see NECA Comments at 4 (citing 47 CFR § 32.6720(j)). Carriers may continue to provide building space for such food services such as cafeterias, lunch rooms, and break rooms and book them as a building expense (Account 6121). See 47 CFR § 32.6121. Carriers may provide food services to their employees but they may not recover these expenses from universal service support. To illustrate, a carrier that maintains a cafeteria in its office to provide free meals to employees may record this expense as a building expense, but the costs of the cafeteria building space and meals provided in that space may not be recovered from universal service support.

<sup>76</sup> See *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340.

capital investment and operating expenses pursuant to section 54.303.<sup>77</sup> Expenses unrelated to operations, however, are not currently included in these high-cost support calculations.<sup>78</sup> Instead, under our current rules, “nonoperating expenses”—including political contributions, contributions for charitable, social, or community welfare purposes, membership fees and dues in social, service and recreational or athletic clubs and organizations, and penalties and fines on account of violations of statutes—are recorded in Account 7300, presumed excluded from the costs of service in setting rates, and not included in high-cost support calculations.<sup>79</sup> Expenses unrelated to operations have historically not been recoverable from high-cost support because by definition these expenses are not operational in nature and are ancillary to core business objectives. Expenses must fall within the scope of the statutory requirement that support be used “only for the provision, maintenance, and upgrading of facilities and services for which support is intended.”<sup>80</sup> Below we find that various expenses unrelated to operations, including various Account 7300 nonoperating expenses, do not satisfy this standard and, thus, may not be recovered from high-cost support.

29. Political contributions are expenses unrelated to operations that may not be recovered from high-cost support.<sup>81</sup> The record supports the continued exclusion of political contributions from recovery through high-cost support.<sup>82</sup> No commenter opposed this. Political contributions are not used only for the provision, maintenance, and upgrading of facilities and services for which support is intended.<sup>83</sup> ETCs are still, of course, free to make political contributions to the extent permitted by other laws, but they cannot recover those expenses from high-cost support.

30. In a related vein, the National Exchange Carrier Association (NECA) sought clarification on the extent to which the costs of “[m]aintaining relations with government, regulators, other companies and the general public” such as “performing public relations and non-product-related corporate image advertising activities” (Account 6720) should be included in universal service data submissions.<sup>84</sup> At the outset, no commenter has provided any persuasive basis for determining how non-product-related corporate image advertising expenses are used for the provision, maintenance, and upgrading of supported services and facilities. Accordingly, corporate image advertising expenses may not be recovered from high-cost support.<sup>85</sup> By contrast, expenses incurred to meet state, local, or federal

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<sup>77</sup> 47 CFR § 54.303(a)(2).

<sup>78</sup> See 47 CFR § 54.303; see 47 CFR § 32.7300 (Part 32 nonoperating income and expense account).

<sup>79</sup> See 47 CFR §§ 54.303; 32.7300(h).

<sup>80</sup> 47 U.S.C. § 254(e); see 47 CFR § 54.7.

<sup>81</sup> See 47 CFR § 54.303(a) (allowing high-cost recovery only for operating expenses); see also 47 CFR § 32.7300(h)(1); see TCA Comments at 3 (political contributions “already excluded from recovery through high-cost support...calculations under existing rules”).

<sup>82</sup> See NTCA Comments at 11 (arguing that it is “clear” political contributions “cannot be recovered via High-Cost USF”); NTCA Reply at 6 (same); TCA comments at 3 (arguing that political contributions are “already excluded from recovery through high-cost support”); NECA Comments at 3; see USTelecom Comments at 2; see also SWC Comments at 3; WTA Comments at 5.

<sup>83</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>84</sup> NECA Comments at 3 (citing 47 CFR § 32.6720(d)); see 47 CFR §§ 32.6720(d) (account for the costs of maintaining relations with government, regulators, other companies and the general public). We emphasize that “maintaining relations with government, regulators, other companies and the general public” (Account 6720) is distinguishable from “government relations” lobbying activities (Account 7300) which are excluded from high-cost recovery. See 47 CFR § 32.7300(h)(1).

<sup>85</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7; see Comments of Kansas Corporation Commission, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 2 (May 12, 2016) (KCC Comments) (In addition to the types of expenses identified by the Commission that are “not necessary or efficient for the provision of regulated telecommunications services and should not...be subsidized by the general public through universal service support mechanisms,” commenter’s

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regulatory requirements or obligations to provide supported services including preparing tariff and service cost filings and obtaining plant construction permits are allowable under section 254(e) to the extent that they are a precondition to providing supported services. Additionally, contracting expenses (excluding sales contracts) such as negotiating pole attachment rights-of-way and interconnection agreements that are a precondition to providing supported service are recoverable from the high-cost program consistent with the Act.<sup>86</sup>

31. Charitable donations and scholarships are expenses unrelated to operations that may not be recovered from high-cost support.<sup>87</sup> We recognize the benefits charitable donations provide to the community, as raised by multiple commenters.<sup>88</sup> However, charitable donations are unrelated to the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended.<sup>89</sup>

32. Membership fees and dues in clubs and organizations, including social, service, and recreational or athletic clubs and organizations, as well as trade associations and organizations that provide professional or trade certifications such as state bar associations, are expenses unrelated to

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“experience has shown attempted inclusion of expenses for...corporate image advertising”). “Non-product-related corporate image advertising activities” are nonproduct-related advertising expenses, distinguishable from product advertising (Account 6613), historically recorded in an “external relation” account intended to “foster public awareness of a carrier’s name, reputation or activities.” *See Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies et al.*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1323-24, para. 201 & n.321 (1987); 47 CFR § 32.6613 (excluding nonproduct-related advertising, such as corporate image); *see also id.* § 32.6720(d)(3). Section 214(e)(1)(B) of the Act provides that ETCs shall “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B). The Commission has previously held that because section 214(e)(1)(B) advertising costs were required costs providing universal-service supported services, the expenses recorded in Account 6613 (product advertising) were required to develop inputs for the universal service high-cost proxy model. *See 2000 Biennial Regulatory Review et al.*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301 and 80-286, 16 FCC Rcd 19911, 19927-28, para. 40 (2001). Product advertising (Account 6613), however, excludes nonproduct-related advertising, such as corporate image. *See* 47 CFR § 32.6113.

<sup>86</sup> *See* 47 CFR § 32.6720(d)(2), (4).

<sup>87</sup> *See* 47 CFR § 54.303(a) (allowing high-cost recovery only for operating expenses); 47 CFR § 32.7300(h)(2); *see also* NTCA Comments at 3. NTCA argues that in the *1987 Rate Base Order* the Commission “expressly denied arguments that such [charitable] contributions should not be included in regulated accounts that are ultimately used to establish rates and USF cost recovery.” *See* NTCA Comments at 12 (citing *Amendment of Part 65 of the Commission’s Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers*, CC Docket No. 86-497, Report and Order, 2 FCC Rcd 269, 280, para. 77 (1987) (*1987 Rate Base Order*)); *see also* NTCA Reply at 6; NECA Comments at 3-4. The *1987 Rate Base Order*, however, predates the Fund which was established with the Telecommunications Act of 1996. Thus, in the *1987 Rate Base Order*, the Commission was not concerned with preserving finite universal service funding as we are today.

<sup>88</sup> *See* TCA comments at 5 (“Charitable donations increase company awareness in the same way as advertising expenditures”); MTA comments at 7 (“rural telecom providers’ contribution to the communities they serve is a two-way investment. Supporting the community supports business and broadband adoption”); WTA comments at 7 (charitable contributions “create goodwill and positive name recognition that enhance the ability of an RLEC to sell its services to both long-standing and new residents and businesses within its service area”); WTA comments at 7 (“charitable contributions constitute an essential part of serving a community”); Alexicon Comments at 6-7 (claiming charitable donations are often vital in maintaining good corporate citizenship in RLEC serving areas); TCA Comments at 5 (“Charitable donations increase company awareness in the same way as advertising expenditures”).

<sup>89</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17685, para. 64.

operations excluded from high-cost support.<sup>90</sup> Commenters agree that these expenses related to social and recreational clubs and organizations are already excluded from high-cost support recovery.<sup>91</sup> But those same and other commenters also argue that membership fees and dues in trade associations, chambers of commerce, state bar associations and professional certifications for specialized employees should be recoverable.<sup>92</sup> We recognize the educational and training benefits that trade associations provide and that membership in chambers of commerce may help stimulate business.<sup>93</sup> However, as other commenters acknowledge, a function of many of these organizations is advocacy on behalf of their members for the purpose of influencing public policy<sup>94</sup> which is not used for the provision, maintenance, and upgrading of facilities and services for which support is intended.<sup>95</sup> Just as ETCs may not recover lobbying expenses under our rules, similarly, they may not recover membership fees in organizations that engage in lobbying.<sup>96</sup> Further, professional affiliations or certifications such as state bar associations, accounting associations, or other professional groups may facilitate general corporate functions but are not used only for the provision of supported facilities and services.<sup>97</sup>

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<sup>90</sup> 47 CFR § 32.7300(h)(3); see *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340.

<sup>91</sup> See, e.g., NTCA Comments at 14-15 (asserting that there is “no reasonable argument to allow recovery of the costs of membership in country clubs and social clubs”); WTA Comments at 13 (arguing that “unless a carrier can show that the predominant purpose and benefit of membership in a club of this nature [country clubs, golf courses, tennis clubs and swimming pools] was to advance its telecommunications business interests, membership fees in clubs of this nature should not be permissible expenses”), NTCA-WTA Dec. 20, 2017 Letter, Attach. (proposing to exclude from high-cost support recovery “membership fees and dues in clubs and organizations (e.g. social or athletic clubs)”).

<sup>92</sup> Alexicon Comments at 6-7; TCA Comments at 5 (identifying membership in local chambers of commerce as vital to understanding the needs of local rural LEC customers); NTCA Comments at 14-15 (arguing that professional and trade association memberships can be legitimate business expenses, such as employee memberships in state bar associations, professional affiliations or certifications) (citing *1987 Rate Base Order*); SWC Comments at 3 (arguing that trade associations improve the quality of service to consumers); WTA Comments at 12; MTA Comments at 7 (asserting that membership in certain associations and organizations is an “important element in modern American corporate management”); NTCA-WTA Dec. 20, 2017 Letter, Attach. (proposing to exclude from high-cost support recovery “membership fees and dues in clubs and organizations (e.g. social or athletic clubs), but not including organizations that provide education, training, or other services associated with the provision of communications services or otherwise associated with the operation of a business, such as legal bar associations or accounting certifications”). In its comments, NTCA argues that “fees and dues for professional and trade organizations are ‘correctly charged’” to regulated accounts. NTCA Comments at 15, n.38 (citing *1987 Rate Base Order*). However, the order on which NTCA relies, *1987 Rate Base Order*, is not about the use of high-cost support and indeed predates the Universal Service Fund created by the Telecommunications Act of 1996, and thus was not concerned with preserving and prioritizing finite universal service resources as we are today. See *id.*

<sup>93</sup> See WTA Comments at 12 (arguing that memberships in trade associations and chambers of commerce help make companies aware of new regulations, industry trends and community interests, which help increase revenues or decrease expenses in a manner that will ultimately reduce reliance on high-cost support).

<sup>94</sup> See MTA Comments at 7 (“Association membership leverages members’ interests and enables like-minded individuals and companies efficiently and effectively to petition our government and to gather and analyze information and policies that affect their operations.”).

<sup>95</sup> See 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>96</sup> 47 CFR § 32.7300(h)(1) (lobbying costs are booked as nonoperating expenses and presumed to be excluded from the costs of service in setting rates and high-cost support); see 47 CFR § 54.303(a) (allowing high-cost recovery only for operating expenses).

<sup>97</sup> See 47 U.S.C. § 254(e); 47 CFR § 54.7.



33. No commenter opposed the prohibition on using high-cost support to sponsor conferences or community events.<sup>98</sup> As the Commission has explained, sponsorships may be related to community interests but are not used for the provision, maintenance, and upgrading of facilities and services for which support is intended.<sup>99</sup> We continue to recognize that sponsorships of conferences or community events may benefit the community and the ETC,<sup>100</sup> but such expenses do not satisfy the statutory standard for recovery.<sup>101</sup>

34. Costs incurred as penalties or fines on account of violations of statutes, including judgments and payments in settlement of civil and criminal suits alleging antitrust violations, are excluded from high-cost support.<sup>102</sup> Such expenses are not used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>103</sup> Commenters did not take issue with this exclusion.<sup>104</sup>

35. Similar to penalties or fines for statutory or regulatory violations, costs incurred as penalties or fees for any late payments on debts, loans, or other payments are not used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>105</sup> Indeed, commenters recognize that such expenses “have typically not been recoverable in the past.”<sup>106</sup> Penalties or fees for late payments on debt, loans, or other payments arguably are costs of doing business and mistakes will happen, but the costs of these mistakes and inefficiencies should not be borne by universal service contributors.

36. *Corporate Luxury Goods.*—We next codify the prohibition on recovery from the high-cost program of expenses for corporate luxury goods, including artwork and other objects which possess aesthetic value, and corporate aircraft, watercraft, and other vehicles, with limited exception discussed below and codify the existing prohibitions on using high-cost support for tangible luxury goods, including consumer electronics for personal use, and tangible property used for entertainment purposes.<sup>107</sup> None of these goods is used only for the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended.<sup>108</sup> Likewise, kitchen appliances are unrecoverable with a limited exception noted below.

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<sup>98</sup> *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340; *see* KCC Comments at 2.

<sup>99</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>100</sup> MTA Comments at 7 (stating that sponsorships are an investment in the community, which is also an investment in the company).

<sup>101</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>102</sup> 47 CFR §§ 32.7300(h)(4); 54.303(a)(1)-(2) (high-cost support calculated based on operating expenses, not nonoperating expenses).

<sup>103</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>104</sup> *See* NTCA Comments at 11; NTCA Reply at 6; USTelecom Comments at 2; NECA Comments at 3; WTA Comments at 5-6; TCA Comments at 3.

<sup>105</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7.

<sup>106</sup> Alexicon Comments at 6; *see also* TCA Comments at 3.

<sup>107</sup> By “corporate” we mean corporate in the general sense of a legal entity. *See* “Corporate,” Merriam-Webster, <https://www.merriam-webster.com/dictionary/corporate> (last visited Jan. 16, 2018); *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340 n.819.

<sup>108</sup> 47 U.S.C. § 254(e); 47 CFR § 54.7.

37. No commenter argues that artwork is used only for the provision, maintenance, or upgrading of facilities; instead commenters claim that artwork creates a pleasant work environment.<sup>109</sup> While this may be the case, it is irrelevant to the question of whether such expenses meet the statutory standard.<sup>110</sup> Because artwork is not used for the provision, maintenance, and upgrading of supported facilities and services, expenses for artwork must be excluded from high-cost support.<sup>111</sup>

38. Corporate aircraft, boats, and other off-road vehicles to the extent used by executives or board members are more akin to luxuries for personal benefit and not used for provision, maintenance, and upgrading of supported facilities and services. The Commission's proposed rule in the *Rate-of-Return Reform Further Notice* did make allowances "insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles traveling on roads."<sup>112</sup> Commenters supported this exception and opposed a blanket exclusion of aircraft, watercraft, and the like as contrary to the Commission's objective of reducing waste and promoting efficiency.<sup>113</sup> We are persuaded that the use of aircraft and off-road vehicles often can be the "fastest, safest, most reliable and most efficient and least expensive way for technicians to reach remote areas to install, inspect or repair facilities."<sup>114</sup> We encourage such efficiencies because they reduce burdens on the Fund and thus reduce universal service fees for subscribers. We caution ETCs that they may only recover from high-cost support that portion of aircraft, watercraft, and other vehicle expenses used for the provision, maintenance, and upgrading of supported services and facilities, not expenses used for the benefit of corporate executives and board members. Thus, we will closely scrutinize these expenses, and ETCs seeking to recover these costs from high-cost support must retain records of their use in sufficient detail to justify recovery.<sup>115</sup>

39. Consumer electronics for personal use may not be recovered from high-cost support.<sup>116</sup> Consumer electronics such as video games, televisions, and radios designed, marketed, and sold for everyday personal use by consumers, not business use, are analogous to a personal expense or an entertainment expense, both of which are not recoverable from high-cost support.<sup>117</sup> We acknowledge that consumer electronic devices such as laptops, monitors, smart phones, or other hand-held devices may serve valid business purposes. Accordingly, ETCs may only seek high-cost support for that portion of the

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<sup>109</sup> See Alexicon Comments at 7.

<sup>110</sup> We are statutorily bound to limit recovery to those expenses associated with facilities and service for which support is intended. See 47 U.S.C. § 254(e).

<sup>111</sup> *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3217, para. 342.

<sup>112</sup> See *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3234, Appx. A; see *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822.

<sup>113</sup> See Comments of Alaska Telephone Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 2 (May 12, 2016) ("Adopting a rule that includes a blanket exclusion of the costs of off-road vehicles is contrary to the Commission's goals of encouraging efficiency, ensuring that the costs included in high-cost Universal Service support and the interstate rate base are prudent and that the assets leased or purchased are used and useful.") (ATA Comments).

<sup>114</sup> See WTA Comments at 13-14; ATA Comments 2-7. For example, a snowmobile may be a faster, safer, and cheaper mode of transportation than a motor vehicle to access facilities in rugged, snow-covered areas of Alaska. See SWC Comments at 3 ("Subsets of those two categories should be created to allow for All Terrain Vehicles (ATV), Snowcats, and the like, as a reasonable expense to restore or maintain telecommunications equipment"); ATA comments at 5 (noting the use of snowmobiles is needed in the harsh Alaskan terrain).

<sup>115</sup> See, e.g., IRS, *Publication 463 (2016), Travel, Entertainment, Gift, and Car Expenses*, [https://www.irs.gov/publications/p463#en\\_US\\_2016\\_publink100034069](https://www.irs.gov/publications/p463#en_US_2016_publink100034069) (last visited Jan. 16, 2018) (describing the need to maintain adequate records, including mileage, to justify deduction for a business use).

<sup>116</sup> See *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340 n.819.

<sup>117</sup> See *supra* paras. 19-23.

expense associated with work use, consistent with our narrow interpretation of section 254(e).<sup>118</sup> We emphasize that consumer electronics for *personal use* are never used for the provision, maintenance, and upgrading of facilities and services for which high-cost support is intended.<sup>119</sup>

40. Tangible property used for entertainment purposes (*e.g.*, pool tables) may not be recovered from high-cost support.<sup>120</sup> Commenters argue that property used for entertainment purposes builds morale and improves overall service quality.<sup>121</sup> But, these expenses have no direct nexus to the provision, maintenance, or upgrading of facilities or supported services.<sup>122</sup>

41. Except in narrow circumstances referenced above, kitchen appliances may not be recovered from high-cost support except to the extent provided as part of temporary or seasonal lodging for employees providing supported service in rugged, remote areas as explained above.<sup>123</sup> Commenters argued that kitchen appliances are useful for employees in “fulfillment of their company obligations in rural areas”<sup>124</sup> and “relatively inexpensive and last for years.”<sup>125</sup> We recognize that kitchen appliances may be a good investment for rural providers, but ultimately the standard is whether the item is used only for the “provision, maintenance, and upgrading of facilities and services for which the support is intended,”<sup>126</sup> and kitchen appliances do not meet this standard, except in the very narrow circumstance described above.

42. *Compliance.*—Based on the record received in response to the *Rate-of-Return Reform Further Notice*, we adopt measures to ensure carrier compliance with the permitted expense rules adopted above for universal service support.<sup>127</sup> Specifically, we require rate-of-return ETCs to identify on their annual FCC Form 481 (Carrier Annual Reporting Data Collection Form) their cost consultants and cost consulting firm, or other third party, if any, used to prepare cost studies, or other calculations used to calculate high-cost support for their submission.<sup>128</sup> Disclosure of an ETC’s cost consultants is a low-burden measure that will help the Commission identify waste, fraud, and abuse during audits. As at least one commenter explained, it is common business practice for rate-of-return carriers to hire cost consultants to prepare their financial and operations data disclosures used to justify high-cost support.<sup>129</sup>

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<sup>118</sup> 47 U.S.C. § 254(e).

<sup>119</sup> 47 U.S.C. § 254(e).

<sup>120</sup> *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340 & n.819.

<sup>121</sup> *See, e.g.*, MTA Comments at 6-7; WTA Comments at 10; USTelecom Comments at 2.

<sup>122</sup> 47 U.S.C. § 254(e).

<sup>123</sup> *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340 & n.819; *see supra* section III.A.1.

<sup>124</sup> NTCA Reply at 7.

<sup>125</sup> WTA Comments at 9.

<sup>126</sup> 47 U.S.C. § 254(e).

<sup>127</sup> *See Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3222-23, paras. 360-63. All providers receiving high-cost support, including rate-of-return affiliates of price cap carriers, are subject to the rules adopted in this order in establishing their tariffed rates for interstate services. In addition, if a price cap carrier is required to make a cost-based showing in the future after adoption, expense rules adopted in this proceeding would apply to such showings.

<sup>128</sup> *See Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3220, para. 352; 47 CFR § 54.313 (annual reporting requirements for high-cost recipients); *Wireline Competition Bureau Announces Approval of FCC Form 481 by the Office of Management and Budget*, WC Docket Nos. 10-90, 14-58, Public Notice, 31 FCC Rcd 5432 (WCB 2016); USAC, *FCC Form 481*, <http://www.usac.org/hc/tools/forms.aspx><http://www.usac.org/hc/tools/forms.aspx> (last visited Jan 16, 2018). All ETCs requesting federal high-cost or low-income universal service support from USAC, the universal service Administrator, file this financial and operations information form on an annual basis.

<sup>129</sup> *See Alexicon Comments* 1-2.

We agree with commenters that discrepancies in permitted expenses disclosed on Form 481 prepared by a cost consultant may flow through to other carriers' represented by the same cost consultant.<sup>130</sup> Identifying a carrier's cost consultants and cost consulting firms will help NECA, the Commission, and USAC identify and rectify patterns of noncompliance, and potentially fraud, during audits. This disclosure will ultimately help preserve the integrity of the Fund by ensuring that carriers only recover permitted expenses.

43. We decline at this time, however, to adopt a number of other compliance measures proposed in the *Rate-of-Return Reform Further Notice*.<sup>131</sup> Specifically, we decline to require a new certification from carriers attesting that they have not included any prohibited expenses in their cost submissions used to calculate high-cost support.<sup>132</sup> Carriers' corporate officers are already required to certify that they are compliant with the Commission's rules.<sup>133</sup> Carriers are also required to certify to the accuracy of their cost studies used to calculate HCLS pursuant to section 69.601(c) and CAF BLS pursuant to section 54.903(a)(3)-(4).<sup>134</sup> The Commission further requires similar certifications for filings with NECA,<sup>135</sup> Tariff Review Plans (TRPs),<sup>136</sup> tariff filings for carriers that elect to receive CAF support,<sup>137</sup> cost studies used to calculate high-cost support submitted to NECA and USAC<sup>138</sup> and high-cost support.<sup>139</sup> For example, willful false statements in data submissions to NECA or USAC are punishable by fine or imprisonment pursuant to U.S. Code, Title 18, Section 1001.<sup>140</sup> Requiring carriers to submit an additional certification would not further encourage compliance but would be needlessly duplicative and

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<sup>130</sup> KCC Comments at 5-6 (supports this rule because a "consultant often prepares reports for more than one client, thus, if the consultant errs on one carrier's filing, a similar error may flow through and affect multiple carrier's filings" which "would need to be corrected").

<sup>131</sup> See *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3222-23, paras. 360-63.

<sup>132</sup> *Id.* at 3222, para. 360.

<sup>133</sup> See KCC Comments at 8; Comments of Public Utilities Commission of Nevada, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 5 (May 12, 2016) (Nevada PUC Comments).

<sup>134</sup> 47 CFR §§ 54.903(a)(3)-(4); 69.601(c).

<sup>135</sup> See *Cost Support Material to be filed with 1995 Annual Access Tariffs*, Tariff Review Plans, 10 FCC Rcd 6242, 6264, para. 56 (CCB 1995); 47 CFR §§ 69.601(c) (data submissions to NECA include a certification statement signed by an officer or employee responsible for submission certifying that it is "complete, accurate, and consistent with the rules of the Federal Communications Commission"); 54.1305 (submission of information to NECA).

<sup>136</sup> *Material to be Filed in Support of 2017 Annual Access Tariff Filings*, WC Docket No. 17-65, Order, 32 FCC Rcd 3168, 3176, para. 39 (WCB PPD 2017) (incumbent LECs must certify that their historical and forecast data, including all data submitted to support revised rates, such as TRPs, are accurate by submitting a signed statement attesting that data "true, correct and complete.").

<sup>137</sup> 47 CFR §§ 51.917(d)(vii) (rate-of-return carriers that recover costs from Access Recovery Charges (ARC) or CAF, must annually certify as part of their tariff filings that they are not seeking duplicative recovery); 51.917(e)(3) (rate-of-return carriers that elect to receive CAF support must certify in annual tariff filing that they have complied with Commission's rules).

<sup>138</sup> See 47 CFR §§ 69.601(c), 605(a) (rules for submitting and certifying cost study data relied upon by both USAC and NECA). USAC collects information necessary to calculate ICLS payments on FCC Forms 507, 508, and 509, which include a certification to the accuracy of the information reported.

<sup>139</sup> 47 CFR §§ 54.314(c)(2) (ETCs not subject to state jurisdiction shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended).

<sup>140</sup> 47 CFR § 69.601(c). Carriers and their agents submitting Forms 507, 508, and 509 to USAC are required to certify that the information contained therein is accurate to the best of their knowledge subject to U.S. Code, Title 18, Section 1001.

burdensome.<sup>141</sup> To the extent a carrier's corporate officer certifies compliance with the Commission's rules, such certification would cover compliance with the eligible expense rules, as amended.

44. We also do not believe it is necessary to alter NECA's role to enforce the rules adopted herein.<sup>142</sup> NECA is an association of LECs established in 1984, at the direction of the Commission, to administer interstate access tariffs for LECs that do not file separate tariffs and to collect and distribute access charge revenues for those companies.<sup>143</sup> NECA administers the process by which average schedule companies submit sampled data and cost companies submit cost studies that are ultimately used to calculate revenue requirements, rate base, and universal service disbursements.<sup>144</sup> Carriers are required to submit certain cost data necessary to calculate high-cost support payments to NECA, certifying that they are accurate to the best of their knowledge, and NECA in turn analyzes that cost data, performs certain calculations and submits that information to USAC for use in determining support payments for eligible carriers.<sup>145</sup> NECA has a responsibility to take reasonable precautions to ensure that the data it uses in preparing interstate access tariff filings and distributing interstate revenue comply with our rules.<sup>146</sup> We believe that NECA has sufficient authority and operational capability to provide oversight of its members with respect to high-cost support.<sup>147</sup> Rather than expel carriers from the NECA pools as some commenters propose,<sup>148</sup> we encourage NECA to continue its oversight role, which it must do in compliance with the Commission's rules, and subject to Commission review.<sup>149</sup> We direct NECA to work with its members to develop processes to ensure compliance with the eligible expenses rules adopted herein to ensure that universal service support is being used only for its intended purposes.<sup>150</sup> We remind NECA members that it is their responsibility to ensure that the expenses submitted to and used by NECA to calculate high-cost support are accurate and consistent with the Commission's rules.<sup>151</sup> The Commission has authority to revoke section 214 authorizations based on misconduct,<sup>152</sup> a finding that

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<sup>141</sup> See Comments of ITTA – The Voice of Mid-Size Communications Companies, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 4-5 (May 12, 2016) (ITTA Comments).

<sup>142</sup> *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3223, para. 363; see NTCA-WTA Dec. 20, 2017 Letter at 2 (noting existing accountability measures include “multiple layers of review and/or audit by” NECA and USAC).

<sup>143</sup> See 47 C.F.R. §§ 69.601, 69.603.

<sup>144</sup> See *Accounting for Judgments and other Costs Associated with Litigation*, CC Docket No. 93-240, Report and Order, 12 FCC Rcd 5112, 5118, para. 8 (1997).

<sup>145</sup> 47 CFR § 69.601(c); 47 CFR §§ 54.1305-1307. HCLS predates the enactment of section 254 and the creation of USAC. See *Universal Service First R&O*, 12 FCC Rcd at 8939-40, para. 300-302.

<sup>146</sup> See *Safeguards to Improve Administration of the Interstate Access Tariff and Revenue Distribution Processes; Consideration of NECA's Incentive Compensation Plan*, CC Docket No. 93-6, Report and Order and Order to Show Cause, 10 FCC Rcd 6243, 6258-59, 6264, paras. 36-38, 54 (1995).

<sup>147</sup> See *id.* at 6264, para. 56.

<sup>148</sup> See KCC Comments at 8; Nevada PUC Comments at 5.

<sup>149</sup> See generally 47 CFR § 69.603 (outlining NECA's general functions); *id.* § 69.601 *et seq.*

<sup>150</sup> See *id.* § 69.601; *MTS and WATS Market Structure*, CC Docket No. 78-72, Third Report and Order, 93 FCC 2d 241, 333-34 (1983) (establishing NECA at the direction of the Commission); see *Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service*, Second Report and Order and Second Order on Reconsideration, CC Docket Nos. 97-21 and 96-45, 12 FCC Rcd 18400, 18418, para. 30 (1997) (Commission directed NECA to establish USAC); see also NECA Comments at ii (supporting the Commission's further review of how NECA coordinates administration of existing access and high-cost universal service cost recovery methods and “working with staff to improve such processes”).

<sup>151</sup> See 47 CFR § 69.601(c).

<sup>152</sup> See *Implementation of Section 402(b)(2)(A) of the Telecomm. Act of 1996*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11372-74, paras. 12,

(continued...)

disqualifies that carrier from participation in the NECA pools.<sup>153</sup>

45. Finally, we decline to adopt a “safe harbor” standard proposed by commenters that would insulate carriers from audit and enforcement liability if a carrier includes prohibited expenses but the “overall impact” is “immaterial.”<sup>154</sup> The only way to determine if excluded expense are immaterial would be to conduct an audit. Moreover, we believe that such an approach would not be in the public interest because it would not encourage strict compliance with the existing and revised permitted expense rules.

46. We remind carriers that failure to keep Commission-prescribed accounts, records, and memoranda on the books is a violation of section 220(d) of the Act and may subject carriers to forfeiture liability in the amount of \$6,000 for each day of the continuance of each such offense.<sup>155</sup> Carriers’ employees, executives, and board members may also be subject to personal liability for violations. Carriers’ employees, executives, and board members that willfully make any false entry in Commission-prescribed accounts may be subject them to monetary penalties for violations of section 220(e) of the Act will be deemed guilty of a misdemeanor, and shall be subject, upon conviction, to a fine of not less than \$1,000 nor more than \$5,000 or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment.<sup>156</sup> Furthermore, persons making willful false statements in data submissions to NECA, USAC, or the Commission can be punished by fine or imprisonment under the provisions Title 18, Section 1001, of the U.S. Code.<sup>157</sup>

## 2. Interstate Ratemaking Recovery

47. Section 201(b) of the Communications Act requires that only reasonable investments and expenses be recovered through regulated interstate rates—a requirement we have historically enforced through the “used and useful” standard.<sup>158</sup> We amend our rules to provide guidance to legacy rate-of-return LECs<sup>159</sup> regarding investments and expenses that are presumed not used and useful (and thus unreasonable under section 201) and thus, as a general matter, may not be recovered through interstate rates. We divide such investments and expenses into two broad categories: those that we do not expect

(Continued from previous page)

15 (1999) (citing *CCN, Inc., et al.*, CC Docket No. 97-144, Order, 13 FCC Rcd 13599 (1998) and stating that the Commission, with the grant of blanket 214 operating authority, retains the ability to stop “abusive practices against consumers by withdrawing the blanket section 214 authorization that allows the abusive carrier to operate”); *OneLink Communications, Inc. et al.*, File No. EB-TCD-13-00007004 et al., Order to Show Cause, 32 FCC Rcd 1884, 1886, para. 8 (EB & WCB 2017) (initiating a proceeding to determine whether to revoke the domestic section 214 authorizations); *Sandwich Isles NAL*, 31 FCC Rcd at 12974, para. 84 (directing Sandwich Isles to submit a report explaining why Commission should not revoke its Commission authorizations for its egregious misconduct and harm to Fund); *LDC Telecommunications, Inc.*, File No.: ITC-214-20080523-00238, Revocation Order, 31 FCC Rcd 11661, 11662, para. 5 (EB, IB & WCB 2016) (revoking domestic and international section 214 authorizations for failure to pay regulatory fees and respond to multiple Commission inquiries).

<sup>153</sup> The NECA pool is an averaging mechanism to smooth out access rates for pool members over a larger base of costs and revenues. NECA pool members are allowed to participate in the voluntary cost and revenue pools associated with the access tariff filed by NECA. NECA calculates and files rates based on overall pool costs of the member LECs, who in turn share in pool revenues in proportion to their costs. *See* 47 CFR § 69.601.

<sup>154</sup> *See* ITTA Comments at 2-3.

<sup>155</sup> 47 U.S.C. § 220(d).

<sup>156</sup> 47 U.S.C. § 220; 47 CFR §§ 69.601(c); *id.* 69.605(a).

<sup>157</sup> 47 CFR § 69.601(c); 18 U.S.C. § 1001.

<sup>158</sup> *See* 47 U.S.C. § 201(b); *AT&T Phase II Order*, 64 FCC 2d at 38-39, paras. 111-15.

<sup>159</sup> Legacy rate-of-return LECs are rate-of-return carriers that are receiving CAF BLS. They remain subject to rate-of-return regulation for their common line offerings and have the option to participate in the National Exchange Carrier Association’s common line pool. *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3097, para. 21; *see also* 47 CFR §§ 54.5; 54.901.

would be used and useful in the ordinary course and those we would not expect to be used and useful unless customary for similarly situated companies.<sup>160</sup> We note that the second category is intended to capture types of expenses that may be customary among small companies (and based on their widespread usage we may consider more likely to be used and useful) but are subject to abuse. For example, a small company may reasonably host a company picnic (to boost the morale of employees operating the interstate telecommunications network), which would be customary for small companies, but might not reasonably host an expensive banquet for employees at an out-of-state venue.

48. We make clear that our actions are not intended to alter the scope of the used and useful standard—instead only to provide prospective guidance and a default presumption in certain cases. Legacy rate-of-return LECs are free to attempt to rebut the presumption by showing particular factual circumstances justifying recovery of these investments and expenses through interstate rates but cannot recover for such costs absent a particularized showing.<sup>161</sup> To the extent that these investments and expenses are recovered through interstate rates, in the event of an audit or other investigation, the carrier bears the burden of demonstrating that such investments and expenses are used and useful despite the presumption that they are not.<sup>162</sup>

49. *Background.*—Section 201(b) of the Act specifies that “[a]ll charges . . . for and in connection with [interstate] communication service, shall be just and reasonable, and any such charge . . . that is unjust or unreasonable is declared to be unlawful.”<sup>163</sup> The Commission for decades has applied the “used and useful” standard in determining whether investments and expenses are reasonable under section 201 and thus may be recovered through interstate rates.<sup>164</sup> The used and useful principles in ratemaking serve as a protection against inefficiencies and abuse.<sup>165</sup> The Commission has identified general principles to evaluate whether investment and expenses are “used and useful” to the provision of regulated telecommunications services, including: the need to compensate LECs for investment and expenses incurred to provide service; whether the investment and expense benefits ratepayers and thus is necessary for the provision of interstate telecommunications services; and whether investment is prudent and whether the benefit from the investment will be realized within reasonable period of time.<sup>166</sup> The Commission has recognized that “these guidelines are general and subject to modification”—whether an

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<sup>160</sup> See NTCA-WTA Dec. 20, 2017 Letter, Attach. (proposing making various expenses “eligible for recovery via regulated interstate rates, but only to the extent reasonable and customary as a business expenses for a company of similar size and operations”); see also *AT&T Phase II Order*, 64 FCC 2d at 38-39, paras. 111-15; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216-17, paras. 340-42.

<sup>161</sup> See *AT&T Phase II Order*, 64 FCC 2d at 39, para. 115.

<sup>162</sup> 47 U.S.C. § 204(a); *id.* § 220(c) (“The burden of proof to justify every accounting entry questioned by the Commission shall be on the person making, authorizing, or requiring such entry. . . .”); *Policy to be Followed in the Allowance of Litigation Expenses of Common Carriers in Ratemaking Proceedings; Uniform System of Accounts*, CC Docket Nos. 79-19, 78-196, Memorandum Opinion and Order, 92 FCC 2d 140, 144-45, para. 9 (1982) (*Litigation Expenses Order*) (“Pursuant to provisions of the Communications Act of 1934, as amended, a carrier has the burden of establishing the reasonableness of its operating expenses and must support inclusion of any challenged [sic] expenditure”).

<sup>163</sup> 47 U.S.C. § 201(b).

<sup>164</sup> See *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3214, para. 334; *AT&T Phase II Order*, 64 FCC 2d at 39, para. 112.

<sup>165</sup> See *AT&T Phase II Order*, 64 FCC Rcd 2d at 39, para. 114; *Sandwich Isles Order*, 31 FCC Rcd at 13019, para. 65.

<sup>166</sup> See *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3214-15, paras. 334-36; see *AT&T Phase II Order*, 64 FCC 2d at 38-39, paras. 111-14; see also *AT&T Communications Revisions to Tariff F.C.C. Nos. 1, 2, 11, 13, and 14 Application for Review*, CC Docket No. 87-611, Transmittal Nos. 1063 and 10645, Memorandum Opinion and Order, FCC Rcd 5693, 5695, para. 17 (1990) (*1990 AT&T Tariff Revisions Order*).

investment and expense is “used and useful” depends on the “particular facts of each case.”<sup>167</sup> Further, the Commission’s rules provide that rate-of-return LECs may not recover investments and expenses unless “recognized by the Commission as necessary to the provision” of interstate telecommunications services.<sup>168</sup>

50. In recent years, several waiver requests, audits, and enforcement actions have raised heightened concerns that some rate-of-return carriers may be attempting to recover investments and expenses through ratemaking that are inconsistent with the section 201 requirement that investments and expenses be used and useful in the efficient provision of interstate telecommunications services.<sup>169</sup> In the *Rate-of-Return Reform Further Notice*, the Commission sought comment on explicitly prohibiting the expenses listed in the *High-Cost Oct. 19, 2015 Public Notice* from ratemaking recovery.<sup>170</sup> The Commission tentatively concluded that these investments and expenses were unnecessary to the provision of regulated services and thus were not appropriately recovered through ratemaking.<sup>171</sup> The Commission also proposed prohibiting certain additional investments and expenses from ratemaking recovery going forward on the basis that these investments and expenses were not necessary to the provision of regulated interstate services.<sup>172</sup>

51. *Discussion.*—Commenters agree that several of the expenses and investments discussed in the *Rate-of-Return Reform Further Notice* are already excluded from ratemaking,<sup>173</sup> while others argue they should be excluded prospectively.<sup>174</sup> Based on the record, below we discuss the specific categories

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<sup>167</sup> *AT&T Phase II Order*, 64 FCC 2d at 39, para. 115; see *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3215, para. 335.

<sup>168</sup> See 47 CFR 65.450(a).

<sup>169</sup> See, e.g., *Sandwich Isles Order*, 31 FCC Rcd 12999; *Adak Order*, 28 FCC Rcd 10194; see also *Sandwich Isles NAL*, 31 FCC Rcd at 12965-66, para. 56-57; *id.* at 12948, para. 3 n.7 (confidential audit report incorporated by reference).

<sup>170</sup> The Commission tentatively concluded these types of expenditures are unnecessary to the provision of regulated interstate services and thus are not appropriated included in a rate-of-return carrier’s interstate revenue requirement: personal travel; entertainment; alcohol; food (including but not limited to meals to celebrate personal events); political contributions; charitable donations; scholarships; penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans or other payments; membership fees and dues in clubs and organizations; sponsorships of conferences or community events; gifts to employees; and personal expenses of employees, board members, family members of employees and board members, contractors or any other individuals affiliated with the ETC should be excluded from ratemaking. *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216-17, para. 340-41.

<sup>171</sup> *Id.* at 3217, para. 341.

<sup>172</sup> The Commission proposed to prohibit expenses from inclusions in a rate-of-return carrier’s interstate revenue requirement including: artwork and other objects which possess aesthetic value; corporate aircraft, watercraft, and other motor vehicles designed for off-road use, except insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles travelling on roads; any vehicles for personal use; tangible property not logically related or necessary to the offering of voice or broadband services; childcare; cafeterias and dining facilities; and, housing allowances or other forms of mortgage or rent assistance for employees. *Id.* at 3217, para. 342.

<sup>173</sup> See TCA Comments at 3 (“already excluded from recovery through...revenue requirement calculations under existing rules” include personal travel, penalties or fines for statutory or regulatory violations, political contributions, penalties or fines for late payments on debt, loans, or other payments, and “personal expenses of employees, board members, family members of employee and board members, contractors, or any other individuals affiliated with an [rate-of-return] LEC”).

<sup>174</sup> See NECA Comments at 5 (arguing that “to the extent any such rules or guidelines alter prior Commission policies, they will apply on a prospective basis”); ITTA Comments at 2 (arguing that to the extent the Commission

(continued...)



of investments and expenses that we presume are not used and useful in the ordinary course and those not used and useful unless customary for similarly situated companies.

52. *Personal Expenses.*—Personal expenses including vehicles for personal use, and personal travel (such as transportation, lodging and meals) are presumed excluded from recovery through interstate rates. There is broad consensus in the record that personal expenses are not used and useful for the provision of interstate telecommunications services and therefore cannot, and should not, be recovered through interstate rates.<sup>175</sup> Personal expenses are for the benefit of an individual affiliated with the rate-of-return LEC without an articulable business-related purpose and are not necessary or incurred to provide regulated service. Personal expenses are presumed not used and useful in the ordinary course.<sup>176</sup>

53. To the extent a rate-of-return LEC provides its employees, executives or board members, or any other individuals affiliated with the LEC with additional benefits, such as gifts, housing allowances, and childcare that are not part of taxable compensation,<sup>177</sup> we find that these expenses are presumed not used and useful unless customary for similarly situated companies.<sup>178</sup> As noted by commenters, cash or in-kind bonuses, housing allowances, or childcare may qualify as part of a taxable compensation package—and are subject to a presumption-free review under the used and useful standard.<sup>179</sup> We agree with commenters that temporary housing offered as part of businesses-related travel lodging or a temporary work assignment may qualify as legitimate business expenses, not a personal expense, and do not warrant the presumption.<sup>180</sup>

54. Personal food and beverage expenses are presumed not used and useful whereas food and beverage expenses for work and work-related travel as well as costs of operating cafeterias and dining facilities are presumed not used and useful unless customary for similarly situated companies. We clarify

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“exclude[s] certain expenses or investments...should be prospective only” not “retroactive[.]”); ERTA Comments at 3 (“Any changes should be prospective only”).

<sup>175</sup> NECA Comments at 3 (“Commission rules prohibit inclusion of expenditures for personal items...in regulated accounts”) (citing 47 CFR § 32.7300(h)(1)); MTA Comments at 6; Alexicon Comments at 6-7; TCA Comments at 3; see WTA Comments at 5 (supporting “appropriate exclusion and disallowance of expenses for...personal travel not required by employment duties”).

<sup>176</sup> See *AT&T Phase II Order*, 64 FCC 2d at 38-39, paras. 111-15; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3214-15, paras. 334-36.

<sup>177</sup> See *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3218, paras. 345-46.

<sup>178</sup> See NTCA Comments at 15-16; Alexicon Comments at 8 (“Commission should review IRS documentation relating to allowable expenses and adjust the lists of non-permitted expenses contained in the FNPRM accordingly”) (citing IRS Publication 535, Business Expenses); see also *AT&T Phase II Order*, 64 FCC 2d at 38-39, paras. 111-15; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3214-15, paras. 334-36.

<sup>179</sup> See NTCA Comments at 15-16 (“cash or in-kind bonuses that a company treats as taxable compensation, such expenses are legitimately associated with the operation of the business and should remain eligible for recovery”); NTCA Reply at 7 (“business expenses for tax purposes” cited as example of expenses that may be used and useful and prudent “as a matter of law”); see also MTA Comments at 8-9 (“Childcare increasingly is recognized as an essential benefit to help retain and employ American citizens.”); Alexicon Comments at 7 (arguing that childcare and housing allowance are often needed to attract and retain qualified employees).

<sup>180</sup> See WTA Comments at 9-10 (arguing that housing allowances “may be necessary to send an employee to a remote part of its service area for several weeks or months, and to provide an allowance for temporary housing during the assignment.”); Alexicon Comments at 7-8 (claiming that housing allowances are needed to attract and retain qualified employees); MTA Comments at 8 (describing an example where a carrier’s study area includes a “ski resort where the cost of housing is exorbitant by Montana standards and wages. The company provides additional support for housing expenses for its plant personnel that work in this exchange area and need to reside nearby,” saving travel expenses).

that food and beverages purchased during business-related travel are not personal expenses.<sup>181</sup> As noted by commenters, reasonable *per diem* travel expenses, including food and beverages, are commonly-accepted business expenses.<sup>182</sup> Similarly, food and beverage expenses incurred as part of work-related entertainment such as company parties or picnics are likewise presumed not used and useful unless customary.<sup>183</sup> Our existing rules allow rate-of-return LECs to include expenses incurred operating cafeterias and dining facilities in general and administrative accounts used to calculate interstate rates.<sup>184</sup> At the same time, ratepayers should not be forced to pay for excessive or imprudent expenses unrelated to business purposes or unnecessary to the provision of regulated services.<sup>185</sup>

55. Although commenters disagree on whether entertainment expenses should be recoverable,<sup>186</sup> we find that entertainment expenses are presumed not used and useful unless customary for similarly situated companies. Entertainment expenses, such as musical entertainment or food and beverage expenses incurred at company parties or picnics, are a common business practice to improve employee morale but are subject to potential abuse.<sup>187</sup>

56. *Expenses Unrelated To Operations.*—We clarify that certain expenses unrelated to operations—including political contributions, membership fees and dues in social, service and recreational or athletic clubs and organizations, penalties or fines for statutory or regulatory violations, and penalties or fees for late payments on debt, loans, or other payments—are presumed not used and useful. As several commenters note, most of these nonoperating expenses are currently presumed to be excluded from the cost of service in setting rates.<sup>188</sup> The record supports the continued presumption that these expenses are excluded from recovery through interstate rates.<sup>189</sup>

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<sup>181</sup> USTelecom Comments at 2-3 (claiming that providing food for employees while traveling on business are legitimate businesses business purposes); NTCA Comments at 14 (arguing that it is a common business practice for firms to reimburse for reasonable food expenses.).

<sup>182</sup> NTCA Comments at 14; *see also, e.g.*, IRS Pub. 535; 48 CFR § 31.205-46.

<sup>183</sup> *See* WTA Comments at 10; NTCA Comments at 14.

<sup>184</sup> *See* 47 CFR § 32.6720(j).

<sup>185</sup> *See AT&T Phase II Order*, 64 FCC 2d at 38-39, paras. 111-15; *1990 AT&T Tariff Revisions Order*, 5 FCC Rcd at 5695, para. 17.

<sup>186</sup> *See* Alexicon Comments at 6 (arguing that entertainment expenses are not recoverable); USTelecom Comments at 2 (acknowledging that “there is probably reasonable argument for eliminating costs associated with entertainment”). *But see* MTA Comments at 8 (arguing that entertainment expenses are vital to morale).

<sup>187</sup> NTCA Comments at 14 (“with respect to recovery of items such as food and entertainment, the question should be whether those are expenses reasonably incurred in the course of conducting the carrier’s business.”); *id.* at 14 & n.37 (“common and accepted practice...to reimburse reasonable food and entertainment expenses associated with conduct of company business, including client or vendor meetings or attendance at board meetings”) (citing IRS Travel, Entertainment, Gift, and Car Expenses); WTA Comments at 10 (oppose eliminating entertainment expenses because “parties and picnics help to build morale and team spirit that improve service quality and reduce employee turnover” that are infrequent and do not constitute “a material or perceptible portion of high-cost disbursements”). *But see* Alexicon Comments at 6-7 (“entertainment...[has]...typically not been recoverable in the past, and should remain so on a going forward basis”); USTelecom at 2 (“there is probably reasonable argument for eliminating costs associated with entertainment”).

<sup>188</sup> *See* 47 CFR § 32.7300(h) (creating a presumption that the following expenses are excluded from the costs of service in setting interstate rates: political contributions, membership fees and dues in social, service and recreational or athletic clubs and organizations, and penalties and fines paid on account of violations of statutes); *see also* NECA Comments at 3 (“Commission rules prohibit inclusion of expenditures for...political contributions in regulated accounts”) (citing 47 CFR § 32.7300(h)(1)); TCA Comments at 3 (political contributions and penalties or fines for statutory or regulatory violations “already excluded from recovery through...revenue requirement calculations under existing rules”).

57. Although penalties or fees for late payments on debt, loans, or other payments have typically not been recovered through ratemaking, as noted by commenters,<sup>190</sup> our rules do not contain an explicit prohibition. We fail to see how these expenses can be distinguished from penalties or fines for statutory or regulatory violations which are currently presumed excluded from ratemaking.<sup>191</sup> All of these expenses are imprudent—incurred when a carrier fails to adequately manage its business and operations.<sup>192</sup> Ratepayers should not pay for expenses incurred due to irresponsible business practices.<sup>193</sup> Accordingly, we find that penalties or fees for any late payments on debt, loans, or other payments are presumed not used and useful (and thus unreasonable).<sup>194</sup>

58. Under our current rules, membership fees and dues in social, service and recreational, or athletic clubs and organizations are presumed not used and useful and must be excluded from recovery via interstate rates.<sup>195</sup> We decline at this time to expand the scope of excluded fees and dues to cover additional types of fees, such as memberships in professional organizations and associations. As some commenters have argued, there is utility to customary memberships in professional organizations such as trade associations, chambers of commerce, and bar associations.<sup>196</sup> As a result, membership fees and dues associated with professional organizations, unless customary for similarly situated companies, are presumed not used and useful.<sup>197</sup>

59. We clarify that other expenses unrelated to operations—including charitable donations, scholarships, sponsorships of conferences or community events—raise the potential for abuse and thus are presumed not used and useful unless customary for similarly situated companies. As commenters note, there appears to be a conflict in our rules regarding the treatment of charitable donations for ratemaking

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<sup>189</sup> See NTCA Comments at 14-15 (asserting that there is “no reasonable argument to allow recovery of the costs of membership in country clubs and social clubs”); TCA Comments at 3.

<sup>190</sup> See 47 CFR § 65.450(d) (“Except for the allowance for funds used during construction, reasonable charitable deductions and interest related to customer deposits, the amounts recorded as nonoperating income and expenses and taxes (Accounts 7300 and 7400) and interest and related items (Account 7500) and extraordinary items (Account 7600) shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included”); see also Alexicon Comments at 6-7 (“penalties on late payment of debt have typically not been recoverable in the past, and should remain so on a going forward basis”).

<sup>191</sup> See 47 CFR § 32.7300(h)(4).

<sup>192</sup> See *1990 AT&T Tariff Revisions Order*, 5 FCC Rcd at 5695, para. 17; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3214, para. 335.

<sup>193</sup> See *AT&T Phase II Order*, 64 FCC 2d at 38, para. 112 (“Equally central to the used and useful concept, however, is the equitable principle that the ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them. Thus, imprudent or excess investment, for example, is the responsibility and coincident burden of the investor, not the ratepayer.”).

<sup>194</sup> See *AT&T Phase II Order*, 64 FCC 2d at 38-39, paras. 111-15; *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216, para. 340; see also Alexicon Comments at 6; TCA Comments at 3.

<sup>195</sup> 47 CFR § 32.7300(h).

<sup>196</sup> See NTCA Comments at 14-15 (arguing that there is “no reasonable argument to allow recovery of the costs of membership in country clubs and social clubs” but “there are a number of legitimate business expenses” citing as examples attorney bar associations and professional affiliations or certifications as well as “organizations that provide education, training and industry updates”); MTA Comments at 7 (noting that memberships can “increase[] educational opportunities for employees and executives,” and that “various associations and organizations can aggregate purchasing power or identify marketing, administrative and other operating efficiencies” and “enhance investment returns”); WTA Comments at 12-13; Sacred Wind Comments at 3; TCA Comments at 5; Alexicon Comments at 6-7.

<sup>197</sup> See *AT&T Phase II Order*, 64 FCC 2d at 38-39, paras. 111-15.

purposes.<sup>198</sup> We clarify here, consistent with the justification provided in the *1987 Rate Base Order*, that our rules allow recovery of reasonable charitable donations through the interstate revenue requirement.<sup>199</sup> We agree with commenters that reasonable charitable donations may to be appropriate to support the community in which it operates as a cost of doing business and part of “good corporate citizenship.”<sup>200</sup> For similar reasons as charitable donations, we find that scholarships and sponsorships of conferences or community events likewise serve an important role in the community.<sup>201</sup>

60. *Corporate Luxury Goods*.—Although some corporate luxury goods are in fact customary, as a category it is subject to potential abuse. As such, expenses associated with corporate luxury goods—specifically corporate aircraft, watercraft, and other off-road vehicles used for work and work-related purposes, as well as artwork and other objects which possess aesthetic value that are displayed in the workplace—are presumed not used and useful (and thus unreasonable) unless customary for similarly situated companies.<sup>202</sup> In the *Rate-of-Return Reform Further Notice*, the Commission proposed to allow recovery for corporate aircraft, watercraft, and other vehicles “insofar as necessary to access inhabited portions of the study area not reachable by motor vehicles traveling on roads.”<sup>203</sup> Commenters support this proposal, asserting that a blanket ban is contrary to the Commission’s objective of reducing waste and

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<sup>198</sup> Compare 47 CFR 65.450(d) (allowing “reasonable charitable deductions” to be included in interstate revenue requirement) with 47 CFR § 32.7300(h)(2) (“Unless specific justification to the contrary is given, such costs are presumed to be excluded from the costs of service in setting rates: . . . Contributions for charitable, social or community welfare purposes”); see NTCA Comments at 12 (noting the apparent “conflict” between section 32.7300(h) and 65.450(d) but that in the *1987 Rate Base Order* the Commission “expressly denied arguments that such [charitable] contributions should not be included in regulated accounts that are ultimately used to establish rates”) (citing *1987 Rate Base Order*, 2 FCC Rcd at 280, para. 77); WTA Comments at 6-8; NECA Comments at 3-4 (quoting *1987 Rate Base Order*, 2 FCC Rcd at 280, para. 77); see also MTA Comments at 7; Alexicon Comments at 6-7; TCA Comments at 5.

<sup>199</sup> See *1987 Rate Base Order*, 2 FCC Rcd at 280, paras. 73-77 (“This Commission continues to believe that reasonable charitable contributions are very much an obligation of a business enterprise to the community it serves and upon which it is dependent for its revenues. We consider reasonable charitable contributions part of the cost of doing business . . . . We also consider it appropriate for any company . . . to support the services of the community in which it operates.”); 47 CFR § 65.450(d) (“Except for . . . reasonable charitable deductions . . . the amounts recorded as nonoperating income and expenses . . . (Account[] 7300 . . .) . . . shall not be included unless this Commission specifically determines that particular items recorded in those accounts shall be included” in interstate revenue requirement).

<sup>200</sup> See *1987 Rate Base Order*, 2 FCC Rcd at 280, paras. 73-77; see also Alexicon Comments at 6-7 (“charitable donations, scholarships . . . are often vital in maintaining good corporate citizenship in [rate-of-return LEC] serving areas”); NTCA Comments at 12 (noting the benefits of charitable donations); WTA Comments at 7-8 (same); TCA Comments at 5 (same); MTA Comments at 7 (same).

<sup>201</sup> See TCA Comments at 5 (arguing that scholarships are “best evaluated in terms of reasonableness, not unconditional prohibitions” because “encourage young residents to return to live and work in rural communities”); MTA Comments at 7 (arguing that scholarships are an “essential” “investment in human capital essential”); MTA Comments at 7 (“investment in the community is investment in the company”); WTA Comments at 8 (noting the “social, goodwill and marketing impacts” of scholarships).

<sup>202</sup> 47 CFR § 32.6113; 47 CFR § 32.6122. WTA Comments at 13-14 (“In the large and rugged service areas of many RLECs, particularly in portions of the rural West, aircraft, watercraft or off-road motor vehicles are often the fastest, safest, most reliable, most efficient and least expensive ways for technicians to reach remote areas to install, inspect or repair facilities.”); ATA Comments at 2-7 (“aircraft, watercraft, and other off-road vehicles” as used in Alaska are “necessary and cost-efficient,” noting the cost-effectiveness of off-road RZR 900 versus Ford F-350 pickup truck, snowmobiles, and boats); Sacred Wind Comments at 3 (“Subsets of those two categories should be created to allow for All Terrain Vehicles (“ATV”), Snowcats, and the like, as a reasonable expense to restore or maintain telecommunications equipment”).

<sup>203</sup> See *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3234, Appx. A; see *High-Cost Oct. 19, 2015 Public Notice*, 30 FCC Rcd at 11822.

promoting efficiency.<sup>204</sup> We agree that the use of aircraft and off-road vehicles can be the “fastest, safest, most reliable and most efficient and least expensive way for technicians to reach remote areas to install, inspect or repair facilities.”<sup>205</sup> However, to avoid the risk of abuse, we presume that even vehicles used for work and work-related purposes are not used and useful unless customary for similarly situated companies. Based on the record, we fully expect that carriers using such vehicles to access areas not seasonably reachable by road travel will be able to overcome the presumption, so long as they limit the use of aircraft, watercraft and off-road vehicles to work and work-related purposes. We acknowledge that office artwork is a common business expense and should not place excessive burdens on ratepayers.<sup>206</sup> Accordingly, expenses associated with artwork and other objects which possess aesthetic value that are displayed in the workplace are presumed not used and useful unless customary for similarly situated companies.<sup>207</sup>

61. The *Rate-of-Return Reform Further Notice* also proposed to prohibit recovery from interstate support “expenses for tangible property not logically related or necessary to offering voice or broadband service.”<sup>208</sup> Such expenses include, for example, recreational equipment and consumer electronics not used for work purposes.<sup>209</sup> These expenses are not used in the ordinary course for providing interstate telecommunications services, and so we will presume them not used and useful (and thus unreasonable).<sup>210</sup> Further, the Commission’s rules provide that rate-of-return LECs may not recover investments and expenses unless “recognized by the Commission as necessary to the provision” of interstate telecommunications services.<sup>211</sup> We note that, by definition, tangible property not logically related or necessary to offering voice or broadband service is not necessary or incurred to provide regulated interstate telecommunications service.

## **B. Providing Additional Support to Fund Model-based Deployment**

62. *Background.*—In the *Rate-of-Return Reform Order*, the Commission adopted a voluntary path for rate-of-return carriers to elect to receive model-based support for a 10-year term, in exchange for extending broadband service to a pre-determined number of eligible locations.<sup>212</sup> On August 3, 2016, the Wireline Competition Bureau (Bureau) announced offers of support based on the Alternative Connect America Cost Model (A-CAM) that identified carrier-specific support amounts and deployment

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<sup>204</sup> See ATA Comments at 2 (“Adopting a rule that includes a blanket exclusion of the costs of off-road vehicles is contrary to the Commission’s goals of encouraging efficiency, ensuring that the costs included in high-cost Universal Service support and the interstate rate base are prudent and that the assets leased or purchased are used and useful.”)

<sup>205</sup> See WTA Comments at 13-14; ATA Comments 2-7. For example, a snowmobile may be a faster, safer, and cheaper mode of transportation than a motor vehicle to access facilities in rugged, snow-covered areas of Alaska. See SWC Comments at 3 (“Subsets of those two categories should be created to allow for All Terrain Vehicles (ATV), Snowcats, and the like, as a reasonable expense to restore or maintain telecommunications equipment”); ATA comments at 5 (noting the use of snowmobiles is needed in the harsh Alaskan terrain).

<sup>206</sup> See Alexicon Comments at 7; WTA Comments at 13.

<sup>207</sup> See 47 CFR §§ 32.6122; 32.7100(d); 32.7300(f)(1); see also *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3217, para. 342; see *AT&T Phase II Order*, 64 FCC 2d at 38-39, paras. 111-15.

<sup>208</sup> See *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3217, para. 342.

<sup>209</sup> See, e.g., *Rate-of-Return Further Notice*, 31 FCC Rcd at 3216, para. 340 n.819.

<sup>210</sup> *AT&T Phase II Order*, 64 FCC 2d 38, para. 113.

<sup>211</sup> See 47 CFR § 65.450.

<sup>212</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd 3087, 3094-3117, paras. 17-79. The Commission directed the Bureau to “take all necessary steps to release the adopted version of the model for purposes of calculating support amounts for rate-of-return carriers electing to receive model support.” *Id.* at 3102, para. 37.

obligations predicated on a monthly funding cap per location of \$200.<sup>213</sup> A total of 216 rate-of-return companies subsequently elected 274 separate statewide offers of A-CAM support for 437 separate study areas in 43 states. The Bureau determined that model-based support and transition payments to all the carriers that accepted the A-CAM offer would exceed the overall 10-year budget set by the Commission by more than \$160 million annually.<sup>214</sup>

63. In the *A-CAM Revised Offer Order*, the Commission allocated an additional \$50 million annually to the budget for model-based support and adopted other measures to address the significant demand for A-CAM support.<sup>215</sup> First, the Commission locked in the support amounts and associated deployment obligations for 35 carriers for whom 45 offers of model-based support were less than the legacy support they received in 2015 in order to maximize their contribution to the A-CAM budget and broadband deployment.<sup>216</sup> Then, for the 191 remaining carriers whose original offer of model-based support was more than their legacy support, the Commission directed the Bureau to reduce the 228 offers of support to fit within the available budget, while preserving as much of the original offer as possible for those that had the lowest broadband deployment.<sup>217</sup>

64. To implement the Commission's decision, the Bureau first reduced the funding cap to \$146.10 per location, the maximum amount of support per location that CAF Phase II provided to price cap carriers accepting offers of model-based support. Because the revised amounts still exceeded the budget, the Bureau further reduced support offers and associated deployment obligations by varying percentages based on the percentage of locations lacking 10/1 Mbps.<sup>218</sup> Most carriers accepted the revised offer, and, on January 24, 2017, the Bureau authorized 182 additional companies that elected 217 revised offers of A-CAM support.<sup>219</sup>

65. In the *A-CAM Revised Offer FNPRM*, the Commission sought comment on whether to allocate additional high-cost funding to the budget for A-CAM to provide the full amount of the original offer for some or all of those carriers that accepted the revised offer of model-based support.<sup>220</sup> The Commission estimated that it would need to increase the overall high-cost budget by an estimated \$110 million per year if all carriers electing the A-CAM offer were "fully funded" using the \$200 per location funding cap.<sup>221</sup> The Commission also sought comment on increasing the budget by a lesser amount with

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<sup>213</sup> *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 8641, 8642 (WCB 2016) (*A-CAM Offer Public Notice*).

<sup>214</sup> *Wireline Competition Bureau Announces Results of Rate-of-Return Carriers that Accepted Offer of Model Support*, WC Docket No. 10-90, 31 FCC Rcd 11966 (WCB 2016) (*A-CAM Election Results Public Notice*).

<sup>215</sup> *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13775 (2016) (*A-CAM Revised Offer Order and/or FNPRM*).

<sup>216</sup> *Id.* at 13777-78, para 7. See also *Wireline Competition Bureau Authorizes 35 Rate-of-Return Companies to Receive More than \$51 Million Annually in Alternative Connect America Cost Model Support and Announces Offers of Revised A-CAM Support Amounts to 191 Rate-of-Return Companies to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 13328 (WCB 2016) (*A-CAM First Authorization and Revised Offer Public Notice*).

<sup>217</sup> *A-CAM Revised Offer Order*, 31 FCC Rcd at 13778, para 8.

<sup>218</sup> *Id.* at 13378-79, paras. 8, 13.

<sup>219</sup> *Wireline Competition Bureau Authorizes 182 Rate-of-Return Companies to Receive More than \$454 Million Annually in Alternative Connect America Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, 32 FCC Rcd 842 (WCB 2017) (*A-CAM Second Authorization Public Notice*). A total of 207 companies accepted 262 offers of A-CAM support, which comprises 424 study areas.

<sup>220</sup> *A-CAM Revised Offer FNPRM*, 31 FCC Rcd at 13780, para. 17.

<sup>221</sup> *Id.* at 13780-81, para. 19.

corresponding deployment obligations, and whether the Commission should revise the offer to an amount less than the original offer, limited to the carriers that originally elected the first offer and accepted the revised offer.<sup>222</sup>

66. *Discussion.*—We direct the Bureau to offer additional support up to \$146.10 per-location to all carriers that accepted the revised offers of model-based support. Under the revised offer, all locations with costs above \$52.50 per location will be funded up to a per-location funding cap of \$146.10, and the Bureau should adjust deployment obligations accordingly. If all eligible carriers accept this offer, we anticipate that it would result in approximately \$36.5 million more support per year for the 10-year A-CAM term. Increasing support immediately will result in additional broadband deployment, while balancing budgetary constraints pending the outcome of this proceeding. This increase in support does not impact legacy support.

67. There is ample support in the record from carriers and state government officials, as well as from members of Congress, for increasing the budget for A-CAM.<sup>223</sup> With additional funding, these parties have made clear the economic, educational, and healthcare benefits that will directly follow.<sup>224</sup> Our action today addresses these requests by extending a revised offer at \$146.10, the same maximum per-location support amount as we offered to price cap carriers for the Phase II offer of model-based support and as the Commission has proposed for the maximum reserve price in the Phase II auction. By raising the per-location cap to a uniform \$146.10 for all current A-CAM recipients, we could increase by more than 17,700 the number of locations that will receive 25/3 Mbps over the course of the support term, with another 14,000 locations receiving 10/1 Mbps. Although we decline to extend the per-location funding cap to \$200 at this time, we seek comment on doing so in the attached Notice, along with potential increases to the overall budget.

68. We direct the Bureau to release a public notice announcing the revised model-based support amounts and corresponding deployment obligations, and providing carriers with 45 days to confirm that they will accept the revised offer. Any such election shall be irrevocable. In order to true up support that would have been disbursed in 2017 at the \$146.10 per-location cap support amounts, we direct USAC to make a one-time lump sum payment from excess cash in its high-cost account. USAC shall disburse that support the month following a Bureau public notice authorizing those carriers that accept this revised offer. We further direct USAC to collect additional funds going forward to cover the increase in A-CAM support for the remainder of the support term.

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<sup>222</sup> *Id.* at 13780, paras. 18, 19.

<sup>223</sup> See e.g., Letter from Christa L. Alexander, General Counsel, VP of Operations, Fail Telecommunications Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Dec. 7, 2017) (rural telecommunications carriers that elected the revised offer of A-CAM support in Mississippi), Letter from Ruth Newman, Co-General Manager, Highland Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Dec. 8, 2017) (rural telecommunications carriers that elected the revised offer of A-CAM support in Virginia), Letter from James Becker, President, The Middleburgh Telephone Company, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Dec. 11, 2017) (New York A-CAM Letter) (rural telecommunications carriers that elected the revised offer of A-CAM support in New York), Letter from Asa Hutchinson, Governor, State of Arkansas, to Marlene Dortch, Secretary, FCC, WC Docket 10-90 (filed Dec. 12, 2017), Letter from Twinkle Andress Cavanaugh, President, Alabama Public Service Commission, to Ajit Pai, Chairman, FCC, WC Docket No. 10-90 (filed Dec. 15, 2017), Letter from Danna MacKenzie, Executive Director, Minnesota Office of Broadband Development, to Ajit Pai, Chairman, FCC, WC Docket No. 10-90 (filed Dec. 18, 2017), Letter from Glenn Grothman, Member of Congress, 6th District Wisconsin, to Ajit Pai, Chairman, FCC (Dec. 19, 2017) (on file in WC Docket No. 10-90), and Letter from U.S. Senator Roger F. Wicker, Mississippi, to Ajit Pai, Chairman, FCC (Dec. 20, 2017) (on file in WC Docket No. 10-90).

<sup>224</sup> See, e.g., New York A-CAM Letter; Letter from Michael Preston, Executive Director, Arkansas Economic Development Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 12, 2017); Letter from The Colorado A-CAM Companies, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 5, 2017).

### C. Continuing to Smooth Quarterly Collections

69. *Background.*—In the *USF/ICC Transformation Order*, the Commission established an annual funding target for the size of the high-cost program at no more than \$4.5 billion.<sup>225</sup> The Commission also amended section 54.709(b) of the Commission’s rules to give it “greater flexibility to direct USAC to manage collections to mitigate fluctuations in the contribution factor.”<sup>226</sup> The Commission then directed USAC to forecast total high-cost demand as no less than \$1.125 billion per quarter for years 2012-2017, even if actual forecasted demand was less than this amount, in order to avoid dramatic shifts in the contribution factor while CAF was implemented.<sup>227</sup> USAC maintains excess funds in the high-cost cash account.<sup>228</sup> On November 1, 2017, the Bureau directed USAC to retain excess cash on hand in the high-cost account at the end of 2017 and not to take that amount into consideration when determining the contribution factor for the first quarter of 2018.<sup>229</sup> As of November 1, 2017, USAC estimated it would have \$129 million left in the high-cost cash account at the end of 2017 that is not necessary for support payments to existing programs.<sup>230</sup>

70. *Discussion.*—Pursuant to section 54.709(a)(3) of the Commission’s rules, we direct USAC to continue forecasting a quarterly amount of high-cost demand at no less than one quarter of \$4.5 billion until further Commission action, such as addressing the issues raised in the Notice.<sup>231</sup> The concerns raised by the Commission in 2011 regarding support fluctuations resulting from implementation of the CAF remain true today. We expect that there will continue to be shifts in support levels as we transition to paying winners of both upcoming universal service auctions (CAF Phase II and Mobility Fund II) while phasing down payments to current ETCs receiving frozen support amounts. At this time, we cannot predict how those transitions will impact the overall CAF budget but will have a better sense of the impacts after the outcome of the auctions. It is in the public interest to collect a uniform amount to minimize unpredictable fluctuations in consumers’ bills by allowing USAC to build up some excess cash to cover transitions without causing a dramatic shift in the quarterly contribution factor.<sup>232</sup> Moreover, we

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<sup>225</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 125. The Commission further stated “[t]his budgetary target will remain in place until changed by a vote of the Commission.” *Id.*

<sup>226</sup> *Id.* at 17842-43, para. 546; 47 CFR § 54.709(b) (“The Commission may instruct the Administrator to treat excess contributions in a manner other than as prescribed in this paragraph (b). Such instructions may be made in the form of a Commission Order or a public notice released by the Wireline Competition Bureau.”).

<sup>227</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17842-43, 17847, paras. 546, 559-62. (“To the extent that USAC forecasts demand will actually be higher than that amount, USAC should reflect that higher forecast in its quarterly demand filing.”).

<sup>228</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3111, para. 60 & n.130; but see *USF/ICC Transformation Order*, 26 FCC Rcd at 17847, para. 560 & n.928 (“If high-cost demand actually exceeds \$1.125 billion, no additional funds will accumulate in the reserve account for that quarter and ... the reserve account will be used to constrain the high-cost demand in the contribution factor.”).

<sup>229</sup> *Wireline Competition Bureau Provides Guidance to the Universal Service Administrative Company Regarding the High-Cost Universal Service Mechanism Budget*, Public Notice, 32 FCC Rcd 9243, 9243 (WCB 2017) (*USAC Guidance Public Notice*); see also 47 CFR § 54.709(b) (authorizing the Bureau to release a public notice instructing USAC to treat excess contributions in a manner other than by taking into consideration the excess contributions when determining the following quarter’s contribution factor); *Proposed First Quarter 2018 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 17-1203 (OMD Dec. 14, 2017) (*2018 1Q Contribution Factor Public Notice*).

<sup>230</sup> *USAC Guidance Public Notice*, 32 FCC Rcd at 9243.

<sup>231</sup> See 47 CFR § 54.709(a)(3); *USF/ICC Transformation Order*, 26 FCC Rcd at 18263, Appx. F, para. 23; see also *High-Cost Universal Service Support*, WC Docket No. 05-337, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 12854, 12863-64, para. 26 (2010)

<sup>232</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17847, para. 559.



seek comment in the attached Notice on whether to make certain adjustments to the rate-of-return support mechanisms, and building up excess cash leading up to an order on those decisions could lessen later increases to the contribution factor.

71. USAC forecasted contributions based on an estimated demand of \$1.06 billion for the first quarter of 2018, given that USAC's directive to collect \$1.125 billion ended in 2017.<sup>233</sup> To collect at least \$4.5 billion for 2018, we direct USAC to project for each of the final quarters of 2018 a total high-cost demand of at least \$1.125 billion plus the difference between what it has already projected in 2018 based only on demand and the amount it would have collected had the Commission's prior direction continued into 2018, equally spread out over the final quarters. USAC shall place those excess funds in its high-cost account, pending further Commission decisions. USAC shall not take those excess funds into account when forecasting demand for 2018.<sup>234</sup> If high-cost quarterly demand actually exceeds \$1.125 billion plus the additional amount, no additional funds will accumulate in the high-cost cash account for that quarter and excess cash will be used to constrain the high-cost demand in the contribution factor. In other words, by the end of 2018, absent further direction by the Commission, USAC will have collected at least \$4.5 billion for the deployment of broadband networks in high-cost areas. We anticipate that we will take action on the Notice prior to the end of 2018 and will issue additional guidance to USAC at that time.

#### IV. THIRD ORDER ON RECONSIDERATION

72. On May 25, 2016, five petitions were filed requesting that the Commission reconsider or clarify various aspects of the *Rate-of-Return Reform Order*.<sup>235</sup> In April 2017, the Commission adopted an Order on Reconsideration in which it amended the capital investment allowance (CIA) rule limiting support for new construction projects with high average capital expenses.<sup>236</sup> In a Second Order on Reconsideration and Clarification, we addressed the surrogate method for estimating consumer broadband-only loops (CBOLs) and the Access Recovery Charge imputation rule.<sup>237</sup> In this Third Order on Reconsideration, we address certain additional issues petitioners raised, including the mitigation of the budget control mechanism from July 2017 to June 2018; the addition of an inflation factor to calculate the operating expenses limitation; inclusion of broadband-only loops in calculating each carrier's corporate operations expense limitation; treatment of transferred exchanges; streamlined waivers; and the effect of the first A-CAM election on current budget for legacy rate-of-return carriers.<sup>238</sup>

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<sup>233</sup> See *2018 1Q Contribution Factor Public Notice* at 2.

<sup>234</sup> See 47 CFR § 54.709(b).

<sup>235</sup> Petition for Reconsideration and/or Clarification of the NTCA—The Rural Broadband Association, WC Docket No. 10-90 et al. (May 25, 2016) (NTCA Petition); Petition for Reconsideration of Custer Telephone Cooperative, Inc. et al., WC Docket 10-90 et al. (May 25, 2016) (Custer Petition); Petition for Reconsideration of Madison Telephone Company, WC Docket No. 10-90 et al. (May 25, 2016) (Madison Telephone Petition); Petition for Reconsideration of WTA – Advocates for Rural Broadband, WC 10-90 et al. (May 25, 2016) (WTA Petition); Motion to Reconsider, or in the Alternative, Request for Waiver of Certain Provisions within FCC 16-33 of Baraga Telephone Company, WC Docket No. 10-90 et al. (May 25, 2016) (addressed in *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 10664, 10667-68, para. 10 (WCB 2016)). To the extent that we do not expressly address any matter raised in these petitions for reconsideration, the petition remains pending for resolution in a future order.

<sup>236</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order on Reconsideration, 32 FCC Rcd 3258 (2017) (reconsidering the average per-location, per-project construction limitation).

<sup>237</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Order on Reconsideration, FCC 18-13 (Feb. 16, 2018) (*Second Order on Reconsideration*); NTCA Petition at 9, n. 18, and *id.* at 23.

<sup>238</sup> We already addressed, although not explicitly, the substance of NTCA's request to clarify that the Commission did not expand any group's jurisdictional rights to confidential information in the *Rate-of-Return Reform Order*. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 32 FCC Rcd 5944 5948-49, paras. 15- (continued...)

**A. Mitigating the Effects of the Budget Control Mechanism for July 2017 to June 2018**

73. *Background.*—In the *USF/ICC Transformation Order*, the Commission adopted an overall CAF budget, including a \$2 billion budget for rate-of-return carriers.<sup>239</sup> To ensure that the support distributed to rate-of-return carriers did not exceed \$2 billion annually, the Commission subsequently adopted a “self-effectuating mechanism”—known as the budget control mechanism—to enforce the rate-of-return budget.<sup>240</sup> Because support amounts for the two other types of rate-of-return carriers, model-based (A-CAM) and Alaska Plan, are fixed, the budget control mechanism only affects legacy carriers, *i.e.*, those carriers receiving CAF BLS.<sup>241</sup>

74. The budget control mechanism is based on proposals submitted by NTCA.<sup>242</sup> First, a target amount is identified for each category of support affected by the budget control mechanism—HCLS and CAF BLS—so that the aggregated disbursements equal the \$2 billion budgeted amount. This target amount is calculated once annually by multiplying the forecasted disbursements for each category of support by the ratio of the budgeted amount to the total calculated support for each category.<sup>243</sup>

75. The portion of claims affected by the budget control mechanism under HCLS and CAF BLS is then split between a per-line reduction and a pro rata reduction applied to each study area on legacy support. The per-line reduction is calculated by dividing one half the difference between the calculated support and the target amount for each mechanism by the total number of eligible loops in the mechanism.<sup>244</sup> The pro rata reduction is then applied as necessary to achieve the target amount.<sup>245</sup>

76. In its Petition for Reconsideration, NTCA challenges whether the budget, combined with the budget control mechanism, will be “sufficient” under section 254(e) and 254(b)(3) of the Communications Act of 1934, which respectively requires that support be “sufficient to achieve the purposes of this section” and establishes the policy that consumers in rural areas have access to services “reasonably comparable to those services provided in urban areas . . . at rates that are reasonably

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16 (2017) (stating that while entities such as states and Tribal governments, which already have access to confidentially filed information for ETCs within their jurisdiction, will continue to have access to such information “entities without such access will not newly gain access to confidential information”); *see also* NTCA Petition at 24.

<sup>239</sup> Additional background regarding the CAF budget is discussed in the Notice. *See* section V.A.1.

<sup>240</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3143, para. 146.

<sup>241</sup> *See* section V.A.1. Certain CAF BLS carriers also receive HCLS.

<sup>242</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3144, para. 150; Letter from Michael Romano, Senior Vice President – Policy, NTCA—The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. 2 (filed Apr. 21, 2015) (on behalf of NTCA, WTA, and NECA).

<sup>243</sup> Disbursements include CAF BLS provided on a projected basis, as well as true-ups of that mechanism that apply to prior periods. For example, in July 2019, disbursements include HCLS payments being made in the 2019 calendar year, CAF BLS payments being made on a projected basis for the 2019-20 tariff year, and CAF BLS true-ups associated with the 2017 calendar year.

<sup>244</sup> Because some study areas may have per-line support amounts that are less than the per-line reduction, the per-line reductions as applied may not precisely equal one-half the difference between the calculated support and the target amount. In that case, the remaining reductions are achieved through the pro-rata reduction.

<sup>245</sup> For CAF BLS, the per-line and pro rata reductions are calculated once per year, prior to the annual filing of tariffs. For HCLS, the per-line and pro rata reductions are calculated quarterly, using the annual target amount. To facilitate implementation of the budget control mechanism, the initial budget adjustment factor was calculated for September through December 2016 and then another factor was calculated for January through June 2017. An annual factor was calculated for July 2017 through June 2018, with the first quarterly update in September 2017. *See* USAC, Budget Control Mechanism for Rate of Return Carriers, <https://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx> (last visited Mar. 13, 2018).

comparable to rates charged for similar services in urban areas.”<sup>246</sup> To address these concerns, NTCA seeks reconsideration of either: “(1) the insufficient USF budget for RLEC high-cost support as enforced pursuant to the new budget control the Commission has adopted in the *Rate-of-Return Reform Order*; or (2) alternatively, the requirement for RLECs to provide certification that they are providing standalone broadband services at reasonably comparable rates until such time as the budget and other structural modifications to the support mechanism can be more fully considered.”<sup>247</sup>

77. *Discussion.*—To address the concerns raised by NTCA, we grant its petition in part and eliminate the effect of the budget control mechanism for the period current budget year (from July 2017 to June 2018).

78. During this budget year, the support claims of legacy rate-of-return carriers have been reduced by approximately \$180 million due to application of the budget control mechanism—a 13 percent reduction in support.<sup>248</sup> Moreover, the reductions in support are not evenly distributed among states or carriers. For example, carriers in Virginia are subject to an average 17 percent reduction in support while carriers in New Mexico have their support reduced overall by only 9 percent. Similarly, carriers within each state may be subject to drastically different reductions. In Iowa, one carrier has its support reduced by 17 percent while another carrier’s support is only reduced by 8 percent. In Texas, carrier reductions range from 8 percent to 16 percent.<sup>249</sup>

79. NTCA claims these legacy support reductions, which are even greater than it predicted, endanger legacy carriers’ ability to offer service at reasonably comparable rates,<sup>250</sup> and could result in rural consumers paying “tens of dollars (or even hundreds of dollars) more per month than urban consumers for standalone broadband.”<sup>251</sup> That claim has been borne out in fact: Based on FCC Form 481 data, 27 eligible telecommunications carriers could not certify to meeting the broadband reasonable comparability benchmark.<sup>252</sup>

80. Several parties support NTCA’s assertions regarding the insufficient budget for legacy carriers as enforced through the budget control mechanism. GVNW states that the Commission should revisit the budget “to ensure sufficient support so that rural consumers may pay affordable rates.”<sup>253</sup> The National Tribal Telecommunications Association also argues that “inadequate funding is leading to unreasonably comparable rates between rural Tribal areas and the urban areas of the United States,” and that the Commission “must act soon to provide the support necessary to ensure broadband capable facilities are deployed in these areas that allow for services being provided at affordable rates.”<sup>254</sup> ITTA

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<sup>246</sup> NTCA Petition at 2; and 47 U.S.C. § 254(b)(3), (e).

<sup>247</sup> NTCA Petition at 2.

<sup>248</sup> See USAC, Budget Control Mechanism for Rate-of-Return Carriers, <http://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx> (last visited Mar. 13, 2018).

<sup>249</sup> See USAC, Budget Control Mechanism for Rate-of-Return Carriers, <http://www.usac.org/hc/program-requirements/budget-control-rate-of-return.aspx> (last visited Mar. 13, 2018). The percentages herein were calculated based on the analysis posted on May 1, 2017.

<sup>250</sup> See Comments of NTCA—The Rural Broadband Association, WC Docket No. 10-90, at 7-9 (Feb. 13, 2017) (NTCA Feb. 2017 Comments).

<sup>251</sup> NTCA Feb. 2017 Comments at 9.

<sup>252</sup> We note that there may be reasons other than insufficient support that cause a carrier’s rates to be above the comparability standard.

<sup>253</sup> Reply of GVNW Consulting, Inc., WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 4 (Aug. 25, 2016) (GVNW Reply).

<sup>254</sup> The National Tribal Telecommunications Association Reply to Petitions for Reconsideration, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 2, 3 (Aug. 25, 2016) (NTTA Reply).

“shares the concerns expressed by NTCA . . . regarding the insufficiency” of the budget.<sup>255</sup> WTA’s Petition for Reconsideration of the *Rate-of-Return Reform Order* similarly asserts that the budget control mechanism is contributing to rates that are not reasonably comparable to urban areas.<sup>256</sup>

81. We agree with these concerns and find here that it is in the public interest to grant in part NTCA’s petition for reconsideration. Specifically, we reconsider implementation of the budget control mechanism affecting claims from July 2017 to June 2018 by fully funding carrier claims during that period—such large and variable reductions in support have made support not sufficiently “predictable” for affected rate-of-return carriers to engage in the long-term planning for the high-speed broadband deployment needed in rural America. We direct USAC, working with the Bureau, to determine an efficient methodology to calculate the amounts withheld as a result of the budget control mechanism and make payments to fully fund support claims to the affected carriers in a lump sum payment in the second full quarter after the effective date of this Third Order on Reconsideration, drawing first upon funds available in USAC’s reserve account.<sup>257</sup>

82. Nonetheless, we disagree with NTCA’s suggestion that we should go farther immediately and instead initiate a budget review to determine whether the current level of support is sufficient and predictable enough for carriers serving rural areas to provide service at rates comparable to those in urban areas.<sup>258</sup> We also seek comment on how we can encourage more efficient use of carrier support and modify the budget control mechanism to provide more predictable support.

### **B. Operating Expense Limitation Inflation Adjustment**

83. *Background.*—In the *Rate-of-Return Reform Order*, the Commission adopted an operating expense (opex) limitation to “encourage efficient spending by rate-of-return carriers” and “increase the amount of universal service support available for investment in broadband-capable facilities.”<sup>259</sup> For any study area with expenses above the opex limitation, a rate-of-return carrier faces a reduction in support.<sup>260</sup> Although the industry proposal included an inflationary factor in the opex limitation calculation<sup>261</sup>—an annual adjustment to account for the percentage change in the United States Department of Commerce’s Gross Domestic Product–Chained Price Index (GDP–CPI)—the Commission did not address this issue.<sup>262</sup>

84. NTCA argues that omitting an inflationary factor in the opex limitation calculation “is of serious concern that will only increase over time [because] the rigidity of the cap . . . will result in an increasing amount of carriers ‘falling into’ the cap in subsequent years through no fault of their own” due to inflation.<sup>263</sup> NTCA further argues that “there was no notice that such a factor would be excluded from the new limit, nor is there any discussion in the [*Rate-of-Return Reform Order*] regarding why such a

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<sup>255</sup> Comments of ITTA – The Voice of Mid-Size Communications Companies, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 2 (Aug. 15, 2016).

<sup>256</sup> WTA Petition at 22-24.

<sup>257</sup> To the extent that the support payments are attributable to CAF BLS, each carrier will report the payments as revenue on its FCC Form 509 for the applicable year and USAC will apply true-ups as necessary. *See* 47 CFR §§ 54.901, 54.903.

<sup>258</sup> *See* section V.A.1.

<sup>259</sup> *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3125, para. 98; *see also* 47 CFR § 54.303(a).

<sup>260</sup> *See* 47 CFR § 54.303(a)(5).

<sup>261</sup> *See* Letter from Gerard J. Duffy, Regulatory Counsel, WTA-Advocates for Rural Broadband, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 2, Attach. A (filed May 29, 2015) (WTA Ex Parte).

<sup>262</sup> *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3125-26, paras. 98-104;

<sup>263</sup> NTCA Petition at 20.

factor was omitted.”<sup>264</sup>

85. *Discussion.*—We grant NTCA’s request.<sup>265</sup> We recognize that the opex limitation may constrain support for rising costs, potentially diminishing carriers’ ability to maintain and support their networks, thereby potentially reducing service quality, and in turn harming consumers. We therefore reconsider how the opex limitation is calculated to include the adjustment factor GDP–CPI.<sup>266</sup> The GDP–CPI is the same adjustment factor proposed by industry and that we use for the Rural Growth Factor (RGF).<sup>267</sup> Using this adjustment factor will alleviate any harm caused by inflation in application of the opex limitation. Moreover, using the same series for both the opex adjustment and the RGF will reduce confusion and facilitate administrative efficiency. This inflation adjustment will be applicable for five years. Thereafter, we anticipate that the Commission may revisit the inflation adjustment to assess whether it accurately reflects carriers’ experienced changes in costs and if it remains necessary to protect carriers from inflation-driven cost increases.

86. We direct NECA to calculate each carrier’s opex limitation for the following calendar year by multiplying the inflation adjustment factor used in the RGF, as described in its annual September 30 filing, by the carrier’s opex limitation for the current year. For example, if the inflation adjustment in NECA’s September 30, 2018 annual filing is 2 percent, then each carrier’s opex limit for 2019 will be calculated by multiplying its 2018 opex limit by 1.02. Adjusting the opex limitation on this schedule will provide sufficient notice for carriers in preparing their budgets for the upcoming calendar year.

87. The inflation adjustments will be implemented beginning with expenses incurred in 2017. It would be administratively burdensome to apply the inflation adjustment to 2016 expenses because NECA has already made its annual filing setting 2018 HCLS amounts based on 2016 expenses. Therefore, we will include in the 2017 opex limitation a compounded inflation adjustment so as to account for the effects of inflation for 2016 expenses. Specifically, the inflation adjustment will be implemented as follows.

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<sup>264</sup> NTCA Petition at 20.

<sup>265</sup> NTCA Petition at 20-21. The National Tribal Telecommunications Association (NTTA) supports NTCA’s request. *See* NTTA Reply at 4. NTTA also urges the Commission to adopt a waiver of the opex limit “for carriers with a majority of customers located in a Tribal area.” *See id.* We decline to address NTTA’s request at this time because application of the opex limit on Tribal lands is subject to an ongoing further notice of proposed rulemaking, and we revisit the opex limitation for all legacy carriers in the Notice we adopted today. *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3227, para. 382, and *infra* section V.C.4. Although we determine that inflation adjustment should be included in the opex limitation calculation, we note that in the Notice we seek comment on whether the opex limitation has been effective at minimizing inefficient spending and if this limitation should be eliminated. *See* section V.C.4.

<sup>266</sup> *See* WTA Ex Parte at Attach. A, 2.

<sup>267</sup> 47 CFR § 54.1303.

Expense Incurred In	Inflation Adjustment (multiplied by prior year opex limitation)	Expenses Reported In
2017	1.0273 <sup>268</sup>	NECA October 1, 2018 annual filing (HCLS) December 31, 2018 Form 509 (CAF BLS)
2018	1.0128 <sup>269</sup>	NECA October 1, 2019 annual filing (HCLS) December 31, 2019 Form 509 (CAF BLS)
2019	As Published in NECA's Oct. 1, 2018 annual filing	NECA October 1, 2020 annual filing (HCLS) December 31, 2020 Form 509 (CAF BLS)
Subsequent years	As published in the prior year's NECA annual filing	NECA annual filing and Form 509 filed in the following year

### C. Corporate Operations Expense Limitation

88. On reconsideration, as requested by NTCA, we amend section 54.1308(a)(4) of the Commission's rules to include CBOLs in the calculation of each carrier's corporate operations expense limitation.<sup>270</sup> The rule operates by creating a limit on total corporate operations expenses based on the number of lines, and then apportioning those costs among common line and other cost categories.<sup>271</sup> The Commission did not amend this rule in the *Rate-of-Return Reform Order*, and the rule currently includes only common line (voice and voice-broadband) loops in the calculation. As a result, NTCA argues that the rule now sets an inappropriately low limit on the corporate operations expenses for carriers with broadband-only lines. In an extreme case, a carrier with customers that exclusively have chosen to subscribe through broadband-only lines would not be eligible to recover any of its corporate operations expenses. We concur and amend the rule accordingly to allow broadband-only loops, as well as voice and voice-broadband loops, in the corporate operations expense limitation calculations. We expect that this action will provide parity for carriers with broadband-only lines and create incentives for broadband deployment.

### D. Transfer of exchanges

89. At the request of WTA, we clarify the treatment of transferred exchanges under the rules adopted in the *Rate-of-Return Reform Order*.<sup>272</sup>

90. Specifically, we first clarify that when any entity that is not a rate-of-return carrier

<sup>268</sup> This is the compounded inflation factor reflecting the 1.6649 percent inflation rate shown in NECA's September 30, 2015 annual filing (which would have adjusted the 2016 opex limitation) and the 1.0667 percent inflation rate shown in NECA's September 30, 2016 annual filing (which would have adjusted the 2017 opex limitation). See National Exchange Carrier Association, Inc., Overview and Analysis of 2015 USF Data Submission at 2 (Sept. 30, 2015); National Exchange Carrier Association, Inc., Overview and Analysis of 2016 USF Data Submission at 2 (Sept. 30, 2016), available at <https://www.fcc.gov/general/necas-overview-universal-service-fund>.

<sup>269</sup> National Exchange Carrier Association, Inc., Overview and Analysis of 2017 USF Data Submission at 3 (Sept. 29, 2017), available at <https://www.fcc.gov/general/necas-overview-universal-service-fund> (NECA 2017 Annual Filing).

<sup>270</sup> NTCA Petition at 21, n.47. We addressed NTCA's request regarding the surrogate method for estimating CBOLs and the Access Recovery Charge imputation rule. See *Second Order on Reconsideration*; NTCA Petition at 9, n. 18, and *id.* at 23.

<sup>271</sup> 47 CFR § 54.1308(a)(4).

<sup>272</sup> WTA Petition at 13-17. In its reply, GVNW supported WTA's request for clarification. See GVNW Reply at 5.

(including a price cap carrier, competitive local exchange carrier, interexchange carrier, or non-carrier entity) acquires exchanges from a rate-of-return carrier, section 54.902(c) applies. This means that, “absent further action by the Commission, the carrier will receive model-based support.”<sup>273</sup> We note that the language about which WTA raises its specific question—“entity other than a rate-of-return carrier”—is retained from the prior ICLS rule.<sup>274</sup> Given that CAF BLS is predicated on rate-of-return regulation, there does not appear to be any basis for automatically providing CAF BLS to an entity that is not a rate-of-return carrier. The rule expressly contemplates that the Commission may consider alternatives on a case-by-case basis, but provides a default mechanism whereby the acquiring entity becomes subject to the Connect America Model support and obligations. WTA suggests that this result does not appear to be the intent of the *Rate-of-Return Reform Order* but provides no support for this assertion.

91. Second, we clarify, as requested by WTA, that the term “exchanges” in section 54.902 does not apply to entire study areas, but instead to areas smaller than a complete study area. This approach is consistent with how the Commission has previously treated transfers of control, as well as section 54.305 (the “parent trap rule”) and study area waivers.<sup>275</sup> We note that the sale of a complete study area does not necessarily present the same potential for manipulating universal service support as the sale of exchanges because support is calculated on a study area basis.<sup>276</sup> The transfer of exchanges or other parts of a study area, on the other hand, likely would affect the amount of universal service support for which a study area would qualify under our rules. The Commission is concerned that transfers of exchanges could be structured in order to maximize and increase high-cost support and could put additional pressure on scarce high-cost resources.<sup>277</sup>

92. Next, we decline to eliminate section 54.305 as proposed by Madison Telephone.<sup>278</sup> Madison Telephone argues that the parent trap rule is no longer necessary because section 54.902 is sufficient to address the consequences to high-cost universal service support resulting from transfers of exchanges.<sup>279</sup> We disagree. Section 54.902, entitled “Calculation of CAF BLS Support for transferred exchanges,” does not apply to HCLS.<sup>280</sup> Without section 54.305, therefore, there is no constraint on

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<sup>273</sup> 47 CFR § 54.902(c); see WTA Petition at 14-15. Any such acquisition would be subject to Commission approval under section 214, see 47 U.S.C. § 214; 47 CFR § 63.03, and would also require a study area waiver. See 47 CFR § 36.4 & App.

<sup>274</sup> *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers et al.*, CC Docket No. 00-256 et al., 16 FCC Rcd 19613, 19753, App. A, § 54.902(d) (2001).

<sup>275</sup> See, e.g., *Notice of Non-Streamlined Domestic Section 214 Application Granted*, WC Docket No. 14-112, Public Notice, 29 FCC Rcd 10499 (WCB 2014) (granting transfer of control of study area without requiring study area waiver or application of section 54.305).

<sup>276</sup> See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45 et al., Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11284, para. 97 (2001).

<sup>277</sup> When an entire study area is acquired, the transfer of control is subject to approval pursuant to section 214, see 47 U.S.C. § 214; 47 CFR § 63.03, and the Commission may take additional action as it finds necessary as a condition of approval. For instance, the Commission may condition approval upon the post-transfer company receiving model-based support.

<sup>278</sup> Madison Telephone Petition at 2-8.

<sup>279</sup> Madison Telephone Petition at 2-8.

<sup>280</sup> 47 CFR § 54.902. While section 54.902(b), which applies to acquisitions of exchanges by rate-of-return carriers from price cap carriers, does not expressly limit itself to CAF BLS, the rule itself is plainly within the bounds of CAF BLS. Further, section 54.902(a), which applies to acquisitions of exchanges by rate-of-return carriers from other rate-of-return carriers, does expressly limit its applicability to CAF BLS. Madison Telephone does not address acquisitions from rate-of-return carriers in its analysis.

increases to HCLS resulting from the strategic transfer of portions of study areas. Further, we are not persuaded by Madison Telephone's arguments that the parent trap rule should be eliminated because only a relatively small number of carriers are currently subject to the rule.<sup>281</sup> Currently, 28 carriers are subject to the parent trap rule.<sup>282</sup> Madison Telephone's argument fails to address the fact that the absolute number of carriers subject to the rule is not an adequate measure of the potential financial effects to universal service posed by the elimination of the parent trap rule. Madison Telephone does not, for example, estimate the amount of additional support that affected carriers would receive if the parent trap rule were eliminated. We further note that the Commission relied on the applicability of section 54.305 as a constraint on universal service support in granting study area waivers to many of the carriers currently subject to the parent trap rule.<sup>283</sup> Eliminating the parent trap rule without further analysis of the consequences would undermine the rationale for granting those waivers.

93. We are also not persuaded by Madison Telephone's argument that the build-out requirements of the *Rate-of-Return Reform Order* necessitate the provision of additional support to carriers currently subject to the parent trap rule.<sup>284</sup> Each carrier's build-out obligations have been determined based on the amount of support a carrier was forecasted to receive, which takes into account the effect of the parent trap rule.<sup>285</sup> Therefore, we expect that eliminating the parent trap rule would increase the build-out obligations for those carriers, rather than provide additional support to achieve the same obligations. Finally, we reject Madison Telephone's argument that the complications of the parent trap rule perpetuate a disincentive to further consolidation among rate-of-return carriers.<sup>286</sup> Although we agree that rate-of-return carriers should have appropriate incentives for further consolidation, we must have adequate safeguards to protect the Fund from transfers of exchanges that result in excessive increases in high-cost support. As described above, we disagree that there would be adequate safeguards if we eliminate the parent trap rule and find that it continues to serve an important purpose.

94. In general, the rules governing the transfer of exchanges are intended to prevent an increase in high-cost universal service, driven by a change in the area over which costs are averaged, without a Commission finding that such an increase would be in the public interest. Although budget constraints now prevent the Fund's total size from increasing as the result of transactions, increases in universal service awarded to one carrier result in decreases in support to other carriers. Therefore, the Commission must carefully review new or additional demands on resources to ensure that the overall effect is in the public interest. Although the Commission may consider a systematic review of the rules governing transfers of exchanges in light of the recent reforms, we do not believe that the current petitions are the appropriate means by which to do so.

#### **E. Waiver Requests**

95. We address two requests, one from NTCA and the other from WTA, related to streamlining waivers. NTCA's petition for reconsideration, in part, asks the Commission to clarify (or to the extent necessary, reconsider) the circumstances in which a "streamlined waiver" process may be used, whereby an "engineer-certified estimate of construction costs could be substituted for the CIA-estimated

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<sup>281</sup> Madison Telephone Petition at 6-7. Madison Telephone further notes that the number of carriers subject to the parent trap rule may decrease further if those carriers elect A-CAM support, but our analysis here reflects those elections, which occurred subsequent to Madison Telephone's filing of its petition. *Id.* at 7.

<sup>282</sup> NECA 2017 Annual Filing at App. F.

<sup>283</sup> See, e.g., *Northwest Communications Cooperative and Noonan Farmers Tel. Co.*, CC Docket No. 96-45, Petition for Waiver of the Definition of "Study Area" Contained in Part 36 of the Commission's Rules, 20 FCC Rcd 14676, 14678, para. 6 (WCB 2005).

<sup>284</sup> Madison Telephone Petition at 7.

<sup>285</sup> See, e.g., *Rate-of-Return Reform Order*, 31 FCC Rcd at 3149-52, 3315-16, paras. 166-71 & App. E.

<sup>286</sup> Madison Telephone Petition at 7-8.



investment allowance. Specifically, NTCA argues that a streamlined process should be permitted for circumstances beyond the narrow instance of compliance with defined buildout obligations.”<sup>287</sup> For example, NTCA states that, “a RLEC may be unable to obtain financing to perform any buildout—whether tied to a specific obligation or otherwise intended to advance broadband—unless it can obtain such a waiver.”<sup>288</sup> NTCA also notes that “timing considerations with respect to buildout and hiring of contractors, especially in certain locales where build seasons are shorter, may drive the need for a waiver.”<sup>289</sup>

96. First, we clarify that the Commission did not adopt a “streamlined waiver” process in the *Rate-of-Return Reform Order*. Although the Commission noted that several commenters argued a streamlined waiver process was needed “to ensure that carriers can seek a waiver if it needs to make investments greater than those allowed by the capital budget limitation to provide broadband to the carrier’s customers,” the Commission determined that any carrier could file a waiver under the Commission’s existing rules.<sup>290</sup> The Commission then explained what would enable “expeditious” treatment of a waiver and further stated that “carriers who cannot meet their deployment obligation even by expending the full amount of their TALPI [Total Allowed Loop Plant Investment] allowance should submit information regarding the costs expected to be incurred to meet the deployment obligation certified by an engineer licensed in the state(s) in which the construction will take place.”<sup>291</sup> The Commission noted that this information would assist the Commission in reviewing a waiver request expeditiously.

97. Second, we clarify that in assessing whether “good cause” exists to grant a request for waiver of the CIA, the Commission is likely to view as highly relevant cost estimate information certified by an engineer licensed in the state where the construction will take place. We anticipate that certification will help ensure that any cost estimates are reasonably accurate and objective. We further clarify that we will review any waiver petitions of the CIA on a case-by-case basis, and carriers should submit all relevant information, certified appropriately, to justify the relief requested to help expedite the review process.

98. WTA asks the Commission to address the “extremely likely” situation of material/labor shortages and corresponding price increases by adopting a rule that allows rate-of-return carriers receiving CAF BLS to “request and obtain via a streamlined process a reduction of their applicable build-out requirements if they can show that their cost per location has increased by thirty percent (30.0%) or more above the cost per location used to compute their initial buildout requirement.”<sup>292</sup> WTA further requests a streamlined waiver process for all CAF BLS and A-CAM carriers to “extend their deadlines for meeting interim and/or ultimate build-out requirements if they can show that they had made *bona fide* attempts to obtain the requisite pre-construction approvals, fiber optic cable and/or contractor

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<sup>287</sup> NTCA Petition at 21-22. In the *Rate-of-Return Reform Order*, the Commission adopted the capital investment allowance to limit universal service reimbursement of capital expenses associated with very high-cost locations, with a goal of preserving funds for more efficient projects with deployment to a greater number of lower-cost locations. See *Rate-of-Return Reform Order*, 31 FCC Rcd at 31327-31, 3236-39, paras. 105-15 & App. B, § 54.303(b)-(m).

<sup>288</sup> NTCA Petition at 22.

<sup>289</sup> *Id.*

<sup>290</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3129, n.235.

<sup>291</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3129, n.235.

<sup>292</sup> See WTA Petition at 21. GVNW supports WTA’s request. See GVNW Reply at 6. Sacred Wind Communications supports WTA’s request for streamlined waiver process that would permit “extended deadlines for meeting interim and/or ultimate build-out requirements if they can show that they had made *bona fide* attempts to obtain the requisite preconstruction approvals.” See Reply Comments of Sacred Wind Communications, Inc. on Petitions for Reconsideration, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 8 (Aug. 24, 2016)

arrangements, and had been unsuccessful in doing so for reasons significantly outside their control.<sup>293</sup>

99. We deny WTA's request. We find that the situations for which WTA requests streamlined waivers must each be considered individually and that there is an existing process by which to seek relief. As stated above and in the *Rate-of-Return Reform Order*, any carrier may file a waiver under existing rules to address the specific hardships that it faces.<sup>294</sup> Carriers should submit all relevant information, certified appropriately, to justify the relief requested to help expedite the review process, and the Commission will evaluate the circumstances on a case-by-case basis. We further note that WTA does not provide a concrete proposal for how a streamlined waiver process would work. For instance, it is not clear whether after a specific period of time the waiver would be deemed granted; or whether a request to reduce the number of locations by a third or extend a deadline by two years would qualify for streamlined treatment. Given the availability of an existing mechanism to address WTA's concerns, and its lack of a specific proposal, we conclude that WTA's request lacks merit and is thereby denied. We remind carriers that detailed petitions for waiver, substantiated by data (and certified appropriately) will help to facilitate expeditious review.

#### **F. Effect of First A-CAM Election on Current Budget for Legacy Rate-of-Return Carriers**

100. We dismiss as moot NTCA's request regarding the budgetary impact in cases where a carrier that initially elected to receive model support in 2016 subsequently declined the revised offer.<sup>295</sup> In the *Rate-of-Return Reform Order*, the Commission decided how the budget for the first offer of A-CAM support would be determined if carriers that initially elected to receive model support subsequently declined to accept a revised second offer. Specifically, the *Rate-of-Return Reform Order* provided that "[i]f the carrier received more support from the legacy mechanisms in 2015 than it was offered by the final model run, the overall budget for all carriers that receive support through the rate-of-return mechanisms (HCLS and reformed ICLS) will be reduced by the difference between the carrier's 2015 legacy support amount and the final amount of model support offered to that carrier."<sup>296</sup>

101. NTCA seeks clarification of whether this statement means that the difference reduces that carrier's own support, or whether it reduces the overall budget for carriers remaining on legacy support.<sup>297</sup> To the extent the Commission intended to reduce the overall budget, NTCA seeks reconsideration of this decision. NTCA is concerned that such an approach could dramatically reduce the budget for carriers remaining on legacy support and undermine their ability to offer voice and broadband service at reasonably comparable rates. Similarly, Custer Telephone Cooperative et al. seeks clarification, or reconsideration, regarding the reduction of support available to carriers remaining on legacy support mechanisms.<sup>298</sup>

102. In the *A-CAM Revised Offer Order*, the Commission concluded that its approach to revising the first A-CAM offers largely addressed the concerns raised by NTCA because the Commission did not change the support amounts for those carriers for which the offer of model-based support was less than the legacy support.<sup>299</sup> The 35 such carriers that accepted the initial offer contributed to the overall A-CAM budget and were authorized by the Bureau to receive support because their support was unchanged

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<sup>293</sup> WTA Petition at 21-22.

<sup>294</sup> See 47 CFR § 1.3; see also *Rate-of-Return Reform Order*, 31 FCC Rcd at 3129, n.235.

<sup>295</sup> NTCA Petition at 12-14.

<sup>296</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3114, para. 69.

<sup>297</sup> NTCA Petition at 12-14.

<sup>298</sup> Custer Petition at 2-4.

<sup>299</sup> *A-CAM Revised Offer Order*, 31 FCC Rcd 13777-78, para. 7.

and their initial elections were irrevocable.<sup>300</sup> When the Bureau extended revised offers to the remaining carriers that accepted the initial offer, it resulted in only 18 instances in which the carrier was offered a revised amount that was less than the legacy support received in 2015. Because the net decrease in legacy support for this group of carriers was only approximately \$4.2 million, the Commission determined that the difference was only a *de minimis* amount in the context of the overall rate-of-return budget.<sup>301</sup> Therefore, the potential harm identified by the parties in their petitions for clarifications or reconsideration of this issue—“to ensure that non-model carriers and their consumers will not be harmed by the decisions of RLECs that choose to ‘jump in and out’ of the model election process”<sup>302</sup>—did not come to pass. Accordingly, we dismiss as moot those portions of these requests.

## V. NOTICE OF PROPOSED RULEMAKING

### A. Connect America Fund Support Available for Rate-of-Return Carriers

#### 1. Review of the Rate-of-Return Budget

103. *Background.*—In the *USF/ICC Transformation Order*, the Commission established a budget of \$4.5 billion for the high-cost program, based on the estimated size of the high-cost program in fiscal year 2011. The Commission allocated up to \$1.8 billion in price cap areas, \$500 million for the Mobility Fund, and at least \$100 million for the highest cost areas.<sup>303</sup> The Commission allocated \$2 billion for the rate-of-return carriers, an amount “approximately equal” to 2011 levels.<sup>304</sup>

104. The current \$2 billion budget for rate-of-return carriers consists of several components. Model-based support for rate-of-return carriers (A-CAM) offered in 2016 is fixed through the end of 2026. Support for most rate-of-return Alaska carriers is fixed also through the end of 2026, pursuant to the terms of the comprehensive Alaska Plan adopted in 2016.<sup>305</sup> Support to reimburse rate-of-return carriers for reductions in switched access charges—adopted with the ultimate goal of transitioning to a bill-and-keep regime and called Connect American Fund intercarrier compensation (CAF ICC) support—is being phased in and ultimately phased down for rate-of-return carriers.<sup>306</sup> Finally, CAF BLS and HCLS, the two primary components of the legacy rate-of-return support mechanism, are the only two CAF support programs that are neither fixed nor being phased down.<sup>307</sup>

105. Because CAF BLS and HCLS are the only support mechanisms that are not fixed and not already predetermined for the support term, they are the only ones we constrain after the fact (after support claims) to remain within budget. The amount of support currently available for CAF BLS and

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<sup>300</sup> *A-CAM Revised Offer Order*, 31 FCC Rcd 13777-78, para. 7; see also *A-CAM First Authorization and Revised Offer Public Notice*.

<sup>301</sup> *A-CAM Revised Offer Order*, 31 FCC Rcd at 13777, n.16. Ultimately, 5 of those 18 carriers declined the revised offer, narrowing the budgetary impact to \$1.7 million. See *A-CAM Second Authorization Public Notice*.

<sup>302</sup> NTCA Petition at 14.

<sup>303</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 126.

<sup>304</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17738, para. 195.

<sup>305</sup> In August 2016, the Commission adopted an integrated plan to address both fixed and mobile voice and broadband service in high-cost areas of the state of Alaska. As part of this plan, Alaskan rate-of-return carriers had the option to obtain a fixed level of funding for a defined term in exchange for committing to deployment obligations that are tailored to each Alaska rate-of-return carrier’s circumstances. *Connect America Fund; Universal Service Reform; Connect America Fund – Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016) (*Alaska Plan Order*). As noted above, under the Alaska Plan, support for most Alaska carriers is fixed through the end of 2026.

<sup>306</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17677, para. 36; *id.* at 17934-35, para. 801; *id.* at 17957-58, paras. 850-852.

<sup>307</sup> HCLS includes Safety Net Additive and Safety Valve Support (SNA and SVS).

HCLS is approximately \$1.23 billion, once funding requirements for A-CAM, Alaska Plan, and CAF ICC support are deducted from the overall \$2 billion rate-of-return budget.<sup>308</sup> We anticipate that the \$1.23 billion amount will increase over time as total CAF ICC support decreases.

106. The Commission anticipated that it might revisit and adjust accordingly the appropriate size of each of the CAF programs by the end of 2017 “based on market developments, efficiencies realized, and further evaluation of the effect of these programs in achieving our goals.”<sup>309</sup>

107. *Discussion.*—We seek comment on revising the budget for rate-of-return carriers within the high-cost program.<sup>310</sup> The Commission has not revised the budget since 2011, and as a result, has not accounted for the effects of inflation on the budget. Had we accounted for inflation, the rate-of-return budget would have increased from \$2 billion in the 2012 budget year to \$2.193 billion in the 2018 budget year.<sup>311</sup>

108. Moreover, since 2011 consumers’ expectations and the Commission’s requirements regarding broadband speed have continued to increase. The Commission’s initial speed benchmark for CAF recipients was 4 Mbps downstream and 1 Mbps upstream, later revised to 10 Mbps downstream and 1 Mbps upstream, and certain CAF recipients are now required to offer 25 Mbps downstream and 3 Mbps upstream.<sup>312</sup> Consumer demand for higher speeds is also evident. Among residential users, the percentage of fixed broadband connections with a “downstream speed of at least 25 Mbps has grown from 24% (or 23 million connections) in June 2013 to 57% (or 59 million connections) in June 2016,” and “slower downstream speeds of less than 3 Mbps has decreased from 18% (or 17 million connections) in June 2013 to 5% (or 5 million connections) in June 2016.”<sup>313</sup> A budget designed to speed the deployment of 4 Mbps/1 Mbps broadband to rural America may be insufficient to encourage the deployment of the high-speed broadband networks that residents of rural America need.

109. In initiating the budget review, we seek comment on the appropriate level of support—and we note that the Act requires such support to be “predictable and sufficient . . . to preserve and advance universal service.”<sup>314</sup> Should we establish a separate budget dedicated to HCLS and CAF BLS? If so, should the Commission set that budget at \$1.23 billion (the current amount available for HCLS and

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<sup>308</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17710, para. 122, n 194 (“[F]or purposes of this budget, the term ‘high-cost’ includes all support mechanisms in place as of the date of [the *USF/ICC Transformation Order*], specifically, high-cost loop support, safety net support, safety valve support, local switching support, interstate common line support, high cost model support, and interstate access support, as well as the new Connect America Fund, which includes funding to support and advance networks that provide voice and broadband services, both fixed and mobile, and funding provided in conjunction with the recovery mechanism adopted as part of intercarrier compensation reform.”).

<sup>309</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17710, para. 123. The Tenth Circuit Court of Appeals affirmed the Commission’s decision establishing an overall high-cost budget, including the adoption of the rate-of-return budget of \$2 billion, based in part on the Commission taking a fresh look at the budget at the end of six years—in 2017. *In re: FCC 11-161*, 753 F.3d at 1060.

<sup>310</sup> At this time, we are not reviewing the support mechanisms for price cap areas, mobility, or Alaska and thus do not seek comment on these.

<sup>311</sup> This amount is based on using the GDP-CPI as the inflation factor.

<sup>312</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17697, para. 94; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15649-53, paras. 15-25 (2014) (*December 2014 Connect America Order*); *Rate-of-Return Reform Order*, 31 FCC Rcd at 3097-98, paras. 23-25.

<sup>313</sup> See Wireline Competition Bureau, FCC, Internet Access Services: Status as of June 30, 2016, at 5, Fig. 3 (WCB 2017).

<sup>314</sup> 47 U.S.C. § 254(b)(5); see also 47 U.S.C. § 254(e); *Texas Office of Public Util. Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999); *In re: FCC 11-161*, 753 F.3d at 1055.

CAF BLS), at \$1.35 billion (that amount adjusted by the inflationary ratio that reflects inflation since 2011), or at some other amount? Commenters should submit evidence that labor costs or other costs, such as fiber or electronics, have increased since 2011 due to inflation. Commenters should also submit evidence that those increased costs, if any, have not been offset by savings related to increased labor productivity or the lower cost of network equipment.

110. Alternatively, should the amount of support available for HCLS and CAF BLS continue to be calculated by subtracting A-CAM, Alaska Plan, and CAF ICC support from a single rate-of-return budget? If so, should we increase that rate-of-return budget for the 2018 budget year to \$2.193 billion (the inflation-adjusted figure) or adopt some other figure? If we retain a single budget, how should we account for other changes and proposals we make today? For example, we offer existing A-CAM carriers revised support up to a per-location cap of \$146.10 and seek comment on making a second A-CAM offer to legacy carriers—should that additional funding come from within a single, combined budget? We note that any increase in the budget attributable to those carriers now receiving A-CAM could help fully fund the original offer at the \$200 per-location cap or incent more legacy carriers to elect a new model offer. Should we adopt a budget that would fully fund a new model offer and fully fund the original A-CAM offer for all existing A-CAM providers? We also propose to offer model-based support to glide path carriers, which would decline over the 10-year term as transition payments phase down to the model amount. Should that support then be available to carriers continuing to receive HCLS and CAF BLS?

111. In revisiting the budget, how should we take into account the reforms the Commission adopted in the *Rate-of-Return Reform Order* as well as proposals we make in this Notice—reforms and proposals that will bring more predictability to rate-of-return carrier support, while spurring deployment and mitigating regulatory inefficiencies? And how should we account for the fact that recipients of CAF BLS and HCLS are uniquely situated because each recipient effectively determines its own support claims through its behavior (its expenses and capital investments) and each recipient's behavior has a collective effect on all recipients of these funds due to the budget cap. In other words, how should we account for the fact that spending by one legacy carrier could reduce support available to other providers once adjustments are made to ensure that total spending falls below the cap?

112. We are mindful of our obligation to ensure that scarce public resources are spent judiciously. As courts have recognized, too much subsidization could affect the affordability of telecommunications services for those that pay for universal service support, in violation of section 254(b).<sup>315</sup> We also note that when the Tenth Circuit upheld the budget adopted in 2011, it stated that “the FCC quite clearly rejected any notion that budgetary ‘sufficiency’ is equivalent to ‘complete’ or ‘full’ funding for carrying out the broadband and other obligations imposed upon carriers who are voluntary recipients of USF funds.”<sup>316</sup> We therefore ask commenters to discuss whether the benefits of any budget increase would outweigh the burden on ratepayers from an increase in the contribution factor. We note that the proposed contribution factor for the second quarter of 2018 is 18.4 percent.<sup>317</sup> The Commission takes seriously its obligations as steward of the Fund and is committed to fiscal responsibility. We also recognize that increases in the contribution factor raise the costs, directly and indirectly, of service to businesses and consumers. We thus ask that commenters consider our commitment to fiscal

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<sup>315</sup> *Qwest Corporation v. FCC*, 258 F.3d, 1191, 1200 (5th Cir. 2001); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000); *Qwest Commc'ns Int'l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005). In adopting the budget in the *USF/ICC Transformation Order*, the Commission noted that “establishing a CAF budget ensures that individual consumers will not pay more in contributions due to the reforms” adopted. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17710, para. 124. The Commission also noted that were “the CAF to significantly raise the end-user cost of services, it could undermine [the Commission's] broader policy objectives to promote broadband and mobile deployment and adoption.” *Id.*

<sup>316</sup> *In re: FCC 11-161*, 753 F.3d at 1060.

<sup>317</sup> *Proposed Second Quarter 2018 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 18-234, at 1 (WCB Mar. 9, 2017).

responsibility when advocating an appropriate high-cost budget.

113. With any proposed budget, we urge commenters to provide a detailed economic analysis. We would find most helpful comments providing evidence on the amount of support legacy carriers would need to meet mandatory buildout requirements while offering at least one plan at the comparative benchmark rate, and why/if current support levels are insufficient.<sup>318</sup> We also ask that comments quantify how much additional broadband deployment could occur with any budget increase.

114. After we have set a new initial budget, we propose to increase that budget for inflation going forward and seek comment on this proposal.<sup>319</sup> We believe that adjusting the budget for inflation would account for any increases in the costs of network inputs and allow carriers an opportunity to recover those increased costs. We seek comment on inflation's impact on the costs of deploying and maintaining a network.

115. For an inflationary factor, we propose using GDP-CPI, the same factor used for the RGF.<sup>320</sup> Using the same inflationary factor we use for the RGF would be administratively efficient. In addition, the Commission has been using the GDP-CPI in other contexts since 1996, and of the two versions used to index federal programs, the GDP-CPI is more accurate in estimating cost of living changes from month to month.<sup>321</sup> Furthermore, above, we modify the operating expense limitation to add GDP-CPI as the inflationary factor, which the industry had requested.<sup>322</sup> Nonetheless, we seek comment on whether another inflationary factor be more appropriate and, if so, why?

116. We also seek comment on when we should next revisit the budget. Should the Commission revisit the budget again in six years, as set forth in the *USF/ICC Transformation Order*? Given that current A-CAM funding continues until 2026, would it be more appropriate to revisit the budget in 2026? We ask that commenters consider that any time frame should take into account carriers' needs for a sufficient and predictable funding stream, while providing the flexibility to make adjustments as marketplace circumstances warrant.

## 2. A New Model Offer

117. In the *A-CAM Revised Offer Order*, the Commission recognized that glide path carriers—those carriers electing A-CAM despite an “offer of model-based support . . . less than the legacy support that they received”—leave more funding available in the A-CAM rate-of-return budget to the benefit of

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<sup>318</sup> See 47 CFR 54.313(a)(3) (requiring recipients of high-cost support must provide, “A certification that the pricing of a service that meets the Commission’s broadband public interest obligations is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support.”). The benchmark rate is determined annually through the urban rate survey. See, e.g., *Wireline Competition Bureau Announces Results of 2017 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for ETCs Subject to Broadband Public Interest Obligations*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 1358, 1359 (WCB 2017).

<sup>319</sup> See NTCA Petition, at 8, n.17 (requesting an inflationary factor for the legacy rate-of-return budget).

<sup>320</sup> See 47 CFR § 54.1303.

<sup>321</sup> See *Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications*, CC Docket No. 16-193, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 11716, 11729-30, paras. 24-26 (1996), and *Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications*, CC Docket No. 16-193, Report and Order, 12 FCC Rcd 8071, 8091-92, paras. 41-44 (1997); Rob McClelland, Congressional Budget Office, Differences Between the Traditional CPI and the Chained CPI, Apr. 19, 2013, <https://www.cbo.gov/publication/44088>.

<sup>322</sup> See section IV.B.

consumers and other rate-of-return carriers that elected model support.<sup>323</sup> Here, we propose to extend a new model offer to carriers willing to accept lower support amounts in exchange for increased certainty of funding—which in turn could create additional headroom for legacy rate-of-return carriers over time. We seek comment on this proposal.

118. In proposing this new model offer, we first seek comment on limited adjustments to the cost model that may make participation more favorable to carriers that declined the A-CAM, including the addition of a Tribal Broadband Factor. We next seek comment on which carriers should be eligible to participate. We then seek comment on the support amounts available for electing carriers, as well as their accompanying obligations. Finally, we seek comment on the process used for elections.

119. *Revising Model Parameters.* We generally propose to use the A-CAM and the parameters we adopted in the *Rate-of-Return Reform Order* to provide our new model offers, but we seek comment on several proposed revisions.<sup>324</sup>

120. *First*, we propose to adjust the model to reflect the unique challenges of deploying high-speed broadband to rural, Tribal communities by incorporating a Tribal Broadband Factor into the model. Specifically, the A-CAM incorporates assumptions about take rates and potential average revenues per subscriber that may be unrealistic given the “high concentration of low-income individuals [and] few business subscribers” in many rural, Tribal areas.<sup>325</sup> By reducing the funding threshold by 25 percent for locations in Indian country—in other words, by setting a high-cost funding benchmark of \$39.38 on Tribal lands—we believe the revised model will better reflect the business case of deploying high-speed broadband in rural, Tribal areas and therefore spur further broadband deployment there. Because A-CAM support is calculated at the census block level, the Tribal Broadband Factor would efficiently target support to carriers that serve significant Tribal lands, as well as those carriers that serve only a minimal amount of Tribal lands or a small number of housing units on Tribal lands in their study area.<sup>326</sup> We propose to use the definition of “Tribal lands” that was used in the *USF/ICC Transformation Order*<sup>327</sup> and later modified in the *2015 Lifeline Reform Order*.<sup>328</sup> We seek comment on this proposal.

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<sup>323</sup> *A-CAM Revised Offer Order*, 31 FCC Rcd at 13777-78, para 7.

<sup>324</sup> A-CAM contains two modules: a cost module that calculates costs, and a support module that calculates the support for each area based on those costs. The support module can be used to calculate costs differently for different geographic areas, including removing support entirely (or filtering out) those areas that have broadband coverage. The proposed Tribal Broadband Factor and the updated broadband coverage would be modifications only to the support module.

<sup>325</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17820, para. 482 (quoting *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12226, para. 32 (2000)); see also, e.g., SWC Comments at 4, 5-6, 9-10; Comments of Gila River Telecommunications, Inc., WC Docket No. 10-90, at 3, 7-9 (May 12, 2016) (GRTI Comments); and Comments of National Tribal Telecommunications Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 4, 7-14 (May 12, 2016) (NTTA Comments); Reply Comments of the National Congress of American Indians, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 3-4 (Jun. 8, 2016); Reply Comments of the South Dakota Telecommunications Association, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, at 2 (Jun. 13, 2016).

<sup>326</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3089, para. 1 (modernizing “the rate-of-return program to . . . efficiently target support to areas that need it most . . .”).

<sup>327</sup> Consistent with past precedent in the high-cost program, “Tribal lands” include any federally recognized Indian tribe’s reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688), and Indian Allotments, as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, Act July 9, 1921, 42 Stat. 108, et seq., as amended. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17711, n.197. This definition was adopted in that Order for purposes of the comprehensive reforms adopted to the high-cost program. *Id.* It was also used for the Tribal Mobility Fund Phase I. *Id.* at 17819-20, paras.

(continued...)

121. *Second*, we propose to include census blocks where an incumbent or its affiliate is providing 10 Mbps/1 Mbps or better broadband using either fiber to the premises (FTTP) or cable technologies. In the *Rate-of-Return Reform Order*, the Commission excluded these census blocks to focus our limited budget on those carriers most likely to build new networks with new funding.<sup>329</sup> Because we propose to limit this new offer to glide path carriers, providing model support to maintain and upgrade existing networks is financially feasible and may create an additional incentive for legacy providers to consider shifting to model-based support.

122. *Third*, consistent with the \$146.10 per-location funding cap we are implementing for the original A-CAM electors, we propose to cap the total amount of support available for the second offer at \$146.10 per location instead of \$200.<sup>330</sup> We also propose a \$13.12 higher per-location cap on rural, Tribal lands to reflect the high-cost threshold created by applying the Tribal Broadband Factor.<sup>331</sup> We seek comment on this proposal. We also seek comment on alternatives. For example, because we propose to limit eligibility to carriers for whom A-CAM support would be less than legacy support, should we anticipate that the available budget could potentially fund a higher per-location funding cap of \$200? If so, should we establish a per-location cap up to that amount? Alternatively, we note that a single per-location funding cap may unnecessarily exclude some carriers from participating in the new model offer. For example, a carrier might be willing to accept a small loss of support but not a larger loss—meaning a \$146.10 per-location funding cap may be, for that carrier, too low to induce participation. In contrast, a carrier might be willing to accept a small loss of support but is not given the chance—because a \$146.10 per-location funding cap may result in an increase to that carrier’s legacy support. Should we adjust the per-location funding cap for each carrier so that every legacy carrier has an opportunity to accept the new model with only a small loss (5 to 15 percent) of support? If so, should we nonetheless retain a per-location funding cap maximum of \$200 or \$146.10?

123. *Fourth*, we propose to update the broadband coverage data with the most recent publicly available FCC Form 477 data prior to any additional offer of support. We propose to rely on the certified FCC Form 477 data rather than conducting a time-consuming and administratively burdensome challenge process. In this regard, we note that in the challenge process for the first A-CAM offer, the Bureau granted only 61 challenges of the more than 250 requests received to change A-CAM coverage.<sup>332</sup> Even with the challenges granted, the coverage data may not have changed to “unserved” in particular census blocks if there were other unsubsidized providers that were not challenged reporting service in those census blocks.<sup>333</sup> We seek comment on updating the broadband coverage data.

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481-483. Carriers serving Alaska Native regions will not be eligible to obtain additional support under the measures adopted today, however, because the Commission has already established a separate plan tailored to meet the needs of carriers serving Alaska. See *Alaska Plan Order*, 31 FCC Rcd at 10139 (2016). Similarly, Tribal support will not be available to carriers already authorized to receive A-CAM support or to carriers subject to a universal service support recovery action, see, e.g., *Sandwich Isles Communications, Inc.*, Order, WC Docket No. 10-90, 31 FCC Rcd 12999 (2016).

<sup>328</sup> See *Lifeline & Link Up Reform & Modernization*, Second Further Notice of Proposed Rulemaking, WC Docket Nos. 11-42, 09-197, 10-90, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7903, para. 257 (2015).

<sup>329</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3109, para. 56.

<sup>330</sup> See *supra* Section III.B, Providing Additional Support to Fund Model-based Deployment.

<sup>331</sup> Absent a decision to provide a higher per-location funding cap, lowering the funding benchmark to \$39.38 and adopting a \$146.10 per-location funding cap would effectively fund locations in Tribal census blocks only up to \$185.48 (\$39.38 + \$146.10), rather than the \$198.60 we are willing to fund elsewhere.

<sup>332</sup> See *Connect America Fund*, WC Docket No. 10-90, Order, 31 FCC Rcd 7790 (WCB 2016).

<sup>333</sup> *Id.* at 7804, para. 46.



124. *Eligibility Requirements.*—*First*, we propose to limit this new model offer to legacy carriers eligible to receive HCLS and CAF BLS, i.e., those rate-of-return carriers that are not recipients of A-CAM support and that are not participants in the Alaska Plan.<sup>334</sup>

125. *Second*, we propose to limit this new model offer to carriers that would be glide path carriers, i.e., those for whom the new offer of model support will be below their legacy support. We seek comment on how to set the baseline level of legacy support for these purposes. Should we use the same baseline we did in authorizing the A-CAM? Should we set the baseline as total support received in calendar year 2017 or budget year 2017? In setting the baseline, should we ignore the parent trap rule where applicable?<sup>335</sup> For instance, if a carrier's legacy support would have been \$500,000, but because of the parent trap rule, support is \$300,000, which amount should we use?

126. *Third*, we seek comment on whether to exclude from this new model offer carriers whose deployment obligations would include no fully funded locations. That is, should we exclude from the new model offer those carriers that would only be obligated to deploy 4/1 Mbps to a certain number of locations, and to provide broadband only upon reasonable request to the remaining locations?

127. In the *Rate-of-Return Order*, the Commission excluded from the initial A-CAM offer any carrier that had deployed 10/1 Mbps broadband to 90 percent or more of its eligible locations in a state in order to maximize our limited funding toward those areas with less deployment.<sup>336</sup> Because we propose to limit this new offer to glide path carriers, we decline to propose such a limit because offering model support to such carriers is financially feasible and may create an opportunity for legacy providers to consider shifting to model-based support and increasing their deployment of even higher-speed service. We also seek comment on any other eligibility criteria that we should consider.

128. *Support.*—We propose aligning the term of support for this new model offer with the 10-year term of the first A-CAM offer. Current A-CAM support recipients began receiving support as of January 1, 2017. If support is authorized pursuant to a second A-CAM offer in 2018, we seek comment on providing a nine-year term of support that will expire at the end of 2026, with support beginning January 1, 2018.<sup>337</sup> If additional A-CAM recipients are not authorized until late 2018, in 2019, or later, should we offer a shorter term of support or take other measures to align the A-CAM support terms? In addressing an appropriate term of support, commenters are invited to address our competing goals of providing the certainty needed to stimulate investment with our interest in promoting administrative efficiency and accounting for marketplace developments over time.

129. As adopted by the Commission for current A-CAM recipients, we propose a three-tiered

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<sup>334</sup> Two Alaskan companies currently receive A-CAM support and all other Alaskan rate-of-return companies have been authorized to receive support pursuant to the Alaska Plan. *See A-CAM Second Authorization Public Notice*, 32 FCC Rcd at 845; *Wireline Competition Bureau Authorizes Alaska Plan Support for 13 Alaskan Rate-of-Return Companies*, WC Docket Nos. 10-90 and 16-271, 31 FCC Rcd 13347 (WCB 2016). Accordingly, no Alaskan rate-of-return company remains on legacy support mechanisms. Adak Eagle Enterprises, LLC (Adak) indicated interest in A-CAM support but in the *Alaska Plan Order*, the Commission noted that those Alaska carriers that are unable to offer even 4/1 Mbps service would not be permitted to elect A-CAM support. *See Alaska Plan Order*, 31 FCC Rcd at 13348. Adak filed a Petition for Reconsideration of the Commission's decision to deny Adak a revised offer of A-CAM support pursuant to the *A-CAM Revised Offer Order*. Petition for Reconsideration of Adak, WC Docket No. 10-90 (Jan. 19, 2017).

<sup>335</sup> *See* 47 CFR § 54.305.

<sup>336</sup> *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3113, para. 66.

<sup>337</sup> Provided additional carriers are authorized in 2018, we propose to true-up A-CAM support back to the beginning of the calendar year. We note that this approach is consistent with how we treated CAF II support for price cap carriers. *See December 2014 Connect America Order*, 29 FCC Rcd at 15677-78, paras. 91-94.

process to transition electing carriers from the legacy support mechanism to the model.<sup>338</sup> We propose to base the transition payments on the difference between model support and legacy support, and phase down transition payments over longer periods of time where that difference is greater. If we align the term of support for the new model offer with the 10-year term of the original A-CAM offer, we propose to adjust the percentage reductions also to align with the shorter support term. We seek comment on this proposal. In the alternative, we seek comment on modifying the transition payments so that a greater portion of the available budget will be directed to increased broadband deployment obligations. Commenters are also invited to address whether we should modify deployment obligations if a carrier forgoes transition payments or accepts faster transitions.

130. We note that given that we propose to extend a new model offer only to those carriers for whom the offer is less than their legacy support, support claims alone will cover the A-CAM support plus transition payments regardless of any per-location cap adopted by the Commission. We therefore propose to base the budget for a new model offer on the 2017 claims amount contributed by electing carriers.

131. *Obligations.*—We propose to require the same performance and deployment obligations as the Commission requires for existing A-CAM recipients.<sup>339</sup> Specifically, we propose to require rate-of-return carriers electing model support to maintain voice and existing broadband service and to offer at least 10/1 Mbps to the number of locations “fully funded” by the model, and at least 25/3 Mbps to a certain percentage of those locations, by the end of the support term.<sup>340</sup> We continue to believe that this approach strikes the appropriate balance in allowing carriers to conduct network planning, while accounting for evolving standards in the future.

132. We propose to vary the deployment obligations by density, as we did for the previous A-CAM offers.<sup>341</sup> Carriers with a density in the state of more than 10 housing units per square mile would be required to offer 25/3 Mbps to at least 75 percent of the fully funded locations; carriers with 10 or fewer, but more than five, housing units per square mile would be required to offer 25/3 Mbps to at least 50 percent of the fully funded locations; and carriers with five or fewer housing units per square mile would be required to offer 25/3 Mbps to at least 25 percent of the fully funded locations.

133. We also propose requiring carriers electing model support to offer at least 4/1 Mbps to a defined number of locations that are not fully funded (i.e. with a calculated average cost above the funding cap) by the end of the support term. We propose that carriers with a density of more than 10 housing units per square mile be required to offer at least 4/1 Mbps to 50 percent of all capped locations; and carriers with a density of 10 or fewer housing units per square mile be required to offer at least 4/1 Mbps to 25 percent of all capped locations. The remaining capped locations would be subject to the reasonable request standard.<sup>342</sup> We seek comment on these proposed obligations. We also seek comment on whether we should modify the broadband speed obligations in any way, such as by requiring additional 25/3 Mbps deployment in census blocks that would have been excluded from the original A-CAM offer because of reported cable or fiber deployment.

134. Consistent with CAF requirements for funding recipients, we propose to require carriers electing the new model offer to offer a minimum usage allowance of the higher of 170 GB per month or

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<sup>338</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3115-16, paras. 72-76; see also 47 CFR § 54.311(e).

<sup>339</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3097-99, paras. 23-26.

<sup>340</sup> See 47 CFR § 54.308 (defining broadband obligations for A-CAM recipients).

<sup>341</sup> The density of each carrier’s study area or study areas in a state will be determined using the study area boundary data collection information submitted by carriers, and the number of housing units will be determined using U.S. Census data. See *Rate-of-Return Reform Order*, 31 FCC Rcd. at 3098, para. 25.

<sup>342</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7071-75, paras. 63-72 (2014) (declaratory ruling regarding which requests should be deemed unreasonable under the Commission’s rules and policies) (*April 2014 Connect America Order*).

one that reflects the average usage of a majority of consumers, using Measuring Broadband America data or a similar data source.<sup>343</sup> In addition, we propose to require carriers electing to receive model support to certify that 95 percent or more of all peak period measurements of round-trip latency are at or below 100 milliseconds.<sup>344</sup> Because there may be a need for relaxed standards in areas where carriers may use alternative technologies to meet their public interest obligations, we propose that this latency standard would apply to locations served by terrestrial technologies. We seek comment on whether to use the high latency metric adopted in the CAF II auction proceeding for any capped locations served by a non-terrestrial technology.<sup>345</sup> Under the high-latency standard, carriers would be required to certify that 95 percent or more of all peak period measurements of round-trip latency are at or below 750 milliseconds, and with respect to voice performance, a score of four or higher using the Mean Opinion Score (MOS).<sup>346</sup> We seek comment on these proposals.

135. We propose to require carriers electing a new model offer to meet the same deployment milestones as the Commission requires for existing A-CAM recipients,<sup>347</sup> adjusted for the proposed nine-year term of support or as appropriate. Assuming a nine-year term, we would eliminate the 40 percent benchmark in 2020, and propose to require new A-CAM support recipients to offer at least 10/1 Mbps service to 50 percent of the requisite number of funded locations by the end of 2021, an additional 10 percent each year thereafter, and 100 percent by 2026. In addition, by the end of 2026, we propose to require these carriers to offer at least 25/3 Mbps and 4/1 Mbps to the requisite percentage of locations, depending on density. We also propose to provide the same flexibility afforded other A-CAM recipients to deploy to only 95 percent of the required number of fully funded 10/1 Mbps locations by the end of the term of support.<sup>348</sup> We seek comment on these proposed deployment milestones.

136. Consistent with existing obligations, we propose to require carriers to report geocoded location information for all newly deployed locations that are capable of delivering broadband meeting or exceeding the speed tiers.<sup>349</sup> We also propose to adopt defined deployment milestones, so that the same previously adopted non-compliance measures would apply.<sup>350</sup>

137. *Election Process.* We propose a single-step process whereby electing carriers make an irrevocable acceptance of the offered amount because no support adjustments will need to be made to address budget targets.

### 3. Continuing Uniform Collections

138. We seek comment on whether we should extend our direction to USAC to forecast total high-cost demand as no less than one quarter of the annual high-cost budget, regardless of actual quarterly demand in order to minimize volatility in contributions. If the Commission maintains an overall cap on the legacy portion of the rate-of-return budget, are there any reasons why demand might shift dramatically, causing unexpected increases to the contribution factor? Are uniform collections with a reserve fund a prudent budgetary practice or an unnecessary change to our traditional framework?

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<sup>343</sup> See *2018 Urban Rate Survey Public Notice*, 32 FCC Rcd at 9341.

<sup>344</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3099-3100, para. 28.

<sup>345</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Order on Reconsideration, 32 FCC Rcd 1624, 1627, para. 11 (2017) (*Phase II Auction FNPRM Order*).

<sup>346</sup> See *id.*

<sup>347</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3100-01, para. 32.

<sup>348</sup> See *id.* at 3101, para. 33 & n.68. Those 5% of locations would then shift into the carriers' obligations to offer service to the number of capped locations.

<sup>349</sup> *Id.* at 3117, para. 79.

<sup>350</sup> *Id.* at 3116, paras. 77-78.

## B. Increasing Broadband Deployment and Promoting Efficient Use of Resources by Rate-of-Return Carriers

139. *Background.*—Rate-of-return regulation allows a regulated service provider to set rates for regulated services to cover the company’s revenue requirement. The revenue requirement is calculated by multiplying capital investments (the “rate base”) by a percentage (the “rate of return”) that equates to the difference between return on investment and depreciation, and by adding in certain allowable operating expenses including taxes.<sup>351</sup> The shortcomings of rate-of-return regulation are well documented. It provides incentives for companies to operate inefficiently by “padding” operating expenses and over-investing in capital projects to increase profits.<sup>352</sup>

140. As the Commission has transformed the high-cost fund and implemented the CAF, it has adopted rules to combat some of the negative incentives associated with rate-of-return regulation. Most importantly, the Commission provided rate-of-return carriers the option to elect model-based support under which carriers would receive a fixed amount of support over a 10-year period in exchange for meeting defined buildout obligations.<sup>353</sup> In addition, the Commission adopted mechanisms to curb incentives for inefficient spending for those carriers remaining on legacy rate-of-return regulation. For example, the Commission implemented a cap on HCLS annual increases,<sup>354</sup> a corporate operations expense limitation,<sup>355</sup> an operating expense limitation,<sup>356</sup> a capital expense limitation,<sup>357</sup> and a \$250 per-loop, per-month cap on support.<sup>358</sup> Additionally, the Commission adopted a budget control mechanism to reduce support where necessary to ensure that the overall amount stays within the budget.<sup>359</sup>

141. Here, we prioritize our goal of ensuring that our limited universal service resources are distributed to maximize broadband deployment throughout rate-of-return areas. Therefore, we seek comment on using available support and any increases in budget headroom to make additional offers of model-based support and reduce uncertainty for those carriers remaining on legacy mechanisms.

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<sup>351</sup> Sutapa Ghosh, *The Future of FCC Dominant Carrier Rate Regulation: The Price Caps Scheme*, 41 Fed. Comm. L.J. 401, 406 (Jul. 1989). *See also Rate-of-Return Order*, 31 FCC Rcd at 3172, para. 229.

<sup>352</sup> This tendency to over-invest in capital is referred to as the Averch-Johnson effect. *See* Harvey Averch and Leland L. Johnson, *Behavior of the Firm Under Regulatory Constraint*, 52 Am. Econ. Rev. 5 (Dec. 1962); *see also* Sutapa Ghosh, *The Future of FCC Dominant Carrier Rate Regulation: The Price Caps Scheme*, 41 Fed. Comm. L.J. 401, 409 (Jul. 1989); W. Kip Vuscusi, John M. Vernon, Joseph E. Harrington, Jr., *Economics of Regulation and Antitrust*, Page 364 (D. C. Heath and Company eds., 1992). *See also* Mark A. Jamison, *Rate of Return Regulation*, Public Utility Research Center, University of Florida, *available at* [https://www.researchgate.net/publication/228720046\\_RATE\\_OF\\_RETURN\\_REGULATION](https://www.researchgate.net/publication/228720046_RATE_OF_RETURN_REGULATION) (“The emphasis on cost recovery in rate of return regulation is the source of the concern that companies may not operate efficiently (2). For example, if the regulator allows a rate of return that is higher than what the company actually needs to ensure that shareholders continue to provide capital for investment, the company could increase its returns to shareholders by making unnecessary investments (if the regulator does not catch the company doing so). This is called the Averch-Johnson effect (3).”).

<sup>353</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3096, para. 20.

<sup>354</sup> 47 CFR § 54.1302(a).

<sup>355</sup> *See, e.g.*, 47 CFR § 54.901(c).

<sup>356</sup> 47 CFR § 54.303(a).

<sup>357</sup> 47 CFR § 54.303(b).

<sup>358</sup> 47 CFR § 54.302(a).

<sup>359</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3144, paras. 151-52. The Commission adopted the \$4.5 billion budget for CAF in 2011 but did not include a self-executing mechanism to constrain spending within that limitation. *USF/ICC Transformation Order*, 26 FCC Rcd at 1711, para. 125. Regardless, based on USAC data assembled by Commission staff, high-cost disbursements have not exceeded \$4.5 billion annually through 2016.

## 1. Fully Funding Existing A-CAM Carriers

142. In the Report and Order above, we offer additional support to authorized A-CAM recipients based on a \$146.10 per-location cap. Here, we seek comment on whether to offer A-CAM support to those carriers using a \$200 per-location funding cap, and what additional deployment commitments may be appropriate. We also provide information on the amount by which the acceptances for the model exceeded the available funding. We note that carriers who elected A-CAM offers that were below then-current support levels have already received full funding. To stay within the budget, however, the Bureau revised the offer for all other electing carriers by reducing the funding cap to \$146.10 per location, and then further reducing carrier-specific offers by varying amounts based on the percentage of locations lacking 10/1 Mbps.<sup>360</sup>

143. We now seek comment on using additional headroom in the budget to offer the carriers that accepted the revised offer of A-CAM support in 2017 the fully funded amount, using a per-location funding cap of \$200 per location. Providing full funding for the original A-CAM recipients would accelerate broadband deployment in those rural areas for which rate-of-return carriers accepted the first A-CAM offer.<sup>361</sup> If all eligible carriers accept this offer, we anticipate that it would result in approximately \$66.6 million more support per year for the 10-year A-CAM term. If we were to move forward with this additional offer, the Bureau would release a public notice announcing the offer and provide carriers 30 days to accept the offer and carriers accepting the fully funded offer be subject to the original deployment obligations. We seek comment on this option, including any timing considerations that we should bear in mind.

## 2. Initiating a Broader New Model Offer

144. Encouraged by the response to the first A-CAM offer, we seek comment on whether to open a new window for all legacy carriers—not just those for whom the offer of model-based support is less than the legacy support they received—to elect to receive specific and predictable model-based support on a state-level basis in exchange for extending broadband service to a pre-determined number of locations in eligible census blocks. Expanding the number of carriers receiving A-CAM support will advance the Commission’s longstanding objective to provide high-cost support based on forward-looking, efficient costs to help spur additional broadband deployment in rural areas. If we initiate a broader new model offer, we generally propose to use the same process, obligations, and criteria described above in section V.A.2. Accordingly, when reviewing the proposals and questions we ask in section V.A.2, commenters should also consider them in light of a second offer to all legacy carriers. Below, we discuss and seek comment on aspects of a new model offer that are not discussed above, i.e. those aspects that are applicable only if we make a new model offer to legacy carriers who might receive more funding than they had received previously.

145. *Budget.* If we extend a second offer to all legacy rate-of-return carriers, we propose to direct the Bureau to use a multi-step process for non-glide path carriers, similar to the one used in the first offer, to determine support amounts if the available budget is insufficient to maintain the initial per-location funding cap of \$146.10 (or some other amount). The Bureau would first total the amount of model-based support for electing carriers and determine the extent to which, in the aggregate, their model-based support exceeds the total legacy support they received in 2017. We seek comment on whether we should collect additional contributions to fully fund all electors at this point, rather than calculating a second offer for electors. We seek comment on this approach.

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<sup>360</sup> See *A-CAM Revised Offer Order*, 31 FCC Rcd at 13778, para 8 (2016). See also *infra* III.B.

<sup>361</sup> See e.g., Letter from the Iowa A-CAM Companies, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Nov. 8, 2017) (with a \$200/month per eligible location “2,615 additional locations in the state will receive service at 25/3 Mbps, while 2,453 additional locations will have increased service of at least 10/1 Mbps.”); Letter from Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 30, 2017).

146. Alternatively, if we do not decide to collect sufficient contributions to fully fund all electors, should we direct the Bureau to reduce the funding cap and/or prioritize support amounts to those areas that have the lowest deployment of broadband? Should the Bureau first reduce the per-location funding cap? If the new model support amounts using this lower funding cap still exceeded the budget, should the Bureau further reduce support offers by varying percentages based on the percentage of locations lacking 10/1 Mbps? Is there a different way to allocate the budget amongst new model electors that would maximize broadband deployment?

147. *Election Process.* If we extend a new model offer to non-glide path carriers, we propose to use the same two-step election process the Commission used for the first A-CAM offer. The Bureau would first release a public notice showing the offer of model-based support for each carrier in a state and associated deployment obligations, including the number of fully funded and capped locations. We seek comment on providing carriers 30 days or 60 days to indicate on a state-by-state basis whether they elect to receive model-based support. We propose that the elections would be irrevocable if no adjustment to the support amounts would be required either because the support amounts are within the available budget or because the Commission has concluded to collect sufficient amounts to fully fund the offers. If the budget is insufficient, we propose that the Commission adopt a methodology similar to that used to revise the first A-CAM offers. The Bureau would approve fully funded amounts for glide path carriers. The Bureau would also release a public notice showing the revised offers for all other carriers. Carriers would have 30 days to accept the revised offer. We seek comment on this option.

### **3. Establishing a Threshold Level of Support Not Subject to the Budget Control Mechanism for Legacy Carriers**

148. In funding support claims affected by the budget control mechanism from July 2017 to June 2018, we provide an opportunity to consider the effects of the budget control mechanism on rate comparability in conjunction with our overall review of the rate-of-return budget. We also acknowledge carriers' claims that unpredictability may make capital planning difficult, potentially resulting in reduced broadband deployment that, in turn, could harm consumers.<sup>362</sup> With each successive annual calculation of the budget control mechanism, the budget adjustment factor has increased and legacy carriers have faced increasing reductions in their support relative to their support claims. Moreover, we note that reductions can vary from year-to-year and even quarter-to-quarter, given that each carrier's reduction in support is affected by the spending of other carriers.

149. Here, we seek to address this concern and provide greater long-term stability and predictability for legacy carriers to facilitate planning and help spur deployment. At the same time, we want to better motivate legacy carriers to operate efficiently. To achieve this result, we propose two changes to the budget control mechanism.<sup>363</sup>

150. *First*, we propose to modify the budget control mechanism to use only a pro rata reduction applied as necessary to achieve the target amount and no longer include a per-line reduction. Our experience thus far with per-line reductions has led to larger and more unpredictable swings in support than might otherwise be expected; accordingly, using only a pro rata reduction may be a more predictable and equitable way to reduce support amounts because all carriers' support is reduced by the same percentage. It is also a less complex mechanism to administer. Accordingly, we propose that the

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<sup>362</sup> See, e.g., Letter from Michael R. Romano, Sr. VP – Industry Affairs & Business Development, to Marlene H. Dortch, Secretary, FCC WC Docket No. 10-90, at 1-2 (filed Sept. 15, 2017) (stating “volatile unpredictability of the frequently changing budget control [where] the average reduction in support has grown in just 12 months from 4.5% to 9.1% to 12.3% to even more than 14% in a recent quarterly update—is hindering, if not defeating, reasonable planning efforts.”).

<sup>363</sup> If we adopt the proposals for the overall budget and the budget control mechanism we discuss in this Notice, we will consider making the changes retroactive to July 1, 2018. USAC would then adjust support levels through true-ups as necessary.

budget control mechanism would operate in the same manner as the current one, but without the per-line reduction aspect. We seek comment on this proposal.

151. *Second*, we propose to provide legacy providers a threshold level of annual support that would not be subject to a budget cap. Establishing a level of uncapped support may give legacy carriers more predictability, allowing them to make longer term plans while knowing that certain expenses could push them above the uncapped amount and therefore would be less likely to be fully recoverable.<sup>364</sup>

152. We seek comment on alternatives for establishing a level of high-cost support that would not be subject to the budget control mechanism. One option would be to set the uncapped amount of annual support at 80 percent of the amount a legacy carrier would have received had they elected the new model offer (based on a funding cap of \$146.10 per location). In evaluating this option, we seek comment on whether basing a carrier's uncapped level of support using 80 percent of the revised model is appropriate, as opposed to a different percentage.

153. Another option would be to use the five-year CAF BLS forecast developed by NECA for the carrier-specific deployment obligation as the uncapped threshold, but subject any amounts greater than that to a budget control mechanism.<sup>365</sup> A third option could set the uncapped threshold at a specified fraction of each carrier's unconstrained 2016 or 2017 claims amount. If we adopt this approach, would a 70 percent fraction be appropriate? Should it be lower or higher? And should this amount be adjusted to reflect line loss, so that a carrier is not guaranteed a fixed amount to serve a decreasing number of lines? Finally, a fourth option if we do retain the per-line reductions would be to limit any reductions in support due to the budget control mechanism to no more than twice the "budget adjustment factor."<sup>366</sup> For example, if total demand, prior to the application of the budget control mechanism, was \$1.4 billion and the overall legacy rate-of-return budget remains at \$1.23 billion, then a 12.1 percent reduction would be applied to CAF BLS and HCLS to stay within the budget. Under this alternative, no carrier would have a reduction in support greater than 24.2 percent.<sup>367</sup>

154. We seek comment on these alternatives, and any others that parties may propose. What are the benefits and costs of each proposal? Would they result in a threshold level of support that is sufficient or excessive? Should any of these options be adopted as an additional layer to one of the methods of limiting support losses described above? In evaluating the various options, we request that commenters discuss what factors and goals we should consider. For instance, is the best option the one where the average decrease in support from current levels is the least or is it better to base the guaranteed

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<sup>364</sup> To illustrate, we assume that a carrier's uncapped threshold is \$80 and the budget control mechanism factor is 90 percent pro rate (a 10 percent reduction). Under this proposal, if a carrier's support based on its HCLS and CAF BLS claims is \$75, the carrier would receive that amount (because it is below the uncapped threshold). If a carrier's support based on its claims is \$100, the carrier would receive \$98, i.e., \$80 in uncapped funds and \$18 (\$20 times 90 percent) in capped funds.

<sup>365</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3150, n.373. Throughout *Rate-of-Return Reform Order* proceeding, NECA modeled and forecasted support for each rate-of-return carrier based on various hypothetical mechanisms and conditions. See, e.g., Letter from Regina McNeil, Vice President of Legal, General Counsel & Corporate Secretary, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Nov. 19, 2015). For purposes of the five-year forecast, the Commission adopted and NECA used growth assumptions similar to "Scenario 1" in NECA's submission. See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3150, n.373. The projected levels of support reflected anticipated build out and growth of broadband-only lines, derived from industry-provided data. The method used to calculate the five-year forecast is provided in Appendix E of the *Rate-of-Return Reform Order*. See *id.* at 3315-16, Appx. E.

<sup>366</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3144, para. 152. The budget adjustment factor is the percentage reduction applied to total, unconstrained demand used to determine the target CAF BLS and HCLS amounts.

<sup>367</sup> This option would somewhat mitigate the effects of the per-line portion of the budget control mechanism if that mechanism were maintained.

amount on those carriers the cost model indicates can use it most efficiently? To what extent should we weigh the certainty and predictability of support associated with each option? We also seek comment on how each option helps to mitigate the inefficiencies of the legacy rate-of-return system, such as the incentive for rate-of-return companies to over-invest capital to increase profits, the Averch–Johnson effect. In addition, we seek comment on any other mechanisms for calculating an amount of support not subject to a budget control that balances the Commission’s objective of providing specific, predictable, and sufficient support, with its goals of spurring rural broadband deployment, all while fairly allocating a finite budget among legacy carriers.

#### 4. Deployment Obligations

155. We seek comment on revising deployment obligations should we decide to provide carriers a threshold level of support that is not subject to the budget control mechanism or a cap on overall support, based on the A-CAM model.<sup>368</sup> The deployment obligations adopted in the *Rate-of-Return Reform Order* were based on each legacy carrier targeting a defined percentage of its five-year forecasted CAF BLS support to the deployment of broadband where the carrier has not already deployed.<sup>369</sup> Deployment obligations were determined by dividing the dollar amount of targeted CAF BLS by a cost-per-location amount.<sup>370</sup> In forecasting the amount of CAF BLS that a carrier would receive, NECA incorporated the impact of the budget control mechanism.<sup>371</sup>

156. Consistent with our proposal above, we seek comment on revising the deployment obligations to reflect any guaranteed level of support that is not subject to the budget control mechanism. Specifically, we seek comment on whether each carrier should have a minimum deployment obligation that is based on the number of locations that would be served under the revised A-CAM model at an 80 percent funding level.<sup>372</sup> For example, if the revised A-CAM, at the 80 percent funding level, indicated that a carrier should serve 1,000 locations with broadband service, and it currently serves 900, then it would be required to build out to an additional 100 locations. Each carrier would have further deployment obligations based on any additional support it is forecasted to receive in excess of its uncapped threshold level of support. The forecasted amount and the further obligations could be developed using the same methodology as was initially used after the adoption of the *Rate-of-Return Reform Order* (i.e., by dividing the amount of targeted CAF BLS in excess of the threshold level by a cost-per-location amount).

157. We seek comment on this option. Would this buildout requirement better serve the public interest and promote deployment than the current buildout obligations?<sup>373</sup> Does setting deployment obligations consistent with the threshold level of support improve certainty for carriers? Are there any additional benefits or possible concerns regarding setting deployment obligations in this manner? Should deployment obligations be modified to align with the expiration of the A-CAM support mechanism? Are there other ways to improve the determination of deployment obligations?

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<sup>368</sup> See section V.B.3.

<sup>369</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3149, paras. 166-68.

<sup>370</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3150-52, paras. 169-171.

<sup>371</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3149-50, paras. 166-67, 3315-16 Appx. E.

<sup>372</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3100, para. 29.

<sup>373</sup> 485 of 655 CAF BLS study areas have no buildout requirement. Five study areas have a buildout requirement of fewer than 25 locations, and eight study areas have a buildout requirement of fewer than 50. See USAC, *Rate-of-Return Reform Order*, <https://www.usac.org/hc/rules-and-orders/rate-of-return-reform-order.aspx> (last visited Mar. 13, 2018) (click “ACAM and CAF BLS Buildout Requirements” spreadsheet).



## C. Other Reforms

### 1. Monthly Per-Line Limit on Universal Service Support

158. We seek comment on lowering the \$250 per-line monthly limit on support to \$225 or \$200.<sup>374</sup> The Commission adopted the monthly limit on support in the *USF/ICC Transformation Order*, finding that amounts higher than \$250 per loop per month (not including CAF ICC) should not be provided to carriers without further justification.<sup>375</sup> In adopting that limit, the Commission noted that only 18 incumbent rate-of-return carriers received more than \$250 per loop each month and estimated that only 12 would be subject to the limit after other reforms adopted in the *USF/ICC Transformation Order* were applied.<sup>376</sup>

159. Our experience suggests that a lower limit may be justified. Currently, approximately 13 study areas are affected by the monthly per-line limit.<sup>377</sup> However, carriers serving only 10 of those study areas have petitioned the Commission to justify higher support amounts, and some withdrew their requests.<sup>378</sup> To date, the Commission has awarded relief in only three instances.<sup>379</sup> This history suggests that the \$250 per-line monthly limit has been neither too restrictive nor likely to have a negative impact on the ability of carriers to provide service. Moreover, we note that a reduction to \$200 would currently affect approximately 25 study areas that are not already subject to the \$250 per-line monthly limit, and the same waiver process would be available to all affected study areas.<sup>380</sup> Lowering the per-line monthly limit would also free up additional support within the legacy budget for other carriers. We invite comment on whether to adopt a lower per-line monthly limit and, in particular, what amount may be appropriate.

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<sup>374</sup> 47 CFR § 54.302.

<sup>375</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17764-66, paras. 272-79.

<sup>376</sup> *Id.* at 17766, para. 277

<sup>377</sup> See USAC, FCC Filings, 2018 Second Quarter Filings, HC01- High Cost Support Projected by State by Study Area - 2Q2018.xlsx (filter for study areas where ILEC Cap Factors (column H) is less than 1).

<sup>378</sup> See Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Dec. 30, 2011); Allband Communications Cooperative Petition for Waiver of Part 54.302 and the Framework to Limit Reimbursable Capital and Operating Costs, WC Docket No. 10-90, WT Docket No. 10-208 (filed Feb. 3, 2012); Petition for Waiver of Big Bend Telephone, Inc., WC Docket No. et al. (filed Feb. 6, 2012) (petition withdrawn on Jul. 18, 2018, see Letter from Thomas J. Navin, Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Jul. 18, 2012)); Windy City Cellular, LLC Petition for Waiver of Section 54.307(e) of the Commission's Rules, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 3, 2012); Adak Eagle Enterprises, LLC Petition for Waiver of Section 54.302 of the Commission's Rules, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 22, 2012); Accipiter Communications, Inc. Petition for Temporary Waiver of the Commission's Rules, WC Docket No. 10-90 et al. (filed Apr. 18, 2012); Petition for Waiver of Dell Telephone Cooperative, WC Docket No. 10-90 et al. (filed June 7, 2012); Petition of Border to Border Communications, Inc. for Waiver of Section 54.302 and the Framework to Limit Reimbursable Capital and Operating Expenses for the Purpose of Determining High Cost Support, WC Docket No. 10-90 (filed June 29, 2012); Petition for Waiver of South Park, L.L.C., WC Docket No. 10-90 et al. (filed Nov. 27, 2012) (petition withdrawn on Nov. 14, 2013, see Letter from John Kuykendall, Vice President, JSI, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 05-337 (filed Nov. 14, 2013); Petition for Waiver of South Central Telephone Association, Inc., WC Docket No. 10-90 et al. (filed Dec. 6, 2012).

<sup>379</sup> See *Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, 27 FCC Rcd 8310 (WCB 2012); See *Accipiter Communications, Inc. Petition for Temporary Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, 28 FCC Rcd 391 (WCB 2013); *Allband Communications Cooperative Petition for Waiver of Certain High-Cost Universal Service Rules*, WC Docket No. 10-90, Order, DA 18-177 (WCB Feb 22, 2018).

<sup>380</sup> FCC calculation is based on USAC data.

## 2. 100 Percent Overlap Process

160. We seek comment on whether to replace the 100 percent overlap process by which we eliminate support for legacy rate-of-return study areas that are fully served by unsubsidized carriers with a different mechanism. In the *USF/ICC Transformation Order*, the Commission adopted a rule to eliminate high-cost universal service support in incumbent LEC study areas where an unsubsidized competitor or a combination of unsubsidized competitors offers voice and broadband services that meet the Commission's service obligations throughout the study area.<sup>381</sup> High-cost universal service support for the study areas found to be 100 percent overlapped is frozen at the amount disbursed in the prior calendar year, and support is phased down over three years.<sup>382</sup> The Bureau conducted this biennial review in 2015 and 2017 and found only one study area to be 100 percent overlapped by unsubsidized competitors.<sup>383</sup>

161. We seek comment on the effectiveness of the 100 percent overlap process. We note that to date there has been little participation by unsubsidized competitors. This lack of participation likely reflects the absence of incentives to participate. In competitively served rate-of-return areas, a study area is often not completely overlapped by one competitor, but rather multiple competitors covering different parts of the study area. An unsubsidized competitor that only partially overlaps an incumbent may not participate in the current process because there is a cost to doing so (e.g., cost of compiling the information and filing) but other competitor(s) similarly may not participate such that the incumbent's support will not be phased out. In addition, the current process requires Commission staff to weigh the certifications and evidence presented to determine whether all locations are in fact served by voice and broadband, which can be challenging. Does the benefit of eliminating support from study areas 100 percent served by competitors outweigh the cost of conducting this process?

162. In lieu of the current process to determine whether a study area is 100 percent overlapped, we seek comment on using an auction mechanism to award support to either the incumbent LEC or the competitor(s) in areas where there is significant competitive overlap. Competitive bidding can result in more efficient levels of support. Competitors will have an incentive to bid less than the amount the incumbent currently receives, and incumbents will have an incentive to increase efficiencies by bidding less than the competitor(s). In addition, we anticipate that the competitive overlap process adopted by the Commission in the 2016 *Rate-of-Return Reform Order* will require substantial Commission resources because it will require the Commission to review evidence regarding each census block that is competitively served individually. An auction procedure is likely to be quicker and more efficient.

163. If we were to conduct auctions, should we focus only on study areas that are 100 percent overlapped according to FCC Form 477 data, or should we focus on some lesser percentage, such as 90 percent overlapped or greater? If a lesser percentage, should we adopt an auction to replace the competitive overlap process adopted by the Commission in the *Rate-of-Return Reform Order*?<sup>384</sup> Using an auction at the study area level rather than the current process would give competitors an incentive to participate—the opportunity to win support to serve these areas. In the current 100 percent overlap process, we use the 10/1 Mbps standard to determine whether an area is served by unsubsidized competitors. If a study area is determined to be 100 percent overlapped, then the incumbent's support is phased out, perhaps trapping the area at 10/1 Mbps for the foreseeable future. An auction for support in these areas could increase speeds to the Commission's current standard of 25/3 Mbps, or indeed even

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<sup>381</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17766-68, paras. 280-84. The Commission subsequently codified the 100 percent overlap rule in April 2014. See 47 CFR § 54.319.

<sup>382</sup> 47 CFR § 54.319(b).

<sup>383</sup> See *Connect America Fund*, WC Docket No. 10-90, Order, 30 FCC Rcd 14145 (WCB 2015); *Wireline Competition Bureau Concludes the 100 Percent Overlap Challenge Process*, WC Docket No. 10-90, Public Notice, 32 FCC Rcd 9294 (2017).

<sup>384</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3131-42, paras. 116-145.

higher. If one of the goals of this auction process is to increase speeds in these areas, should we only auction those areas that are overlapped at the 10/1 Mbps level, or any speed less than 25/3 Mbps?

### 3. Other Reforms of Legacy Support Mechanisms

164. The current legacy support mechanisms are complicated and remain mired in the complexities and disadvantages of rate-of-return regulation. We therefore seek comment on broader measures that would simplify our legacy support mechanisms while providing flexibility and certainty to carriers. For example, the Commission could rely on its prior HCLS and ICLS mechanisms but treat all lines similarly, regardless of what services customers purchase. Under this scenario, carriers would include certain costs associated with standalone broadband service when calculating HCLS and ICLS and all voice and standalone broadband lines would be counted as working loops when calculating support.<sup>385</sup> Thus, HCLS and ICLS would continue as they had prior to the adoption of the *Rate-of-Return Reform Order* but would now include standalone broadband costs and lines in the calculations. We seek comment on whether this approach would be less complex than the CAF BLS program adopted by the Commission in 2016. Alternatively, is there a way to treat voice and broadband lines similarly that could be incorporated into the CAF BLS program? If so, would this approach minimize the effect of the budget control mechanism? Because carriers have long experience with HCLS and ICLS, would using HCLS and ICLS for standalone broadband line support provide more certainty and predictability to support flows?

165. We also seek comment on whether combining our high-cost support programs into one support stream would be simpler to administer and provide carriers with more flexibility. HCLS and CAF BLS rely on mechanisms originally designed to support voice services. Carriers receiving A-CAM support receive one monthly payment in exchange for meeting specific buildout obligations. Would a single support mechanism that combines current HCLS and CAF BLS resources and focuses on broadband deployment rather than voice services reduce regulatory burdens and provide more certainty and predictability to carriers receiving legacy support? Could such a mechanism be structured to provide incentives for carriers to operate efficiently and minimize the disadvantages of rate-of-return regulation? We seek comment on how a single high-cost support mechanism could reduce the need for complex cost regulation while encouraging broadband deployment.

166. We seek comment on whether there are other alternatives we should consider to further enhance the efficiency of the legacy high-cost program and target support to where it is most needed. For example, should we target support not only to high-cost areas but low-income areas as well? Should we adopt means-testing within the high-cost program?<sup>386</sup> Either approach could target support where it is needed most by focusing only on areas or consumers with lower household income. Should we award support for high-cost areas through a portable consumer subsidy or voucher?<sup>387</sup> Would a voucher system increase the choices available to consumers? Should we target support to States with less ability to fund the deployment of broadband in rural areas? How should we identify States that are most in need of support, and how can we do so while avoiding perverse incentives? Are there other alternatives we should consider? Commenters should address considerations of timeliness, ease of administration, and cost effectiveness for each alternative.

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<sup>385</sup> Working loops require the carrier to have telecommunications plant in service. *See, e.g., Sandwich Isles Inc.*, Order, WC Docket No. 10-90, 31 FCC Rcd 12999, 13017, para. 63 (2016).

<sup>386</sup> *See* Commissioner Michael O’Rielly and Commissioner Mignon Clyburn, *Would Means-Testing Bring More Efficiencies to the High-Cost Program?* (May 31, 2017), <https://www.fcc.gov/news-events/blog/2017/05/31/would-means-testing-bring-more-efficiencies-high-cost-program> (identifying possible approaches for incorporating means-testing within the high-cost program).

<sup>387</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 18093, para. 1225.

#### 4. Modifying Limitations on Capital and Operating Expenditures

167. We seek comment on the opex limitation<sup>388</sup> and capital investment allowance.<sup>389</sup> Through this proceeding, we seek to adopt further reforms to legacy support mechanisms that will simplify administrative processes and provide carriers with greater flexibility to deploy efficient broadband networks. Accordingly, we seek comment on whether the current limitations on capital and operating expenditures—currently untethered from the budget control mechanism—are successfully curbing unnecessary expenditures and incentivizing prudent investments or instead creating unnecessary burdens or deterring efficient investments. We note that for NECA to calculate the capital investment allowance, legacy carriers must track every capital expenditure and the number of locations affected by that expenditure. Is that additional administrative work yielding results for ratepayers? Also, given the trade-off many carriers must make between capital and operating expenditures, we seek comment on whether these limitations might actually lead to greater inefficiencies in overall business operations than would be the case without the constraints.

168. We also seek comment on the extent to which the limitations on capital and operating expenditures have been effective in promoting efficient spending. Do the company-specific limitations reflect reasonable upper limits on the amount of operating and capital expenses that a carrier need incur? For example, we note that the National Tribal Telecommunications Association recently argued that carriers serving Tribal lands incur costs that other rural carriers do not face, resulting in significantly higher operating expenses to serve very sparsely populated service areas.<sup>390</sup> Are there other specific examples that we should take into account? For instance, are there modifications to the process or amounts that would improve operation of these limitations? Alternatively, should we eliminate the opex limitation or the capital investment allowance entirely?

#### 5. Conforming Changes to Information Collection and Parts 32 and 36

##### a. Line Count Data

169. We seek comment on proposed changes related to the collection of line count data for rate-of-return carriers. Currently, carriers that receive CAF BLS must use FCC Form 507 to file, on July 31 of each year, their voice and broadband-only line counts as of the prior December 31.<sup>391</sup> Carriers may file, also using FCC Form 507, optional updates on September 30, December 31, and March 31, reporting line counts as of six months prior to the filing.<sup>392</sup> These data are used to apply the monthly \$250 per-line cap and to administer the budget control mechanism. In addition, these data are extremely useful in monitoring and analyzing the benefits and efficiency of high-cost universal service.

170. First, we propose to change the date for mandatory line count filings for CAF BLS to March 31 of each year but to continue to require line counts as of December 31 (*i.e.*, reduce the lag until filing to 3 months). This would ensure that recent line counts are used to apply the monthly cap and administer the budget control mechanism. Currently, when USAC performs the necessary calculations in

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<sup>388</sup> Pursuant to the operating expense limitation, a regression methodology is used to set a cap on the amount of operating expenses that a carrier may report for universal service purposes. *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3125-26, paras. 95-104. The Commission found that “a mechanism to limit operating costs eligible for support under rate-of-return mechanisms, both HCLS and CAF BLS, will encourage efficient spending by rate-of-return carriers and will increase the amount of universal service support available for investment in broadband-capable facilities.” *See id.* at 3125-26, paras. 98-104.

<sup>389</sup> Pursuant to the capital investment allowance, a rate-of-return carrier may not receive support for capital expenses that exceed a company-specific allowance. *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3127-31, paras. 105-115.

<sup>390</sup> NTTA Comments, at 16-18.

<sup>391</sup> 47 CFR § 54.903(a)(1).

<sup>392</sup> 47 CFR § 54.903(a)(2).

April of each year, it typically must rely on the carrier's FCC Form 507 from the prior July, which in turn reports line counts as of the prior December 31. In other words, these calculations are based on line counts that are more than 15 months old. Revising the line count reporting process as proposed would mean that USAC would be able to use line count data that is only three months old. We seek comment on this proposal.

171. We note that the FCC Form 507 filing deadlines mirror the line count filing deadlines used for HCLS.<sup>393</sup> Would changing the FCC Form 507 deadlines so that they no longer coincided with the HCLS deadlines create significant administrative burdens? Would it be feasible also to revise the HCLS line count deadlines to be consistent with the proposed FCC Form 507 deadlines? If we modify the filing schedule as proposed, do the optional filings serve any benefit, or could they be eliminated?

172. We also seek comment regarding whether FCC Form 507 should be mandatory for rate-of-return carriers that do not receive CAF BLS (*i.e.*, carriers that have elected A-CAM) or whether there are alternative sources of this data that would be less burdensome for carriers. Line count data is extremely useful for monitoring and analyzing high-cost universal service programs. Carriers that elected A-CAM were required to file line count data on FCC Form 507 prior to the implementation of A-CAM because they received ICLS, but no longer do so. Requiring the A-CAM carriers to continue to provide line count information would allow the Commission to maintain a frequently used data set for assessing whether the Commission's rules are achieving its universal service goals, while being a minimal burden to A-CAM recipients. We seek comment on this proposal. The Commission currently estimates that it takes approximately six hours to complete and file FCC Form 507.<sup>394</sup> Is this an accurate estimate of the burden associated with completing this form? Are there alternate sources of these data that we could rely on instead? Would the public benefit of maintaining these data for the purpose of monitoring and analyzing high-cost universal service exceed the burden?

#### **b. Accounting for Capital and Operating Leases**

173. In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2016-02, Leases, which is codified as Accounting Standards Codification (ASC) Topic 842 (ASC 842).<sup>395</sup> The new standard affects both capital and operating leases. Under this new standard, capital leases are referred to as financing leases and the procedures for expensing amounts recorded for financing leases are the same procedures previously used for capital leases.

174. ASC 842 adopts new requirements for operating leases. For example, ASC 842 requires that operating leases longer than one year be carried on a company's balance sheet along with a corresponding liability to reflect the net present value of future lease commitments.<sup>396</sup> The new standard provides procedures for expensing amounts recorded in the operating lease asset account. A carrier would recognize a lease expense from the operating lease on a straight-line basis over the lease term. Thus, for an operating lease with an escalation clause, ASC 842 would require the recorded operating

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<sup>393</sup> See Instructions for Completing Connect America Fund-Broadband Loop Support Mechanism Line Count Report, FCC Form 507, available at [http://www.usac.org/\\_res/documents/hc/pdf/forms/507i.pdf](http://www.usac.org/_res/documents/hc/pdf/forms/507i.pdf), 47 CFR §§ 54.1305, 1306.

<sup>394</sup> Instructions for Completing Connect America Fund-Broadband Loop Support Mechanism Line Count Report, FCC Form 507, available at [http://www.usac.org/\\_res/documents/hc/pdf/forms/507i.pdf](http://www.usac.org/_res/documents/hc/pdf/forms/507i.pdf).

<sup>395</sup> See FASB Accounting Standards Update No. 2016-02, February 2016, Leases (Topic 842), Financial Accounting Standards Board (FASB), available at [http://www.fasb.org/jsp/FASB/Document\\_C/DocumentPage?cid=1176167901010&acceptedDisclaimer=true](http://www.fasb.org/jsp/FASB/Document_C/DocumentPage?cid=1176167901010&acceptedDisclaimer=true) (ASC 842).

<sup>396</sup> See ASC 842 at 3.

expense to be higher in the first year than the amount paid in cash.<sup>397</sup> This is different than the current Part 32 treatment of operating leases, which classifies leases as expenses associated with the executory agreements that are recorded as expenses at the time lease payments are made. Pursuant to the current Part 32 treatment, a company would continue to disclose future lease commitments through a footnote to the financial statements. Additional recordkeeping would be necessary if Part 32 were not to adopt the ASC 842 guidelines.

175. We seek comment on whether to incorporate the ASC 842 guidelines into the Uniform System of Accounts (USOA) contained in Part 32. The differences in the two approaches raise questions regarding how the asset and liability should be recorded and the ability of, and the additional burden on, a carrier to maintain records to support the two approaches. We seek comment on these questions in general, as well as in connection with the specific issues raised below. We are particularly interested in the additional record-keeping burden that maintaining both the Part 32 and ASC 842 lease accounts would place on carriers if we were not to adopt ASC 842 for Part 32 purposes. A party asserting a burden should address the level of that burden in the context of any ratemaking effects that would occur.

176. If we were to incorporate ASC 842 into Part 32, we propose to create an asset and a liability account to reflect operating leases. We seek comment on this proposal. We also invite comment on whether other balance sheet or income statement-related accounts are necessary to account for leasing activities, either financing or operating. If so, parties should specify the additional accounts that are needed. We propose to adopt new or revised instructions for accounting for leases. Commenters supporting the adoption of ASC 842 are encouraged to provide language for the instructions and other rule revisions needed to implement ACS 842 in Part 32, taking into account the issues raised below.

177. The creation of a new asset account and a new liability account for operating leases raises questions about the treatment of these amounts in the ratemaking context. The operating lease asset would record the discounted value of payments due under operating leases longer than one year. Because there is no current outlay of funding for the operating leases, we propose that such amounts be excluded from the carrier's rate base. Similarly, because the liability is based on the value in the operating lease account, we propose that such liability should not be used in calculating the cost of capital. We seek comment on these two proposals, including whether the proposed treatment is warranted and what effect such treatment would have on a carrier's revenue requirement. Commenters are encouraged to identify and provide specific language to effectuate the changes to Part 65, or other affected provisions in the Commission's rules, that would be needed to implement this proposal.<sup>398</sup>

178. Adopting ASC 842 would also modify the way operating lease expenses are currently calculated pursuant to our Part 32 rules. As noted earlier, ASC 842 would spread lease payments on a straight-line basis over the term of the operating lease. We seek comment on any recognition or timing issues between the Part 32 treatment and the treatment under ASC 842. In particular, we seek comment on how any entries reflecting interest associated with the use of the net present value approach to recording operating leases should be treated for purposes of calculating lease expense. If we adopt ASC 842, we propose to assign operating lease costs to the expense accounts currently being used to record such amounts.<sup>399</sup> Would any revisions to the separations rules contained in Part 36 would be required under this proposal, and if so, which sections would need to be revised and what specific language should be used?

179. We also seek comment on the impact any ratemaking changes resulting from this proposed accounting modification would have on the levels or distribution of CAF BLS or other universal

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<sup>397</sup> The difference would be reflected in the netting of other accounting entries reflecting the net present value approach.

<sup>398</sup> See generally 47 CFR Part 65.

<sup>399</sup> See generally 47 CFR §§ 32.5999 et seq.

service support mechanisms.<sup>400</sup> Commenters should identify any recognition and/or timing issues raised by any change and should, to the extent possible, quantify any difference.

180. ASC 842 becomes effective for fiscal years beginning after December 15, 2018 for public business entities and certain other businesses. For all other entities, it becomes effective for fiscal years beginning after December 15, 2019. Early adoption is permitted. We seek comment on when any changes the Commission adopts should become effective and whether there are any other implementation issues the Commission should address.

## VI. PROCEDURAL MATTERS

### A. Paperwork Reduction Act Analysis

181. The Report and Order and Notice adopted herein contain new, proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.<sup>401</sup>

### B. Congressional Review Act

182. The Commission will send a copy of this Report and Order, Third Order on Reconsideration and Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>402</sup>

### C. Final Regulatory Flexibility Analysis

#### 1. Report and Order

183. 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.”<sup>403</sup> Accordingly, we have prepared a FRFA concerning the possible impact of the rule changes contained in the Report and Order on small entities. The FRFA is set forth in Appendix B.

#### 2. Third Order on Reconsideration

184. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>404</sup> requires agencies to prepare a regulatory flexibility analysis for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”<sup>405</sup> The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>406</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>407</sup> A small business concern is one which: (1) is independently owned and operated;

<sup>400</sup> See generally 47 CFR §§ 54.901 et seq.

<sup>401</sup> See 44 U.S.C. § 3506(c)(4).

<sup>402</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>403</sup> 5 U.S.C. § 605(b).

<sup>404</sup> 5 U.S.C. § 601 et seq.

<sup>405</sup> 5 U.S.C. § 605(b).

<sup>406</sup> 5 U.S.C. § 601(6).

<sup>407</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in Small Business Act, (continued...))

(2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>408</sup>

185. The Third Order on Reconsideration above amends rules adopted in the *Rate-of-Return Reform Order* by (1) implementing, for a five-year period, an inflation adjustment for the operating expense limitation, (2) incorporating broadband-only loops into the corporate operations expense limitation, and (3) reconsiders the application of the budget control mechanism for July 2017 to June 2018. These revisions do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the *Rate-of-Return Reform Order*.<sup>409</sup> Therefore, we certify that the rule revisions adopted in this Third Order on Reconsideration and Clarification will not have a significant economic impact on a substantial number of small entities.

186. The Commission will send a copy of the Report and Order and Third Order on Reconsideration, including a copy of this Final Certification, in a report to Congress pursuant to the Congressional Review Act.<sup>410</sup> In addition, the Third Order on Reconsideration and this Final Certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.<sup>411</sup>

#### **D. Initial Regulatory Flexibility Analysis**

187. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules considered in the Notice. This analysis is found in Appendix C. The Notice seeks comment on a potential new or revised information collection requirement. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comment on the Notice of Proposed Rulemaking. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>412</sup>

#### **E. Ex Parte Presentations**

188. *Permit-But-Disclose*. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>413</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments,

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

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." 5 U.S.C. § 601(3).

<sup>408</sup> Small Business Act, 15 U.S.C. § 632.

<sup>409</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3286, App D.

<sup>410</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>411</sup> 5 U.S.C. § 605(b).

<sup>412</sup> See 5 U.S.C. § 603(a).

<sup>413</sup> 47 CFR §§ 1.1200 *et seq.*



memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### **F. Comment Filing Procedures**

189. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554.

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

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

192. *Additional Information.* For additional information on this proceeding, contact Suzanne

Yelen of the Wireline Competition Bureau, Industry Analysis and Technology Division, Suzanne.Yelen@fcc.gov, (202) 418-7400 or Alexander Minard of the Wireline Competition Bureau, Technology Access Policy Division, Alexander.Minard@fcc.gov, (202) 418-7400.

## VII. ORDERING CLAUSES

193. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151-155, 201-206, 214, 218-220, 251, 256, 254, 256, 303(r), 403 and 405, this Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval. 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.

194. 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, Third Order on Reconsideration, and Notice of Proposed Rulemaking, including the IRFA and FRFA certification, to the Chief Counsel for Advocacy of the Small Business Administration.

195. IT IS FURTHER ORDERED, Pursuant to Section 220(i) of the Communications Act, 47 U.S.C. § 220(i), that notice be given to each state commission of the above rulemaking proceeding, and that the Secretary shall serve a copy of this Notice on each state commission.

196. IT IS FURTHER ORDERED that Part 54 and 64 of the Commission's rules, 47 CFR Part 54 and 64, ARE AMENDED as set forth in Appendix A, and such rule amendments SHALL BE EFFECTIVE thirty (30) days after publication of the rules amendments in the Federal Register, except that those rules and requirements which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act WILL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

197. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, the Petition for Reconsideration filed by NTCA on May 25, 2016 IS GRANTED IN PART and DISMISSED AS MOOT IN PART to the extent described herein.

198. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, the Petition for Reconsideration filed by CUSTER TELEPHONE COOPERATIVE, ET AL. on May 25, 2016 IS DISMISSED AS MOOT IN PART to the extent described herein.

199. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, the Petition for Reconsideration filed by WTA on May 25, 2016 IS GRANTED IN PART and DENIED IN PART to the extent described herein.

200. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and sections 0.331 and 1.429 of the Commission's rules, 47 C.F.R. § 0.331 and 47 C.F.R. § 1.429, the Petition for Reconsideration filed by MADISON TELEPHONE COMPANY on May 25, 2016 IS DENIED.

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

202. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## FINAL RULES

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 64 as follows:

**PART 54—UNIVERSAL SERVICE**

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

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

2. Amend § 54.7 by adding paragraph (c).

**§ 54.7 Intended use of federal universal service support.**

\*\*\*\*\*

(c) For those eligible telecommunications carriers as defined in § 54.5 receiving universal service support pursuant to subparts K and M of this part, ineligible expenses include but are not limited to the following:

- (1) Personal expenses of employees, executives, board members, and contractors, and family members thereof, or any other individuals affiliated with the eligible telecommunications carrier, including but not limited to personal expenses for housing, such as rent or mortgages, vehicles for personal use and personal travel, including transportation, lodging and meals;
- (2) Gifts to employees; childcare; housing allowances or other forms of mortgage or rent assistance for employees except that a reasonable amount of assistance shall be allowed for work-related temporary or seasonal lodging; cafeterias and dining facilities; food and beverage except that a reasonable amount shall be allowed for work-related travel; entertainment;
- (3) Expenses associated with: tangible property not logically related or necessary to the offering of voice or broadband services; corporate aircraft, watercraft, and other motor vehicles designed for off-road use except insofar as necessary or reasonable to access portions of the study area not readily accessible by motor vehicles travelling on roads; tangible property used for entertainment purposes; consumer electronics used for personal use; kitchen appliances except as part of work-related temporary or seasonal lodging assistance; artwork and other objects which possess aesthetic value;
- (4) Political contributions; charitable donations; scholarships; membership fees and dues in clubs and organizations; sponsorships of conferences or community events; nonproduct-related corporate image advertising; and
- (5) Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.

3. Amend § 54.303(a) by adding subparagraph (a)(6).

**§54.303 Eligible Capital Investment and Operating Expenses.**

(a) \*\*\*

(6) For a period of five years following the implementation of paragraph (a) of this section, the total

eligible annual operating expenses per location in paragraph (a) shall be adjusted annually to account for changes to the Department of Commerce's Gross Domestic Product Chain-type Price Index (GDP-CPI).  
\*\*\*\*\*

4. Amend § 54.313(f) by adding subparagraph (4).

**§ 54.313 Annual reporting requirements for high-cost recipients.**

\*\*\*\*\*

(f) \*\*\*

(4) If applicable, the name of any cost consultant and cost consulting firm, or other third-party, retained to prepare financial and operations data disclosures submitted to the National Exchange Carrier Association (NECA), the Administrator or the Commission pursuant to subpart D, K, or M of this part.

\*\*\*\*\*

5. Amend § 54.901 by revising paragraph (b) and adding subparagraph (f)(4) to read as follows:

**§54.901 Calculation of Connect America Fund Broadband Loop Support.**

\*\*\*\*\*

(b) For the purpose of calculating support pursuant to paragraph (a) of this section, the Interstate Common Line Revenue Requirement and Consumer Broadband-only Revenue Requirement shall be subject to the limitations set forth in §54.303.

\*\*\*\*\*

(f)\*\*\*

(4) This paragraph (f) shall not apply to support provided from July 1, 2017 to June 30, 2018.

\*\*\*\*\*

6. Amend § 54.1305 by adding paragraph (j):

**§54.1305 Submission of information to the National Exchange Carrier Administration (NECA).**

\*\*\*\*\*

(j) The number of consumer broadband-only loops for each study area, as defined in section 54.901(g), calculated as of December 31st of the calendar year preceding each July 31st filing.

7. Amend § 54.1308 by revising paragraphs (a)(4)(ii) introductory text and (a)(4)(ii)(A) through (C) to read as follows:

**§54.1308 Study Area Total Unseparated Loop Cost.**

(a) \*\*\*

(4) \*\*\*

(ii) A monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A) through (D) of this section. To the extent that some carriers' corporate operations expenses are disallowed pursuant to these limitations, the national average unseparated cost per loop shall be adjusted accordingly. For the purposes of this paragraph (a)(4)(ii), "total eligible lines" refers to working loops as defined by this subpart and consumer broadband-only loops, as defined in section 54.901(g).

(A) For study areas with 6,000 or fewer total eligible lines, the monthly per-loop amount shall be \$42.337 - (.00328 × the number of total eligible lines), or, \$63,000/the number of total eligible lines, whichever is greater;

(B) For study areas with more than 6,000 but fewer than 17,887 total eligible lines, the monthly per-loop amount shall be \$3.007 + (117,990/the number of total eligible lines); and

(C) For study areas with 17,887 or more total eligible lines, the monthly per-loop amount shall be \$9.562.

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\*\*\*\*\*

8. Amend § 54.1310 by adding subparagraph (d)(3) as follows:

**§ 54.1310 Expense Adjustment.**

\*\*\*\*\*

(d) \*\*\*

(3) This paragraph (d) shall not apply to support provided from July 1, 2017 to June 30, 2018.

**PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 202, 225, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, Pub.L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 218, 222, 225, 226, 227, 228, 251(e), 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112-96, unless otherwise noted.

2. Adds a new Subpart J to read as follows:

**Subpart J—Recovery of Investments and Expenses in Regulated Interstate Rates**

**§ 64.1000 Scope.**

This subpart is applicable only to rate-of-return carriers as defined in § 54.5 of this chapter receiving Connect America Fund Broadband Loop Support as described in § 54.901 of this chapter.

**§ 64.1001 Purpose.**

This subpart is intended to ensure that only used and useful investments and expenses are recovered through regulated interstate rates pursuant to section 201(b) of the Communications Act as amended (the Act), 47 U.S.C. §201(b).

**§ 64.1002 Investments and Expenses**

(a) *Investment and Expenses Not Used and Useful in the Ordinary Course.* The following investments and expenses are presumed not used and useful (and thus unreasonable):

- (1) Personal expenses, including but not limited to personal expenses for food and beverages, housing, such as rent or mortgages, vehicles for personal use, and personal travel;
- (2) Tangible property not logically related or necessary to offering voice or broadband services;
- (3) Political contributions;
- (4) Membership fees and dues in social, service and recreational, or athletic clubs or organizations;
- (5) Penalties or fines for statutory or regulatory violations; and

(6) Penalties or fees for late payments on debt, loans, or other payments.

(b) *Non-Customary Investments and Expenses.* Unless customary for similarly situated companies, the following investments and expenses are presumed not used and useful (and thus unreasonable):

- (1) Personal benefits, such as gifts, housing allowances, and childcare, that are not part of taxable compensation;
- (2) Artwork and other objects that possess aesthetic value that are displayed in the workplace;
- (3) Aircraft, watercraft, and off-road vehicles used for work and work-related purposes;
- (4) Cafeterias and dining facilities;
- (5) Charitable donations;
- (6) Entertainment;
- (7) Food and beverage expenses for work and work-related travel;
- (8) Membership fees and dues associated with professional organizations;
- (9) Scholarships; and
- (10) Sponsorships of conferences or community events.

## APPENDIX B

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>1</sup> as amended, Initial Regulatory Flexibility Analyses (IRFAs) were incorporated in the *Report and Order*, *Order*, and *Order on Reconsideration*, and *Further Notice of Proposed Rulemaking (Rate-of-Return Reform Order and Further Notice)*.<sup>2</sup> The Commission sought written public comment on the proposals in the *Rate of Return Reform Order and Further Notice*, including comment on the IRFA. The Commission did not receive comments on the *Rate-of-Return Reform Order and FNPRM* IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

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

2. In the Report and Order, we adopt reforms to ensure that high-cost universal service support provided to eligible telecommunications carriers (ETCs) is used only for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended. Specifically, this Report and Order addresses whether specific expenses are eligible for recovery from federal high-cost support pursuant to section 254(e) of the Act.<sup>4</sup>

3. We also adopt measures to ensure carrier compliance with the permitted expense rules adopted above for high-cost support.<sup>5</sup> We require rate-of-return ETCs to identify on their annual FCC Form 481 (Carrier Annual Reporting Data Collection Form) their cost consultants and cost consulting firm, or other third party, if any, used to prepare cost studies, or other calculations used to calculate high-cost support for their submission. Disclosure of such parties is a low-burden measure that will help the Commission identify waste, fraud, and abuse during audits. Identifying such parties will help the Commission and USAC identify and rectify patterns of noncompliance, and potentially fraud, during audits. This will ultimately help preserve the integrity of the Universal Service Fund by ensuring that carriers use high-cost support only for the provision, maintenance, and upgrading of facilities and services for which the high-cost support is intended.

4. In the Report and Order, we further amend the rules to provide guidance to legacy rate-of-return LECs regarding investments and expenses that are presumed not used and useful (and thus unreasonable under section 201 of the Communications Act) and thus, as a general matter, may not be recovered through interstate rates.<sup>6</sup> We divide such investments and expenses into two broad categories: those that we do not expect would be used and useful in the ordinary course and those we would not expect to be used and useful unless customary for similarly situated companies.<sup>7</sup>

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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, Public Law 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> See *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, Report and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3257-85, paras. 1-90 (2016) (*Rate-of-Return Reform Order and FNPRM*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> See *supra* Section III.A.

<sup>5</sup> See *supra* Section III.A.2.

<sup>6</sup> See *supra* Section III.A.2.

<sup>7</sup> See *supra* Section III.A.2.



5. The Report and Order also addresses two matters for which Final Regulatory Flexibility Analysis is unnecessary.

6. First, the Report and Order provides additional support to fund model-based deployment.<sup>8</sup> In the *April 2014 Connect America FNPRM*, the Commission proposed a framework for a voluntary election by rate-of-return carriers to receive model-based support and tentatively concluded that such a framework could achieve important universal service benefits by creating incentives for deployment of voice and broadband-capable infrastructure.<sup>9</sup> The Commission sought written comment on the proposal, including comment on the Initial Regulatory Flexibility Analysis (IRFA).<sup>10</sup> The Commission did not receive any comments on the *April 2014 Connect America FNPRM IRFA*. In the *Rate-of-Return Reform Order*, the Commission adopted a voluntary path under which rate-of-return carriers may elect to receive model-based support for a term of 10 years in exchange for meeting defined build-out obligations.<sup>11</sup> The Commission issued a Final Regulatory Flexibility Analysis (FRFA) that conforms to the Regulatory Flexibility Act of 1980 (RFA), as amended.<sup>12</sup> This present Report and Order further implements the framework previously adopted by the Commission. Therefore, we certify that it will not have a significant economic impact on a substantial number of small entities.

7. Second, the Report and Order directs USAC to continue the practice of uniform quarterly collections.<sup>13</sup> Our directive to USAC to continue uniform quarterly collection is not a rule subject to notice-and-comment rulemaking and therefore no Regulatory Flexibility Analysis is required. Further, we note that is only applicable to USAC and will not have a significant economic impact on a substantial number of small entities.

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

8. There were no comments raised that specifically addressed the proposed rules and policies presented in the *Rate-of-Return Reform Order and FNPRM IRFA*. 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**

9. Pursuant to the Small Business Jobs Act of 2010,<sup>14</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.

10. 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**

11. The RFA directs agencies to provide a description of, and where feasible, an estimate of the

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<sup>8</sup> See *supra* Section III.B.

<sup>9</sup> *April 2014 Connect America Order*, 29 FCC Rcd at 7139-43, paras. 276-91.

<sup>10</sup> See *id.* at 7216-44, Appx. D.

<sup>11</sup> *Rate-of-Return Reform Order*, 31 FCC at 3094-3117, paras. 17-79.

<sup>12</sup> See *id.* at 3286-3314, Appx. D.

<sup>13</sup> See *supra* Section III.C.

<sup>14</sup> 5 U.S.C. Sec. 604(a)(3).

number of small entities that may be affected by the proposed rules, if adopted.<sup>15</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>16</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>17</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>18</sup>

### 1. Total Small Entities

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

13. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

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

### 2. Broadband Internet Access Service Providers

15. Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.<sup>19</sup> Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired

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<sup>15</sup> See 5 U.S.C. § 603(b)(3).

<sup>16</sup> See 5 U.S.C. § 601(6).

<sup>17</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>18</sup> See 15 U.S.C. § 632.

<sup>19</sup> See, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICs code as 517311. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>

telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.<sup>20</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>21</sup> U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>22</sup> Consequently, under this size standard the majority of firms in this industry can be considered small.

16. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this 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.

### 3. Wireline Provider

17. *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>23</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>24</sup> U.S. Census Bureau data for 2012 shows that there were 3,117 firms that operated that year.<sup>25</sup> 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.

18. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LEC services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>27</sup> According to

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<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> See 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>24</sup> *Id.*

<sup>25</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>26</sup> *Id.*

<sup>27</sup> 13 CFR § 121.201, NAICS code 517311.

Commission data,<sup>28</sup> 1,307 carriers reported that they were incumbent LEC providers.<sup>29</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>30</sup> Consequently, the Commission estimates that most providers of incumbent LEC service are small.

19. 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 size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>31</sup> 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>32</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>33</sup> 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>34</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>35</sup> Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.<sup>36</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.

20. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>37</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>38</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

21. *Interexchange Carriers*. Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a

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<sup>28</sup> Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>29</sup> See *Trends in Telephone Service* at tbl. 5.3.

<sup>30</sup> See *id.*

<sup>31</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>32</sup> See *Trends in Telephone Service* at tbl.5.3.

<sup>33</sup> See *id.*

<sup>34</sup> See *id.*

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> 5 U.S.C. § 601(3).

<sup>38</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

business is small if it has 1,500 or fewer employees.<sup>39</sup> According to Commission data,<sup>40</sup> 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities.

22. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>41</sup> According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>42</sup> Consequently, the Commission estimates that the majority of OSPs are small entities.

23. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>43</sup> According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>44</sup> Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>45</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities.

24. *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> According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>47</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>48</sup> Consequently, the Commission estimates that the majority of local resellers are small entities.

25. *Toll 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>49</sup> According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>50</sup> Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.<sup>51</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

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<sup>39</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>40</sup> *Trends in Telephone Service*, tbl. 5.3.

<sup>41</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>42</sup> *Trends in Telephone Service*, tbl. 5.3.

<sup>43</sup> See 13 CFR § 121.201, NAICS code 517911.

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

<sup>45</sup> See *id.*

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

<sup>47</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>48</sup> See *id.*

<sup>49</sup> See 13 CFR § 121.201, NAICS code 517911.

<sup>50</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>51</sup> See *id.*

26. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>52</sup> According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>53</sup> Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.<sup>54</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities.

27. *800 and 800-Like Service Subscribers.*<sup>55</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>56</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>57</sup> According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.<sup>58</sup> We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

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

28. In the Report and Order, we codify a list of ineligible expenses and expense categories the Commission previously identified as ineligible for high-cost support, and we provide guidance going-forward on the eligibility of expenses on which the Commission sought comment in the *Rate-of-Return Reform Order and FNPRM*. The revised rules adopted herein provide more specificity and certainty to ETCs and do not impose any additional recordkeeping requirements. Additionally, we require all rate-of-return ETCs to identify on their annual FCC Form 481 (Carrier Annual Reporting Data Collection Form) their cost consultants and cost consulting firm, or other third party, if any, used to prepare cost studies, or other calculations used to calculate high-cost support for their submission. We expect this reporting obligation to have a minimal impact.

29. The Report and Order amends the rules to provide guidance to legacy rate-of-return LECs regarding investments and expenses that are presumed not used and useful and thus, as a general matter, may not be recovered through interstate rates.<sup>59</sup> Such investments and expenses are divided into two broad categories: those that we do not expect would be used and useful in the ordinary course and those

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<sup>52</sup> See 13 CFR § 121.201, NAICS code 517311.

<sup>53</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>54</sup> See *id.*

<sup>55</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>56</sup> See 13 CFR § 121.201, NAICS code 517911.

<sup>57</sup> See *Trends in Telephone Service* at Tables 18.7-18.10.

<sup>58</sup> See *id.*

<sup>59</sup> See *supra* Section III.A.2.

we would not expect to be used and useful unless customary for similarly situated companies.<sup>60</sup> These changes do not impact reporting obligations, and are necessary to ensure that recovery of these investments and expenses via interstate rates is consistent with section 201(b) of the Act.

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

30. 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>61</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 *Rate-of-Return Reform Order and FNRPM* and *IRFA*, in reaching its final conclusions and taking action in this proceeding.

31. The rules that we adopt in the Report and Order provide greater certainty to rate-of-return carriers, many of which are small entities. We codify a simple, clear, and carefully defined list of categories of expenses that are precluded from recovery via the universal service fund. We incorporate expenses categories previously identified as ineligible for high-cost support, *High-Cost Oct. 19, 2015 Public Notice* and in the *Rate-of-Return Reform Further Notice*, and we provide guidance going-forward on the eligibility of expenses on which the Commission sought comment in the *Rate-of-Return Reform Further Notice*.<sup>62</sup> Providing a clear list of expenses that are not reimbursable will ensure that more resources are available in the universal service fund. Although we provide guidance going-forward on the eligibility of expenses on which the Commission sought comment, such guidance should have only a minimal impact on small entities.

32. Similarly, the Commission provides greater certainty to legacy rate-of-return carriers by codifying a list of investments and expenses that are presumed not used and useful and thus, as a general matter, may not be recovered through interstate rates.<sup>63</sup> This guidance provides more certainty and predictability, while also providing carriers the opportunity to recover these costs via regulated interstate rates if the presumption can be overcome.

33. The Commission also acts to modify our existing reporting requirements.<sup>64</sup> We require carriers to identify on their annual FCC Form 481 their cost consultants and cost consulting firm, or other third party, used to prepare cost studies or other calculations used to calculate high-cost support for their submission will have a minimal economic impact because small entities already prepare this filing. The Commission revises ETCs' annual reporting requirements to align better those requirements with the Commission's statutory and regulatory objectives.<sup>65</sup> This addition will allow the Commission to identify themes and trends among both rate-of-return carriers and third-party cost consultants and to eliminate waste, fraud, and abuse.

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<sup>60</sup> See *supra* Section III.A.2

<sup>61</sup> 5 U.S.C. § 603(c).

<sup>62</sup> See *Rate-of-Return Reform Further Notice*, 31 FCC Rcd at 3216-17, paras. 340-42 & n.819.

<sup>63</sup> See *supra* Section III.A.2.

<sup>64</sup> See *supra* Section III.A.2.

<sup>65</sup> See *id.*

**G. Report to Congress:**

34. The Commission will send a copy of the Order, 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>66</sup> In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>67</sup>

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<sup>66</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>67</sup> *See id.* § 604(b).



## APPENDIX C

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

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

2. The proposals in this NPRM seek to build on efforts to modernize high-cost universal service support by offering greater certainty, predictability, and stability to rate-of-return carriers and creating incentives for efficient spending and bringing broadband to the areas that need it most.

3. We review the amount of support available to rate-of-return carriers by initiating review of the high-cost universal service support budget, proposing to increase the budget based on inflation, and proposing an offer of model-based support for carriers whose model-based support would be lower than the support they received in 2016. By examining the budget and the support available for rate-of-return carriers, we are looking to bring stability to the program and fulfill our commitment to reexamine the budget. To address some of the shortcomings and inefficiencies in our existing support programs, we also seek comment on whether to fully-fund carriers that have elected to receive model-based support, subject to additional build-out obligations, and on providing another opportunity for all legacy rate-of-return carriers still receiving legacy support to elect a voluntary path to model support. For those carriers that choose to remain on legacy support, we propose to adopt a mechanism whereby legacy carriers would be guaranteed a threshold level of annual support, and we seek comment on implementing an individual cap for each legacy carriers. This would alleviate the unpredictability created by the budget control mechanism. We also seek comment on eliminating limitations on capital, operational, and corporate expenses to minimize the burden these mechanisms put on carriers. Finally, we seek comment on modifying various rules, including legacy buildout obligations, the methodology for applying the budget constraint, the \$250 per-loop, per-month cap, and looking at other reforms to the rate-of-return mechanisms. We also seek comment on proposals to modify line count data reporting requirements and accounting rules for capital and operating leases.

**B. Legal Basis**

4. The legal basis for any action that may be taken pursuant to the Notice is contained in sections 1-4, 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151-155, 201-206, 214, 218-220, 251, 256, 254, 256, 303(r), 403 and 405.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

### C. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

5. 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>4</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>5</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>6</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>7</sup>

#### 1. Total Small Entities

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>8</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>9</sup> These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.<sup>10</sup>

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup> Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).<sup>12</sup>

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<sup>4</sup> See 5 U.S.C. § 603(b)(3).

<sup>5</sup> See 5 U.S.C. § 601(6).

<sup>6</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>7</sup> See 15 U.S.C. § 632.

<sup>8</sup> See 5 U.S.C. § 601(3)-(6).

<sup>9</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016)

<sup>10</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small business are there in the U.S.?” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>11</sup> 5 U.S.C. § 601(4).

<sup>12</sup> Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccs.urban.org/sites/all/nccs-archive/html/tablewiz/tw.php> where the report showing this data can be generated by selecting the following data fields: Report: “The Number and Finances of All Registered 501(c) Nonprofits”; Show: “Registered Nonprofits”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results”.

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>13</sup> U.S. Census Bureau data from the 2012 Census of Governments<sup>14</sup> indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>15</sup> Of this number there were 37, 132 General purpose governments (county<sup>16</sup>, municipal and town or township<sup>17</sup>) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts<sup>18</sup> and special districts<sup>19</sup>) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000.<sup>20</sup> Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”<sup>21</sup>

## 2. Broadband Internet Access Service Providers

9. *Internet Service Providers (Broadband)*. Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications

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<sup>13</sup> 5 U.S.C. § 601(5).

<sup>14</sup> See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.CO G#>.

<sup>15</sup> See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

<sup>16</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

<sup>17</sup> See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

<sup>18</sup> See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

<sup>19</sup> See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. The U.S. Census Bureau data did not provide a population breakout for special district governments.

<sup>20</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States–States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

<sup>21</sup> *Id.*

infrastructure fall in the category of Wired Telecommunication Carriers.<sup>22</sup> Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.<sup>23</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>24</sup> U.S. Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>25</sup> Consequently, under this size standard the majority of firms in this industry can be considered small.

### 3. Wireline Providers

10. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. 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>26</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>27</sup> U.S. Census Bureau data for 2012 shows that there were 3,117 firms that operated that year.<sup>28</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>29</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

11. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent LEC services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>30</sup> According to Commission data,<sup>31</sup> 1,307 carriers reported that they were incumbent LEC providers.<sup>32</sup> Of these 1,307

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<sup>22</sup> See, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICs code as 517311. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>

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

<sup>24</sup> *Id.*

<sup>25</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>26</sup> See 13 CFR § 120.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017>.

<sup>27</sup> *Id.*

<sup>28</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>29</sup> *Id.*

<sup>30</sup> 13 CFR § 121.201, NAICS code 517311.

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

carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>33</sup> Consequently, the Commission estimates that most providers of incumbent LEC service are small businesses.

12. *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 size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>34</sup> 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>35</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>36</sup> 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>37</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>38</sup> Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.<sup>39</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.

13. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>40</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>41</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

14. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>42</sup> According to Commission data,<sup>43</sup> 359 carriers have

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

<sup>32</sup> See *Trends in Telephone Service* at tbl. 5.3.

<sup>33</sup> See *id.*

<sup>34</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>35</sup> See *Trends in Telephone Service* at tbl.5.3.

<sup>36</sup> See *id.*

<sup>37</sup> See *id.*

<sup>38</sup> See *id.*

<sup>39</sup> See *id.*

<sup>40</sup> 5 U.S.C. § 601(3).

<sup>41</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

<sup>42</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>43</sup> *Trends in Telephone Service*, tbl. 5.3.

reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities.

15. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>44</sup> According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>45</sup> Consequently, the Commission estimates that the majority of OSPs are small entities.

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 size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>46</sup> According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>47</sup> Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>48</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities. *Local Resellers*. The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>49</sup> Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees.<sup>50</sup> U.S. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all 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, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>52</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>53</sup> Consequently, the Commission estimates that the majority of local resellers are small entities.

17. *Toll 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

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<sup>44</sup> 13 CFR § 121.201, NAICS code 517311.

<sup>45</sup> *Trends in Telephone Service*, tbl. 5.3.

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

<sup>47</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>48</sup> See *id.*

<sup>49</sup> <https://www.census.gov/cgi-in/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

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

<sup>51</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, "Establishment and Firm Size," NAICS code 517911.

<sup>52</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>53</sup> See *id.*

employees.<sup>54</sup> According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>55</sup> Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.<sup>56</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

18. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>57</sup> According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>58</sup> Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.<sup>59</sup> Consequently, the Commission estimates that most Other Toll Carriers are small.

19. *800 and 800-Like Service Subscribers.*<sup>60</sup> Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>61</sup> The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use.<sup>62</sup> According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736.<sup>63</sup> We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

#### 4. Wireless Providers – Fixed and Mobile

20. The broadband Internet access service provider category covered by this Order may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track

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<sup>54</sup> See 13 CFR § 121.201, NAICS code 517911.

<sup>55</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>56</sup> See *id.*

<sup>57</sup> See 13 CFR § 121.201, NAICS code 517311.

<sup>58</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>59</sup> See *id.*

<sup>60</sup> We include all toll-free number subscribers in this category, including those for 888 numbers.

<sup>61</sup> See 13 CFR § 121.201, NAICS code 517911.

<sup>62</sup> See *Trends in Telephone Service* at Tables 18.7-18.10.

<sup>63</sup> See *id.*

subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

21. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>64</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>65</sup> For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.<sup>66</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>67</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.

22. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>68</sup> The SBA has approved these small business size standards.<sup>69</sup> In the Commission’s auction for geographic area licenses in the WCS there were seven winning bidders that qualified as “very small business” entities, and one that qualified as a “small business” entity.

23. *218-219 MHz Service*. The first auction of 218-219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years.<sup>70</sup> In the *218-219 MHz Report and Order and Memorandum Opinion and Order*, we established a small business size standard for a “small business” as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years.<sup>71</sup> A “very small business” is

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<sup>64</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517210 Wireless Telecommunications Carriers (Except Satellite),” See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210>.

<sup>65</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>66</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210).

<sup>67</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>68</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>69</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

<sup>70</sup> See generally *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, PP Docket No. 93-253, Fourth Report and Order, 9 FCC Rcd 2330 (1994).

<sup>71</sup> See generally *Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Report and Order and Memorandum Opinion and Order, 15 FCC Rcd 1497 (1999) (*218-219 MHz Report and Order and Memorandum Opinion and Order*).



defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years.<sup>72</sup> These size standards will be used in future auctions of 218-219 MHz spectrum.

24. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (“WCS”) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>73</sup> The SBA has approved these definitions.<sup>74</sup> The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

25. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile.<sup>75</sup> An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

26. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite)<sup>76</sup> and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>77</sup> For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.<sup>78</sup> Of this total, 955 firms had fewer than 1,000 employees and 12 firms has 1000 employees or more.<sup>79</sup> Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>80</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>81</sup> Therefore, more than half of these entities can be considered small.

27. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a “small business” for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three

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<sup>72</sup> See *id.*

<sup>73</sup> *Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879 para. 194 (1997).

<sup>74</sup> See *Alvarez Letter 1998*.

<sup>75</sup> 47 CFR § 2.106; see generally 47 CFR §§ 27.1-27.70.

<sup>76</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>77</sup> *Id.*

<sup>78</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210).

<sup>79</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>80</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>81</sup> *Id.*

previous calendar years.<sup>82</sup> For F-Block licenses, an additional small business size standard for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>83</sup> These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA.<sup>84</sup> No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks.<sup>85</sup> On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22.<sup>86</sup> Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

28. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status.<sup>87</sup> Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses.<sup>88</sup> On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71.<sup>89</sup> Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses.<sup>90</sup> On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78.<sup>91</sup> Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.<sup>92</sup>

29. *Specialized Mobile Radio Licenses.* The Commission awards “small entity” bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than \$15 million in each of the three previous calendar

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<sup>82</sup> See *Amendment of Parts 20 and 24 of the Commission’s Rules – Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission’s Cellular/PCS Cross-Ownership Rule*; WT Docket No. 96-59, GN Docket No. 90-314, Report and Order, 11 FCC Rcd 7824, 7850-52, paras. 57-60 (1996) (*PCS Report and Order*); see also 47 CFR § 24.720(b).

<sup>83</sup> See *PCS Report and Order*, 11 FCC Rcd at 7852, para. 60.

<sup>84</sup> See *Alvarez Letter 1998*.

<sup>85</sup> See *Broadband PCS, D, E and F Block Auction Closes*, Public Notice, Doc. No. 89838 (rel. Jan. 14, 1997).

<sup>86</sup> See *C, D, E, and F Block Broadband PCS Auction Closes*, Public Notice, 14 FCC Rcd 6688 (WTB 1999). Before Auction No. 22, the Commission established a very small standard for the C Block to match the standard used for F Block. *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97-82, Fourth Report and Order, 13 FCC Rcd 15743, 15768, para. 46 (1998).

<sup>87</sup> See *C and F Block Broadband PCS Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 2339 (2001).

<sup>88</sup> See *Broadband PCS Spectrum Auction Closes; Winning Bidders Announced for Auction No. 58*, Public Notice, 20 FCC Rcd 3703 (2005).

<sup>89</sup> See *Auction of Broadband PCS Spectrum Licenses Closes; Winning Bidders Announced for Auction No. 71*, Public Notice, 22 FCC Rcd 9247 (2007).

<sup>90</sup> *Id.*

<sup>91</sup> See *Auction of AWS-1 and Broadband PCS Licenses Closes; Winning Bidders Announced for Auction 78*, Public Notice, 23 FCC Rcd 12749 (WTB 2008).

<sup>92</sup> *Id.*

years.<sup>93</sup> The Commission awards “very small entity” bidding credits to firms that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>94</sup> The SBA has approved these small business size standards for the 900 MHz Service.<sup>95</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>96</sup> A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>97</sup>

30. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the \$15 million size standard.<sup>98</sup> In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.<sup>99</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

31. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard.<sup>100</sup> We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

32. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>101</sup> The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>102</sup> A “very small business” is defined as an entity that, together with its affiliates

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<sup>93</sup> 47 CFR § 90.814(b)(1).

<sup>94</sup> *Id.*

<sup>95</sup> See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (filed Aug. 10, 1999) (*Alvarez Letter 1999*).

<sup>96</sup> See *Correction to Public Notice DA 96-586 “FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,”* Public Notice, 18 FCC Rcd 18367 (WTB 1996).

<sup>97</sup> See *Multi-Radio Service Auction Closes*, Public Notice, 17 FCC Rcd 1446 (WTB 2002).

<sup>98</sup> See *800 MHz Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes; Winning Bidders Announced*, Public Notice, 15 FCC Rcd 17162 (2000).

<sup>99</sup> See *800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced*, Public Notice, 16 FCC Rcd 1736 (2000).

<sup>100</sup> See generally 13 CFR § 121.201, NAICS code 517210.

<sup>101</sup> See *Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (*Channels 52–59 Report and Order*).

<sup>102</sup> See *id.* at 1087-88, para. 172.

and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>103</sup> Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—“entrepreneur”—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.<sup>104</sup> The SBA approved these small size standards.<sup>105</sup> An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>106</sup> A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses.<sup>107</sup> Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>108</sup> On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

33. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order*.<sup>109</sup> An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block.<sup>110</sup> Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) won 325 licenses.

34. *Upper 700 MHz Band Licenses*. In the *700 MHz Second Report and Order*, the Commission revised its rules regarding Upper 700 MHz licenses.<sup>111</sup> On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in

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<sup>103</sup> See *id.*

<sup>104</sup> See *id.*, at 1088, para. 173.

<sup>105</sup> See *Alvarez Letter 1999*.

<sup>106</sup> See *Lower 700 MHz Band Auction Closes*, Public Notice, 17 FCC Rcd 17272 (WTB 2002).

<sup>107</sup> See *id.*

<sup>108</sup> See *id.*

<sup>109</sup> *Service Rules for the 698–746, 747–762 and 777–792 MHz Band; Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010; Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule*, WT Docket Nos. 07-166, 06-169, 06-150, 03-264, 96-86, PS Docket No. 06-229, CC Docket No. 94-102, Second Report and Order, 22 FCC Rcd 15289, 15359 n. 434 (2007) (*700 MHz Second Report and Order*).

<sup>110</sup> See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

<sup>111</sup> *700 MHz Second Report and Order*, 22 FCC Rcd 15289.

the D Block.<sup>112</sup> The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed \$15 million for the preceding three years) and winning five licenses.

35. *700 MHz Guard Band Licensees*. In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>113</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>114</sup> Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>115</sup> SBA approval of these definitions is not required.<sup>116</sup> An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>117</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>118</sup>

36. *Cellular Radiotelephone Service*. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico.<sup>119</sup> Bidding credits for designated entities were not available in Auction 77.<sup>120</sup> In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.<sup>121</sup>

37. *Private Land Mobile Radio (“PLMR”)*. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is

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<sup>112</sup> See *Auction of 700 MHz Band Licenses Closes*, Public Notice, 23 FCC Rcd 4572 (WTB 2008).

<sup>113</sup> See *Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299 (2000) (*746–764 MHz Band Second Report and Order*).

<sup>114</sup> See *id.* at 5343, para. 108.

<sup>115</sup> See *id.*

<sup>116</sup> See *id.* at 5343, para. 108 n.246 (for the 746–764 MHz and 776–794 MHz bands, the Commission is exempt from 15 U.S.C. § 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

<sup>117</sup> See *700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 15 FCC Rcd 18026 (WTB 2000).

<sup>118</sup> See *700 MHz Guard Bands Auction Closes: Winning Bidders Announced*, Public Notice, 16 FCC Rcd 4590 (WTB 2001).

<sup>119</sup> See *Closed Auction of Licenses for Cellular Unserved Service Area Scheduled for June 17, 2008, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 77*, Public Notice, 23 FCC Rcd 6670 (Wireless Tel. Bur. 2008).

<sup>120</sup> *Id.* at 6685.

<sup>121</sup> See *Auction of Cellular Unserved Service Area License Closes, Winning Bidder Announced for Auction 77, Down Payment due July 2, 2008, Final Payment due July 17, 2008*, Public Notice, 23 FCC Rcd 9501 (WTB 2008).

any such entity employing no more than 1,500 persons.<sup>122</sup> The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.<sup>123</sup>

38. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

39. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.<sup>124</sup> A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).<sup>125</sup> In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons.<sup>126</sup> There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

40. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons.<sup>127</sup> For this industry, U.S. 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 and 12 had employment of 1000 employees or more.<sup>128</sup> There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$40 million.<sup>129</sup> A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding \$15 million.<sup>130</sup> These definitions were approved by the SBA.<sup>131</sup> In May 2006, the

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<sup>122</sup> See 13 CFR § 121.201, NAICS code 517210.

<sup>123</sup> See generally 13 CFR § 121.201.

<sup>124</sup> The service is defined in 47 CFR § 22.99.

<sup>125</sup> BETRS is defined in 47 CFR §§ 22.757 and 22.759.

<sup>126</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>127</sup> 13 CFR § 121.201, NAICS codes 517210.

<sup>128</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

<sup>129</sup> *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, Biennial Regulatory Review—Amendment of Parts 1, 22, and 90 of the Commission's Rules, Amendment of Parts 1 and 22 of the Commission's Rules to Adopt Competitive Bidding Rules for Commercial and General Aviation Air-Ground Radiotelephone Service*, Order on Reconsideration and Report and Order, 20 FCC Rcd 19663, paras. 28-42 (2005).

<sup>130</sup> *Id.*

Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

41. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.<sup>132</sup> U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.<sup>133</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>134</sup> Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875-157.4500 MHz (ship transmit) and 161.775-162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars.<sup>135</sup> In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars.<sup>136</sup> There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards.

42. *Advanced Wireless Services (AWS) (1710–1755 MHz and 2110–2155 MHz bands (AWS-1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS-2); 2155–2175 MHz band (AWS-3)).* For the AWS-1 bands,<sup>137</sup> the Commission has defined a “small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$40 million, and a “very small business” as an entity with average annual gross revenues for the preceding three years not exceeding \$15 million. For AWS-2 and AWS-3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS-1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size

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<sup>131</sup> See Letter from Hector V. Barreto, Administrator, SBA, to Gary D. Michaels, Deputy Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, Federal Communications Commission (filed Sept. 19, 2005).

<sup>132</sup> See 13 CFR § 121.201, NAICS code 517210.

<sup>133</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210).

<sup>134</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>135</sup> See generally *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19884–88 paras. 64–73 (1998).

<sup>136</sup> See *id.*

<sup>137</sup> The service is defined in section 90.1301 *et seq.* of the Commission’s Rules, 47 CFR § 90.1301 *et seq.*

standards for the AWS-2 or AWS-3 bands but proposes to treat both AWS-2 and AWS-3 similarly to broadband PCS service and AWS-1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.<sup>138</sup>

43. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

44. *Fixed Microwave Services.* Microwave services include common carrier,<sup>139</sup> private-operational fixed,<sup>140</sup> and broadcast auxiliary radio services.<sup>141</sup> They also include the Local Multipoint Distribution Service (LMDS),<sup>142</sup> the Digital Electronic Message Service (DEMS),<sup>143</sup> and the 24 GHz Service,<sup>144</sup> where licensees can choose between common carrier and non-common carrier status.<sup>145</sup> At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>146</sup> For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.<sup>147</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had

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<sup>138</sup> See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Report and Order, 18 FCC Rcd 25162, Appx. B (2003), modified by *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Order on Reconsideration, 20 FCC Rcd 14058, Appx. C (2005); *Service Rules for Advanced Wireless Services in the 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz Bands*; *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket Nos. 04-356, 02-353, Notice of Proposed Rulemaking, 19 FCC Rcd 19263, Appx. B (2005); *Service Rules for Advanced Wireless Services in the 2155–2175 MHz Band*, WT Docket No. 07-195, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, Appx. (2007).

<sup>139</sup> See 47 CFR Part 101, Subparts C and I.

<sup>140</sup> See 47 CFR Part 101, Subparts C and H.

<sup>141</sup> Auxiliary Microwave Service is governed by Part 74 of Title 47 of the Commission's Rules. See 47 CFR Part 74. Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

<sup>142</sup> See 47 CFR Part 101, Subpart L.

<sup>143</sup> See 47 CFR Part 101, Subpart G.

<sup>144</sup> See *id.*

<sup>145</sup> See 47 CFR §§ 101.533, 101.1017.

<sup>146</sup> See 13 CFR § 121.201, NAICS code 517210.

<sup>147</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series, "Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210" (rel. Jan. 8, 2016). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5/naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5/naics~517210).



employment of 1000 employees or more.<sup>148</sup> Thus under this SBA category and the associated size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

45. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category does include some large entities.

46. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.<sup>149</sup> There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>150</sup> U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.<sup>151</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>152</sup> Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

47. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years.<sup>153</sup> An additional size standard for “very small business” is: an entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years.<sup>154</sup> The SBA has approved these small business size standards.<sup>155</sup> The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

48. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint

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<sup>148</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>149</sup> This service is governed by Subpart I of Part 22 of the Commission's Rules. See 47 CFR §§ 22.1001-22.1037.

<sup>150</sup> *Id.*

<sup>151</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (rel. Jan. 8, 2016). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210).

<sup>152</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>153</sup> See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, ET Docket No. 95-183, PP Docket No. 93-253, Report and Order, 12 FCC Rcd 18600, 18661-64, paras. 149-151 (1997).

<sup>154</sup> See *id.*

<sup>155</sup> See Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998).

Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)).<sup>156</sup> In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years.<sup>157</sup> The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities.<sup>158</sup> After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules.

49. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas.<sup>159</sup> The Commission offered three levels of bidding credits: (i) a bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid.<sup>160</sup> Auction 86 concluded in 2009 with the sale of 61 licenses.<sup>161</sup> Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

50. In addition, the SBA’s Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities.<sup>162</sup> Thus, we estimate that at least 2,336 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications

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<sup>156</sup> *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94-131, PP Docket No. 93-253, Report and Order, 10 FCC Rcd 9589, 9593, para. 7 (1995).

<sup>157</sup> 47 CFR § 21.961(b)(1).

<sup>158</sup> 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standard of 1500 or fewer employees.

<sup>159</sup> Auction of Broadband Radio Service (BRS) Licenses, Scheduled for October 27, 2009, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, AU Docket No. 09-56, *Public Notice*, 24 FCC Rcd 8277 (2009).

<sup>160</sup> *Id.* at 8296 para. 73.

<sup>161</sup> Auction of Broadband Radio Service Licenses Closes, Winning Bidders Announced for Auction 86, Down Payments Due November 23, 2009, Final Payments Due December 8, 2009, Ten-Day Petition to Deny Period, *Public Notice*, 24 FCC Rcd 13572 (2009).

<sup>162</sup> The term “small entity” within SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on EBS licensees.

Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”<sup>163</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: all such firms having \$13.5 million or less in annual receipts.<sup>164</sup> U.S. Census data for 2012 show that there were 3,117 firms that operated that year.<sup>165</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>166</sup> Thus, the majority of these firms can be considered small.

51. *Narrowband Personal Communications Services.* Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses.<sup>167</sup> A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards.<sup>168</sup>

52. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>169</sup> A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards.<sup>170</sup> According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service.<sup>171</sup> Of these, an estimated 289 have 1,500 or fewer employees,

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<sup>163</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” (partial definition), <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012>.

<sup>164</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>165</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>166</sup> *Id.*

<sup>167</sup> *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, PP Docket No. 93-253, Second Report and Order and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 10456 (2000).

<sup>168</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

<sup>169</sup> See *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085–88, paras. 98–107 (1999) (*Paging Third Report and Order*).

<sup>170</sup> See *Alvarez Letter 1998*.

<sup>171</sup> See *Trends in Telephone Service* at Table 5.3.

and two have more than 1,500 employees.<sup>172</sup> Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses.<sup>173</sup> A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.<sup>174</sup> One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.<sup>175</sup> A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.<sup>176</sup>

53. *220 MHz Radio Service – Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees.<sup>177</sup> The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard.

54. *220 MHz Radio Service – Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>178</sup> This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years.<sup>179</sup> A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years.<sup>180</sup> The SBA has approved these small business size standards.<sup>181</sup> Auctions of Phase II licenses

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<sup>172</sup> See *id.*

<sup>173</sup> See *id.*

<sup>174</sup> See *Lower and Upper Paging Band Auction Closes*, Public Notice, 16 FCC Rcd 21821 (Wireless Tel. Bur. 2002).

<sup>175</sup> See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (Wireless Tel. Bur. 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

<sup>176</sup> See *Auction of Lower and Upper Paging Bands Licenses Closes*, Public Notice, 25 FCC Rcd 18164 (Wireless Tel. Bur. 2010).

<sup>177</sup> See 13 CFR § 121.201, NAICS code 517210.

<sup>178</sup> See *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, paras. 291–295 (1997) (*220 MHz Third Report and Order*).

<sup>179</sup> See *id.* at 11068–69, para. 291.

<sup>180</sup> See *id.* at 11068–70, paras. 291–95.

commenced on September 15, 1998, and closed on October 22, 1998.<sup>182</sup> In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.<sup>183</sup>

## 5. Satellite Service Providers

55. *Satellite Telecommunications Providers.* This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.”<sup>184</sup> Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$32.5 million or less in average annual receipts, under SBA rules.<sup>185</sup> For this category, U.S. Census Bureau data for 2012 shows that there were a total of 333 firms that operated for the entire year.<sup>186</sup> Of this total, 299 firms had annual receipts of less than \$25 million.<sup>187</sup> Consequently, we estimate that the majority of satellite telecommunications providers are small entities. Cable Service Providers

56. Because section 706 requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

57. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or 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>188</sup> The SBA size standard for this industry establishes as small, any company in this category which has annual receipts of \$38.5 million or less.<sup>189</sup> According to 2012 U.S. Census Bureau data, 367 firms

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<sup>181</sup> See Letter to D. Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, SBA (Jan. 6, 1998) (*Alvarez to Phythyon Letter 1998*).

<sup>182</sup> See *Phase II 220 MHz Service Auction Closes*, Public Notice, 14 FCC Rcd 605 (Wireless Tel. Bur. 1998).

<sup>183</sup> See *Phase II 220 MHz Service Spectrum Auction Closes*, Public Notice, 14 FCC Rcd 11218 (Wireless Tel. Bur. 1999).

<sup>184</sup> U.S. Census Bureau, 2017 NAICS Definitions, “517410 Satellite Telecommunications”; <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517410&search=2017+NAICS+Search&search=2017>.

<sup>185</sup> 13 CFR § 121.201, NAICS code 517410.

<sup>186</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517410 [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~517410](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~517410).

<sup>187</sup> *Id.*

<sup>188</sup> See U.S. Census Bureau, 2012 NAICS Definitions, “515210 Cable and other Subscription Programming”, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.515210#>.

<sup>189</sup> See 13 C.F.R. 121.201, NAICS Code 515210.

operated for the entire year.<sup>190</sup> Of that number, 319 operated with annual receipts of less than \$25 million a year and 48 firms operated with annual receipts of \$25 million or more.<sup>191</sup> Based on this data, the Commission estimates that the majority of firms operating in this industry are small.

58. *Cable Companies and Systems (Rate Regulation)*. 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>192</sup> Industry data indicate that there are currently 4,600 active cable systems in the United States.<sup>193</sup> Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.<sup>194</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>195</sup> Current Commission records show 4,600 cable systems nationwide.<sup>196</sup> Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>197</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

59. *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."<sup>198</sup> There are approximately 52,403,705 cable video subscribers in the United States today.<sup>199</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>200</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>201</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>202</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at

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<sup>190</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab & Firm Size: Receipts Size of Firms for the U.S.: 2012, NAICS Code 515210, [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ4//naics~515210](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ4//naics~515210).

<sup>191</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have receipts of \$38.5 million or less.

<sup>192</sup> 47 CFR § 76.901(e).

<sup>193</sup> The number of active, registered cable systems comes from the Commission's Cable Operations and Licensing System (COALS) database on August 15, 2015. See FCC, *Cable Operations and Licensing System (COALS)*, [www.fcc.gov/coals](http://www.fcc.gov/coals) (last visited Oct. 25, 2016).

<sup>194</sup> See SNL KAGAN, *Top Cable MSOs*, <https://www.snl.com/Interactivex/TopCableMSOs.aspx> (last visited Oct. 25, 2016).

<sup>195</sup> 47 CFR § 76.901(c).

<sup>196</sup> See *March 31, 2013 Broadcast Station Totals Press Release*.

<sup>197</sup> See FCC, *Cable Operations and Licensing System (COALS)*, [www.fcc.gov/coals](http://www.fcc.gov/coals) (last visited Oct. 25, 2016).

<sup>198</sup> 47 CFR § 76.90(f) and notes ff. 1, 2, and 3.

<sup>199</sup> See SNL KAGAN at <http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx>.

<sup>200</sup> 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

<sup>201</sup> See SNL KAGAN at <http://www.snl.com/interactivex/TopCableMSOs.aspx>.

<sup>202</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 section 76.901(f) of the Commission's rules. See 47 CFR § 76.901(f).

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.

60. The open video system (“OVS”) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers.<sup>203</sup> The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,<sup>204</sup> OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.”<sup>205</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.<sup>206</sup> U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.<sup>207</sup> Of this total, 3,083 operated with fewer than 1,000 employees.<sup>208</sup> Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, we note that the Commission has certified some OVS operators, with some now providing service.<sup>209</sup> Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.<sup>210</sup> The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

## 6. Electric Power Generators, Transmitters, and Distributors

61. *Electric Power Generators, Transmitters, and Distributors.* 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>211</sup> The closest applicable SBA category is “All Other Telecommunications”. The SBA’s small business size standard for “All Other Telecommunications,” consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>212</sup> For this category, U.S. 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

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<sup>203</sup> 47 U.S.C. § 571(a)(3)-(4). See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Thirteenth Annual Report, 24 FCC Rcd 542, 606, para. 135 (2009) (*Thirteenth Annual Cable Competition Report*).

<sup>204</sup> See 47 U.S.C. § 573.

<sup>205</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

<sup>206</sup> *Id.*

<sup>207</sup> See U.S. Census Bureau, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012* (517110 Wired Telecommunications Carriers). [https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/51SSSZ5//naics~517110](https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110).

<sup>208</sup> *Id.*

<sup>209</sup> A list of OVS certifications may be found at <http://www.fcc.gov/mb/ovs/csovscer.html>.

<sup>210</sup> See *Thirteenth Annual Cable Competition Report*, 24 FCC Rcd at 606-07 para. 135. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

<sup>211</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>212</sup> 13 CFR § 121.201; NAICS Code 517919.

annual receipts of less than \$25 million.<sup>213</sup> Consequently, we estimate that under this category and the associated size standard the majority of these firms can be considered small entities.

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

62. *Line Count Data.* In the Notice, we seek comment on proposed changes related to the collection line count data for rate-of-return carriers. Currently, carriers that receive CAF BLS must use FCC Form 507 to file, on July 31st of each year, their voice and broadband-only line counts as of the prior December 31st. Carriers may also file quarterly updates. First, we propose to change the date for mandatory line count filings for CAF BLS to March 31st of each year, but to continue to require line counts as of December 31st (*i.e.*, reduce the lag until filing to 3 months). Second, we seek comment regarding whether the FCC Form 507 should be mandatory for rate-of-return carriers that do not receive CAF BLS (*i.e.*, carriers that have elected A-CAM).

63. *Accounting for Capital and Operation Leases.* In February 2016, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) 2016-02, Leases, which are codified as Accounting Standards Codification (ASC) Topic 842 (ASC 842).<sup>214</sup> The new standard affects both capital and operating leases. Under this new standard, capital leases are referred to as financing leases and the procedures for expensing amounts recorded for financing leases are the same procedures previously used for capital leases. ASC 842 adopts new requirements for operating leases. We seek comment on whether to incorporate the ASC 842 guidelines into the Uniform System of Accounts (USOA) contained in Part 32. The changes we propose would lead to carrier being required to modify certain accounting practices. We are interested in the burden this change would create for carriers.

64. *Deployment Obligations.* In the Notice, we seek comment on whether the number of locations legacy carriers are required to deploy to should change and how based on the new support mechanism proposed.

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

65. 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>215</sup> We expect to consider all of these factors when we have received substantive comment from the public and potentially affected entities.

66. Largely, the proposals in the Notice if adopted would have no impact on or would reduce the economic impact of current regulations on small entities. Certain proposals in this Notice could have a positive economic impact on small entities; for instance, we seek comment on fully funding the original A-CAM offer and increasing the budget for rate-of-return carriers based on an inflationary factor.

67. In this Notice, we seek comment on making a second offer of A-CAM support. The offer will be voluntary and carriers are not required to accept it or take any action. Therefore, our proposal for a second A-CAM will not have a significant impact on small entities.

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<sup>213</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).

<sup>214</sup> See ASC 842.

<sup>215</sup> 5 U.S.C. § 603(c).



68. We also seek comment on mechanisms to provide legacy carriers a guaranteed threshold of annual support and a carrier specific cap, which would reduce the unpredictability of the current budget control mechanism. We propose several alternatives for carriers to evaluate. In addition, because legacy carriers' support amounts could change due to our proposals, to minimize significant economic impact, we seek comment on whether or how deployment obligations should change.

69. We also seek comment on whether we should retain the operating expense limitation, the corporate operations limit, and the capital investment allowance. If we were to eliminate these limitations on expenses and investment, we would be further minimizing the economic impacts on small entities of our current regulations. In addition, we seek comment on ways to simplify legacy support mechanisms by making changes to how HCLS and CAF BLS are calculated.

70. We propose to change the date for mandatory line count filings for CAF BLS to March 31st of each year, but to continue to require line counts as of December 31st (*i.e.*, reduce the lag until filing to 3 months). We also seek comment regarding whether FCC Form 507 should be mandatory for rate-of-return carriers that do not receive CAF BLS (*i.e.*, carriers that have elected A-CAM). Finally, we seek comment on whether to incorporate the ASC 842 guidelines into the Uniform System of Accounts (USOA) contained in Part 32. These changes would require carriers to modify certain accounting practices and for certain carriers add a reporting requirement. In the Notice, we seek comment on the burden this change would create for carriers and will factor that into our decision.

71. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Notice and this IRFA, in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the Notice were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

72. None

**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

The Commission's adoption of this *Order* and *Notice* is a big win for rural communities that want high-speed Internet and are served by rate-of-return carriers. It means that such carriers will have over \$500 million more in funding to expand broadband deployment in rural America. And it tees up an examination of how to ensure that we provide sufficient and predictable support over the long term so that communities served by small carriers aren't stuck on the wrong side of the digital divide.

In the short term, we provide \$180 million in one-time funding to mitigate the effect of the budget control mechanism for the current funding year adopted by the prior Commission. I've heard from numerous parties that the large cuts or uncertain funding levels resulting from that mechanism have made it very difficult for many carriers to make investment decisions and to keep operations running smoothly. I hope this infusion of funds will provide needed relief while we consider broader reforms to shore up the system.

In the longer term, we're strengthening the Universal Service Fund and reinvesting in what works. The Alternative Connect America Cost Model (A-CAM), for example, is successfully helping carriers that opted into the model build out broadband networks in their service areas. Much of this success comes from having a fixed amount of support that allows them to plan efficiently and access capital markets. Recognizing the power of the A-CAM approach, we are also devoting over \$360 million toward additional broadband deployment by carriers currently participating in A-CAM.

We also seek comment in this *Notice* on ways to improve and simplify the funding system so that carriers have predictable support and the right incentives to efficiently invest in broadband connectivity. One key proposal is to let more carriers elect model-based support. And we will consider options for adjusting the model offer to better recognize the needs of the areas to which support is directed. For example, we seek comment on incorporating into the model offer a Tribal Broadband Factor to recognize the unique challenges of deploying broadband on rural tribal lands.

We also consider how the legacy rate-of-return system might be improved. Specifically, we look into setting a carrier-specific level of support that would not be subject to the budget control mechanism. Unlike today, carriers would then have a measure of predictability about the support they can expect to receive as they make their investment decisions.

Many of the details contained in this *Order* and *Notice* are quite arcane, but the Commission's overarching objective is simple: to expedite broadband deployment and deliver digital opportunity to more rural Americans. I'm confident that the extra funding that we are allocating and the reforms that we are proposing today will do just that.

I'd like to thank Commissioner O'Rielly for engaging in good faith and working with me on edits to the eligible expenses section that improved the item. With respect to the views expressed by my dissenting colleagues, it's important to note that they had 58 days to review the item but waited until after the close of business on the 57th day—the day before the “must vote” deadline, which itself had already been extended—to propose substantive edits. That's not a serious attempt to work towards consensus; rather, it smacks of a calculated delay tactic. But too many rural Americans have waited long enough for digital opportunity to countenance yet further delay. They expect action, and today, we're taking it.

This *Order* and *Notice* would not have been possible without the help of staff from the Wireline Competition Bureau and the Office of General Counsel. From WCB: Pamela Arluk, Theodore Burmeister, Talmage Cox, James Eisner, Justin Faulb, Victoria Goldberg, Athula Gunaratne, Christian Hoefly, Lisa Hone, Jesse Jachman, Katie King, Christopher Koves, Sue McNeil, Alexander Minard, Kris

Monteith, Ryan Palmer, Eric Ralph, Steven Rosenberg, Doug Sloten, Craig Stroup, Roger Woock, and Suzanne Yelen. From OGC: Billy Layton, Linda Oliver, and Bill Richardson.

**DISSENTING STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

Reforming the rate-of-return program has the potential to offer significant opportunity for those in rural America who have been left without broadband access for far too long. This is why I have continued to work on a bipartisan basis, most recently with Commissioner O’Rielly, to advance our shared priorities.

It is common in a Notice of Proposed Rulemaking, to include a wide variety of questions aimed at creating the most robust record possible. Consistent with prior practice, I offered a number of suggestions for consideration in this item, unfortunately each and every one of those requests was denied.

Specifically, I asked that we include questions which were intended to further spur broadband deployment on Tribal lands:

Requests denied.

Then, I submitted that since we are spending more money on our high-cost fund, why not include language which makes it clear that we would not raid the budgets of other programs in order to pay for these reforms?

Requests denied.

I even suggested that we ask about efficient distribution of high-cost funding, including questions on when it was appropriate to auction or remove support for overlapping areas, and running robust challenge processes.

Suggestion denied.

I also sought feedback on whether it was appropriate to condition funding on a commitment to uphold net neutrality protections, particularly in areas where there is no competition.

The Chairman’s office response: No can do.

I sought edits that would have allowed us to have more tools in the toolkit to combat bad actors by removing them from the rate pool.

A kit to combat bad actors: Not granted.

So finally, I sought feedback on whether consumers in the high-cost program should have a higher data limit than 170 GB per month? Why not even include a question in the item about this?

We will never know: Request denied

I am puzzled. Does the majority want to close the digital divide? Does the majority want to distribute our limited funds efficiently? Does the majority want to stamp out waste, fraud and abuse in all Universal Service programs (or just one)?

We had an incredible opportunity to not only “walk the walk, but talk the talk.” Unfortunately, this item stumbles on many levels.

And to suggest that my requests were last-minute, as the Chairman does in his statement, disingenuously characterizes the fact that I had communicated my requests to his office weeks before the voting deadline. Rather than exercise his power to extend the voting deadline, he made it clear that he simply did not want to deal, and for that I am disappointed.

I dissent.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

Through this item, the Commission seeks to refine the reforms adopted in the 2016 Rate-of-Return Reform Order. For the past several years, I have worked intensively and collaboratively with rate-of-return providers and their associations to understand and address the unique challenges of serving rural America in order to bring greater broadband access to consumers. While I committed to promptly address any legitimate issues that arose after the order was released – and this item closes out all remaining “punch list” tasks – I have wanted to be cautious about upending the stability provided by the prior order, which was and continues to be broadly supported by the affected industry associations. My primary concern is ensuring that providers are able to remain focused on building out broadband to connect the unserved Americans in their communities.

Since the release of the order, the constraint on deployment has not been our rules but rather the amount of available funding. As is the case with all of our high-cost programs, there is simply more demand than dollars to pay for it. Therefore, during the past year, I have pressed the Commission to provide clarity on the budget – by initiating the budget review called for in the 2011 USF/ICC Transformation Order, as well as by disbursing an appropriate and balanced amount of funding from our reserves. In this item, we begin that task by seeking comment on the rate-of-return funding (both for legacy and ACAM carriers) and providing near-term funding for legacy providers.

As the Commission begins to consider longer-term solutions, I will remain focused on maximizing broadband deployment in rural America while minimizing the burdens on hardworking Americans that pay extra fees on their phone bills to support the universal service fund. Moreover, I view high-cost as the foundational universal service program. Without the underlying network infrastructure, the other universal service discount programs will be less effective. That is why I have consistently urged the Commission to set a topline budget for the entire federal universal service fund as is done with the high-cost program (and reexamined in this item) and, if necessary, make some hard choices about the relative sizes of each of its programs.

With respect to other reforms discussed in this item, I am pleased to see the measured approach. While I would have gone even further to aid “parent trapped” companies and been clearer that the use of the model remains entirely voluntary, I appreciate that changes were made at my behest and that the item largely improves upon the prior reforms. Although there are specific ideas in the further notice portion that cause me more than pause, I am willing to advance this item as a whole.

In particular, I am fairly skeptical of removing capital and operating expense limits. These limits, which act as *minor* guardrails, are not intended to recoup funding but rather are designed to prevent companies from egregiously exceeding industry norms. Moreover, these parameters, like the pre-existing \$250 per-line per-month cap that also serves as a basic check on spending, have helped bring to light potentially problematic expenditures. Indeed, the Commission’s review of companies that sought a waiver of the \$250 cap helped us formulate the list of impermissible expenses that the Commission adopts today.

On that note, I appreciate that the item provides clarity regarding expenses that may not be recovered through universal service funding or included in a company’s rate base. While most providers dare not tread into the murky waters of questionable expenses, the occasional revelations of funding being spent on personal mansions, fancy boats, lavish parties, and country club memberships, rather than deploying broadband, undermine the public trust. Moreover, with the industry seeking additional funding for broadband, it is critical to clear up any lingering confusion or concerns and ensure that each dollar is being used for the intended purposes. Resolving this issue is something I spent a good deal of time

working on with Commissioner Clyburn and affected industry. Never let it be said that I am unwilling to address potential waste, fraud, and abuse within the high-cost program. With this task finally accomplished, we can move on to other ways to make the program more efficient.

To that end, I am also gratified that the item now seeks comment on incorporating means-testing within the high-cost program, another idea that Commissioner Clyburn and I have advocated for some time. In the grand scale, means-testing is one method to allocate subsidies to only those recipients who truly need assistance. It is commonly used in federal government programs to establish or scale eligibility for benefits, including for Medicare, Medicaid, and SNAP. Economists have advocated means-testing the high-cost program for more than 15 years. Moreover, the Commission previously sought comment on applying it to the Remote Areas Fund (RAF). Additionally, it is not uncommon for private sector companies to offer discounts for lower income individuals who cannot otherwise bear the full cost of service — another form of means-testing. Amazon, for instance, discounts the cost of its Prime service for Medicaid recipients.

I cannot understand the resistance in some quarters to this concept. With scarce universal service funding at stake, it defies logic that the Commission would continue to use ratepayer dollars to subsidize service to ultra-wealthy individuals who happen to live or vacation in more rural parts of America. Why should lower income Americans help foot the bill for communications service to other consumers who clearly have the wherewithal to pay full freight?

To be clear, I bear no animosity towards successful individuals. In fact, I applaud what they have been able to accomplish financially. But, this is a matter of better targeting our limited funding to places and people that need it most. Each dollar spent subsidizing service unnecessarily is a dollar that is not being used to help bring broadband to unserved Americans. Therefore, it is imperative to seek comment on the concept, as the Commission just did in the recent Rural Healthcare item.

The main critique of means-testing is that it could be administratively burdensome to implement. While means-testing could take a variety of forms, as Commission Clyburn and I discussed in our joint blog post on the subject, I believe that a notification approach would not be unduly complicated.<sup>696</sup> Periodically, providers could notify customers that, under FCC rules, consumers with an annual adjusted gross income above a certain threshold, perhaps as high as \$1 or \$10 million to start, are required to bear the full, unsubsidized cost of service, and must notify the provider if they are above the threshold. When a customer notifies the provider, the provider can then determine a reasonable allocation of costs for the location in question in order to bill the customer appropriately. The provider would also notify the Commission or USAC so that any necessary support adjustments could be made. If other high-cost unserved locations exist within the provider's service area but lack funding, such support could potentially be shifted to those locations. Otherwise, the support could be made available for other unserved locations within the program. This proposal deserves serious debate and consideration, even if it requires some time to develop an implementing structure.

Overall, I thank the Chairman and staff for working with me and including my requested edits. I also appreciate and welcome my ongoing dialog with rate-of-return carriers and their associations to help ensure that our program is as effective as possible in supporting broadband connectivity to the rural communities that they have the privilege to serve. I vote to approve.

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<sup>696</sup> See Commissioner Michael O'Rielly and Commissioner Mignon Clyburn, *Would Means-Testing Bring More Efficiencies to the High-Cost Program?* (May 31, 2017), <https://www.fcc.gov/news-events/blog/2017/05/31/would-means-testing-bring-more-efficiencies-high-cost-program>.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

In my seven months on the Commission, I have had the opportunity to meet with rural broadband providers around the country, from Mississippi to Texas to Colorado. These providers and others like them – many of which are small or family-owned businesses – are doing yeoman’s work each day to bring more broadband to more Americans. And this isn’t an easy task, or an easy business case to make work. But thanks to support from the FCC’s Universal Service Fund, rate-of-return carriers are deploying networks in places like the Nebraska Sandhills, which has more cattle than people, or the Badlands of South Dakota. Their work is vitally important to closing the digital divide and ensuring that everyone has access to the opportunities that broadband enables.

That is why I am glad to support this item, which includes several reforms to ensure high-cost funding for rate-of-return carriers is predictable and sufficient. This includes directing USAC to continue forecasting high-cost demand at its current amount, as well as proposing to establish a minimum threshold support amount for legacy providers that would not be subject to a budget cap. We rightly seek comment on what the minimum threshold support amount should be, and leave all options on the table when it comes to setting that amount. I also support the proposal to adjust the high-cost budget for inflation, which has not been done in the past and is a much-needed step to bring the high-cost program into parity with the other universal service programs. Finally, I am pleased that the Notice asks about opening up new model offers.

As the FCC continues to think about ways to incentivize greater broadband deployment, we must make sure rural communities are not left behind. The item we adopt today is a step in the right direction, and it has my support.

**STATEMENT, DISSENTING IN PART, OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92

Two years ago, the Federal Communications Commission took a series of meaningful steps to help connect rural America to broadband. This effort made it easier for carriers serving rural areas to offer consumers standalone broadband service. It also opened a new frontier for small carriers serving rural communities by providing them with the opportunity to receive model-based support from the universal service fund. These actions were extraordinarily complex, but they set the agency on a course to improve service in some of our most remote communities. Today, we continue on this path by making small but important adjustments to our rules. These changes will adjust limitations on support allowances and bring clarity to permissible expenses. They have my support.

However, I dissent in part on the rulemaking associated with this effort. It fails to ask any questions about how to protect rural consumers who lack other service options if they find they are on the losing end of discriminatory network practices in the wake of the FCC's net neutrality repeal. This is wrong. It deserves discussion and our failure to do so is an unfortunate abdication of our most basic consumer protection duties.