

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

In the Matter of )
Connect America Fund: A National Broadband ) WC Docket No. 10-90
Plan for Our Future High-Cost Universal Service )
Support )
ETC Annual Reports and Certifications ) WC Docket No. 14-58
Telecommunications Carriers Eligible to ) WC Docket No. 09-197
Receive Universal Service Support )
Connect America Fund – Alaska Plan ) WC Docket No. 16-271
Expanding Broadband Service Through the ACAM ) RM-11868
Program )

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairwoman Rosenworcel and Commissioners Carr and Starks issuing separate statements.

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## I. INTRODUCTION

1. In this Notice of Proposed Rulemaking, we seek comment on a proposal by the ACAM Broadband Coalition (Coalition) to achieve widespread deployment of 100/20 Mbps broadband service throughout the rural areas served by carriers currently receiving Alternative Connect America Model (A-CAM) support. The areas served by A-CAM recipients are among the costliest to serve in the nation, and by improving access to modern communications services, we can help connect individuals living in rural areas to high-speed broadband. In seeking comment on the Coalition’s proposal, we recognize that the Infrastructure Investment and Jobs Act (Infrastructure Act) recently created several pathways for federal agencies, in partnership with the states, to fund deployment of broadband in unserved and underserved areas. Given that A-CAM is already supporting the deployment and ongoing provision of some level of broadband service in rural areas through 2028 for most A-CAM carriers, enhancements to the A-CAM program, as the Coalition has proposed, may be an efficient means of funding deployment in a manner complementary to other federal and state efforts. If appropriately high-quality broadband can be deployed in a cost-effective manner by A-CAM carriers pursuant to the cost model, other agencies and the states will be able to target their Infrastructure Act funds to achieve more deployment elsewhere.

2. In this NPRM, we also initiate a targeted inquiry into the management and administration of the high-cost program. For more than a decade, the Commission has made substantial progress reforming and modernizing the various high-cost support mechanisms and has gained valuable experience administering and overseeing the program. Based on those lessons learned, we propose targeted modifications to our rules to improve the efficiency and efficacy of the high-cost program.

## II. BACKGROUND

3. One of the Commission’s central missions is to make “available . . . to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.”<sup>1</sup> This principle of “universal service” ensures affordable telecommunications services for all Americans, including consumers living in high-cost areas.<sup>2</sup>

4. In the 2011 *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the high-cost program and the intercarrier compensation system to focus support on networks capable of providing voice and broadband services and to transition outdated support mechanisms to more efficient model-based and competitive bidding programs.<sup>3</sup> In the years since

<sup>1</sup> 47 U.S.C. § 151.

<sup>2</sup> See 47 U.S.C. § 254(b).

<sup>3</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90 et al., 26 FCC Rcd 17663, 17672, para. 17 (2011), *aff’d sub nom. In re FCC*, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order*). The *USF/ICC Transformation Order* created the Connect America Fund (CAF) and established a budget for the high-cost program. *Id.* at 17710, para. 123. In the *USF/ICC Transformation Order*, as noted below, the Commission adopted the Connect America Fund (CAF) Phase II program to provide ongoing support in price-cap areas through a combination of “a new forward-looking model of the cost of constructing modern multi-purpose networks” and a “competitive bidding process.” *Id.* at 17725, para. 156. The Commission

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adoption of the *USF/ICC Transformation Order*, the Commission has taken numerous actions to implement and improve upon these reforms. In 2014, the Commission adopted a forward-looking Connect America Cost Model (CAM) to determine an offer of model-based support to price-cap carriers.<sup>4</sup> For those carriers receiving rate-of-return support, the Commission adopted the *2016 Rate-of-Return Reform Order*, which made significant changes to support mechanisms for rate-of-return carriers. Among other things, as explained further below, it provided carriers with a voluntary path to model-based support, as well as support for stand-alone broadband for carriers remaining on the legacy support mechanism, known as Connect America Fund Broadband Loop Support (CAF BLS).<sup>5</sup> The Commission provided rate-of-return carriers an additional opportunity to elect model-based support in 2018 and established a budget cap for those remaining on legacy support.<sup>6</sup> In addition, to ensure that carriers are meeting their commitments to provide high-quality broadband services, the Commission has adopted mandatory deployment and reporting requirements for all of the modernized high-cost support mechanisms.<sup>7</sup>

5. The Commission also has awarded support using reverse auctions, including the Mobility Fund Phase I (Auction 901, awarding support to deploy 3G and 4G mobile services to unserved areas),<sup>8</sup> Tribal Mobility Fund Phase I (Auction 902, awarding support to deploy 3G and 4G mobile services to unserved Tribal areas),<sup>9</sup> CAF Phase II (Auction 903, awarding support to deploy fixed voice and broadband service in certain unserved and underserved price cap areas),<sup>10</sup> and the Rural Digital

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largely maintained the existing legacy universal support mechanisms for rate-of-return carriers and required that they provide broadband service meeting the Commission's public service obligations upon reasonable request. *Id.* at 17740, para. 206.

<sup>4</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 28 FCC Rcd 5301 (WCB 2013) (*CAM Platform Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964 (WCB 2014) (*CAM Inputs Order*); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17727 ("Specifically, we adopt the following methodology for providing CAF support in price cap areas. First, the Commission will model forward-looking costs to estimate the cost of deploying broadband-capable networks in high-cost areas and identify at a granular level the areas where support will be available.").

<sup>5</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*2016 Rate-of-Return Reform Order*).

<sup>6</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893 (2018).

<sup>7</sup> See *Connect America Fund; ETC Annual Reports and Certification*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8967 (2014) (*Rural Broadband Experiments Order*); *2016 Rate-of-Return Reform Order*, 31 FCC at 3166, para. 214.

<sup>8</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17675, para. 28; *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, Public Notice, AU Docket No. 12-25, 27 FCC Rcd 4725, 4776-77, paras. 184-188 (2012) (*Auction 901 Procedures Public Notice*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (*CAF Phase II Auction Order and/or FNPRM*); *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, Public Notice, AU Docket No. 17-182, WC Docket No. 10-90, 33 FCC Rcd 1428 (2018) (*Auction 903 Procedures Public Notice*).

<sup>9</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17819, para. 481; *Tribal Mobility Fund Phase I Auction Scheduled for October 24, 2013; Comment Sought on Competitive Bidding Procedures for Auction 902 and Certain Program Requirements*, AU Docket No. 13-53, Public Notice, 28 FCC Rcd 2764 (2013).

<sup>10</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17727-27, para. 166; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (*CAF Phase II Auction Order and/or FNPRM*).

Opportunity Fund (Auction 904, providing support for voice and high-speed broadband in unserved areas).<sup>11</sup>

**A. Current A-CAM**

6. In the *2016 Rate-of-Return Reform Order*, the Commission provided rate-of-return carriers a voluntary path from traditional rate-of-return support to model-based high-cost universal service support (A-CAM I), tailored to reflect the specific requirements in rate-of-return areas.<sup>12</sup> The A-CAM model was used to establish fixed monthly support amounts over a ten-year term in exchange for broadband deployment to a pre-determined number of eligible locations.<sup>13</sup> The Commission directed the Bureau to calculate support as model-estimated costs for eligible census blocks in excess of the funding threshold of \$52.50 per location per month up to the cap of \$200.<sup>14</sup> Carriers were obligated to deploy broadband at speeds of at least 25/3 Mbps or 10/1 Mbps to a number of locations equal to the number of fully funded locations (i.e., locations in eligible census blocks which the model determined could be served for costs at or below the funding cap), and at least 4/1 Mbps or service on reasonable request to a number of locations equal to the number of capped locations (i.e., locations in eligible census blocks which the model determined could be served for costs above the funding cap). Each carrier's specific mix of 25/3 Mbps or 10/1 Mbps obligations, and 4/1 Mbps or reasonable request obligations, was based on the housing unit density of the eligible areas in the offer. These deployment obligations could be met by serving any eligible location, whether fully funded or capped. Carriers that elected A-CAM I were required to elect for all affiliated study areas in the state.<sup>15</sup>

7. The Commission excluded from A-CAM eligibility carriers that had reported deploying 10/1 Mbps service to more than 90% of eligible locations.<sup>16</sup> For those carriers eligible to participate in A-CAM I, the Commission concluded that it would not provide support for locations in census blocks served by an unsubsidized competitor offering at least 10/1 Mbps, and locations in census blocks where the incumbent already deployed fiber to the premises (FTTP) or was providing 10/1 Mbps or better broadband using cable technologies.<sup>17</sup>

8. To award support, the Bureau announced A-CAM I offer amounts and deployment obligations predicated on a monthly funding cap of \$200 per location.<sup>18</sup> Faced with substantial carrier interest in the offer and demand beyond the Commission-approved budget, however, the Commission later allocated an additional \$50 million annually to the A-CAM I budget and adopted other measures to ensure that the model-based support stayed within the revised budget, including a reduced funding cap

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<sup>11</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17675, para. 28; *Rural Digital Opportunity Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686 (2020) (*RDOF Order*).

<sup>12</sup> See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3094-3117, paras. 17-79. For aspects of the model tailored to the requirements in rate-of-return areas, see *id.* at 3102-11, paras. 36-59.

<sup>13</sup> *Id.* The Commission noted that it expected that it would conduct a rulemaking to determine support after the end of the term during year eight of the term, which is 2024. *Id.* at 3097, para. 22.

<sup>14</sup> *Id.* at 3102, para. 37. The \$52.50 funding threshold is based on the Bureau's prior estimate of the reasonable amount of monthly end-user revenues. See *CAM Inputs Order*, 29 FCC Rcd at 4035-41, paras. 170-82.

<sup>15</sup> *Id.* at 3113, para. 65.

<sup>16</sup> *Id.* at 3113, para. 66.

<sup>17</sup> *Id.* at 3109, para. 56.

<sup>18</sup> See *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*).

below \$200 per location for most carriers.<sup>19</sup> In the *March 2018 Rate-of-Return Reform Order and NPRM*, the Commission authorized additional support for another offer to A-CAM I carriers, pursuant to which the funding cap was increased to \$146.10 per location for carriers that elected it.<sup>20</sup>

9. In the *December 2018 Rate-of-Return Reform Order*, the Commission adopted another additional offer for carriers that had previously elected A-CAM.<sup>21</sup> Pursuant to this Revised A-CAM I, the funding cap was increased to \$200 per location per month for all electing carriers, and the term of support was extended by two years, through 2028, in exchange for increased 25/3 Mbps deployment obligations.<sup>22</sup> The Bureau extended offers to eligible carriers in April 2019 and authorized Revised A-CAM I support in May 2019.<sup>23</sup>

10. In the *December 2018 Rate-of-Return Reform Order*, the Commission also adopted a new model offer, A-CAM II, for carriers still receiving support pursuant to legacy support mechanisms based on historical costs, including carriers not previously eligible for A-CAM I.<sup>24</sup> Consistent with Revised A-CAM I, the Commission set the per-location cap for A-CAM II at \$200.<sup>25</sup> For A-CAM II, the Commission revised the model parameters to include as eligible blocks those census blocks where the incumbent or its affiliate already provided FTTP or cable service.<sup>26</sup> Further, the Commission excluded as ineligible census blocks served by unsubsidized competitors only if the unsubsidized competitors provided voice and at least 25/3 Mbps service under the then-most recently available FCC Form 477 data.<sup>27</sup> Finally, the A-CAM II model parameters included a Tribal Broadband Factor, which set the funding threshold for locations on Tribal lands at \$39.38 while increasing the support cap to \$213.12.<sup>28</sup>

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<sup>19</sup> See *Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13775, 13776-80, paras. 5-16 (2016) (*A-CAM Revised Offer Order and/or FNPRM*). Carriers whose original A-CAM I offer was less than the amount of legacy support they received in 2015 (“glide path carriers”) retained a \$200 per location per month funding cap, while other carriers received revised offers with funding caps that varied based on the percentage of locations lacking 10/1 Mbps service, up to \$146.10 per location. *Id.*

<sup>20</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, 33 FCC Rcd 2990, 3018-20, paras. 62-67 (2018) (*March 2018 Rate-of-Return Reform Order and NPRM*). See *Wireline Competition Bureau Announces Offers of Revised A-CAM Support Amounts to 217 Authorized A-CAM Companies to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 18-465, 33 FCC Rcd 4591, 4591 (WCB 2018). The Commission proposed, at the same time, the Revised A-CAM I offer that increased the funding cap and deployment obligations. *March 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 3018-21, paras. 62-68.

<sup>21</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11898-903, paras. 14-30 (2018) (*December 2018 Rate-of-Return Reform Order*).

<sup>22</sup> *Id.*

<sup>23</sup> See *Wireline Competition Bureau Authorizes 186 Rate-of-Return Companies to Receive an Additional \$65.7 Million Annually in Alternative Connect Cost Model Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 2780 (WCB 2019).

<sup>24</sup> *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11903-15, paras. 31-69.

<sup>25</sup> *Id.* at 11904-05, para. 37.

<sup>26</sup> *Id.* at 11907, para. 45.

<sup>27</sup> *Id.* at 11907-09, paras. 46-51. The Commission declined to adopt a challenge process with respect to unsubsidized competitor coverage, as it had pursuant to A-CAM I, finding the process to be administratively burdensome and providing limited benefit. *Id.* at 11909-10, paras. 52-54.

<sup>28</sup> *Id.* at 11910-12, paras. 55-57.

A-CAM II was offered for a ten-year term, ending in 2028.<sup>29</sup> Carriers electing A-CAM II were required to deploy at least 25/3 Mbps service to a number of locations equal to the number of fully funded locations, and at least 4/1 Mbps or on reasonable request to a number of locations equal to the number of capped locations.<sup>30</sup> The Commission adopted a single-step election process, under which the Bureau released a public notice announcing the offers of A-CAM II support amounts and deployment obligations, after which each carrier had 45 days to make an irrevocable acceptance of the offer.<sup>31</sup> On August 22, 2019, the Bureau authorized 171 companies to receive A-CAM II support.<sup>32</sup>

11. Currently, 262 companies are authorized to receive A-CAM I, including 243 companies that elected Revised A-CAM I, with a term ending in 2028, and 19 companies that did not elect Revised A-CAM I, whose term ends in 2026.<sup>33</sup> These A-CAM I carriers collectively receive \$607.6 million per year and have an obligation to deploy at least 25/3 Mbps service to 451,059 eligible locations, at least 10/1 Mbps to 170,491 eligible locations, and at least 4/1 Mbps service to 26,868 eligible locations, with an additional 65,555 locations subject to the reasonable request standard.<sup>34</sup> In addition, there are 185 A-CAM II companies, with support terms ending in 2028, that collectively receive \$494.3 million per year.<sup>35</sup> These carriers have an obligation to provide at least 25/3 Mbps service to 364,108 eligible locations, at least 4/1 Mbps to 24,103 eligible locations, and service on reasonable request to another 68,034 locations.<sup>36</sup> For the A-CAM I and II areas, there are approximately 1,170,000 eligible locations in the model. The total support currently provided to A-CAM I and A-CAM II companies is \$1.1 billion per year.

#### **B. The Broadband DATA Act**

12. Since 2013, the Commission has collected information on broadband deployment across the United States through the FCC Form 477. Using Form 477, broadband service providers have annually reported the census blocks in which they make service available to end users, as well as the maximum speed offered in each census block, distinguishing between residential and non-residential services and by the technology used to provide service.<sup>37</sup> This reporting format made available a nationwide broadband deployment dataset. Over time, however, it became clear that more granular and accurate broadband data were needed to implement the Commission's Universal Service Fund (USF) programs and to support efforts to bridge the digital divide.

13. On August 1, 2019, the Commission adopted an order setting parameters for a new data collection distinct from the Form 477 that would collect fixed broadband deployment data in the form of granular coverage maps and that would include a process for accepting crowdsourced data to challenge

<sup>29</sup> *Id.* at 11912, paras. 58-59.

<sup>30</sup> *Id.* at 11913-14, paras. 64-65. The mix of 4/1 Mbps and reasonable request obligations was based on the density of housing units in the eligible areas. *Id.*

<sup>31</sup> *Id.* at 11915, para. 69.

<sup>32</sup> *Wireline Competition Bureau Authorizes 171 Rate-of-Return Companies to Receive \$491 Million Annually in Alternative Connect America Cost Model II Support to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 7271, 7271 (WCB 2019).

<sup>33</sup> See Authorization Report 5.1 (available at <https://docs.fcc.gov/public/attachments/DOC-352788A1.xlsx>) (summarizing authorized A-CAM I support amounts and deployment obligations).

<sup>34</sup> *Id.*

<sup>35</sup> See Authorization Report 6.2 (available at <https://docs.fcc.gov/public/attachments/DOC-359222A1.xlsx>) (summarizing authorized A-CAM II support amounts and deployment obligations).

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

<sup>37</sup> See *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9902, para. 32 (2013) (*2013 Form 477 Order*).

the accuracy of the submitted data.<sup>38</sup> The Commission stated its intention to establish a uniform national dataset of locations where broadband could be deployed and upon which new coverage data could be overlaid.<sup>39</sup>

14. On March 23, 2020, the Broadband DATA Act was signed into law.<sup>40</sup> In brief, the Broadband DATA Act requires the Commission to establish a semiannual collection of geographically granular broadband coverage data (which the Commission has titled the Broadband Data Collection or BDC) for use in creating coverage maps<sup>41</sup> and processes for challenges to the coverage data<sup>42</sup> and for accepting crowdsourced information,<sup>43</sup> and it further directs the Commission to create a comprehensive database of broadband serviceable locations—i.e., the Broadband Serviceable Location Fabric (Fabric).<sup>44</sup> Further, it requires the Commission to use these maps “to determine the areas in which terrestrial fixed, fixed wireless, mobile, and satellite broadband internet access service is and is not available,” and “when making any new award of funding with respect to the deployment of broadband internet access intended for use by residential and mobile customers.”<sup>45</sup>

### C. The Infrastructure Investment and Jobs Act and Related Federal Programs

15. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (Infrastructure Act). The Act includes the largest-ever federal broadband investment, totaling approximately \$65 billion, and directs multiple agencies to work towards expanding broadband access. In particular, Section 60104(c) of the Act instructs the Commission to report on how it may “improv[e] its effectiveness in achieving the universal service goals for broadband in light of this Act,”<sup>46</sup> while Section 60104(b) instructs the Commission to commence a proceeding “to evaluate the implications of this Act . . . on how the Commission should achieve the universal service goals for broadband.”<sup>47</sup>

16. In accordance with these statutory directives, the Commission adopted a Notice of Inquiry initiating a proceeding regarding the future of the USF on December 15, 2021.<sup>48</sup> In the *Future of USF Notice*, the Commission invited comment on the effect of the Infrastructure Act on existing USF programs and the Commission’s ability to reach its goals of universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States.<sup>49</sup> The Commission also sought comment on recommended courses of action the Commission and Congress might take to further promote those goals.<sup>50</sup>

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<sup>38</sup> *Digital Opportunity Data Collection Order and Further Notice*, 34 FCC Rcd at 7506, 7521, paras. 2, 3, 35.

<sup>39</sup> *Id.* at 7518-19, para. 30.

<sup>40</sup> In Division N of the Consolidated Appropriations Act, 2021, Congress appropriated \$65 million for the Commission to carry out its responsibilities related to the Broadband DATA Act. *See* Consolidated Appropriations Act, 2021, Pub. Law 116-260, Sec. 906(1).

<sup>41</sup> 47 U.S.C. §§ 642(a)(1)(A), (a)(2).

<sup>42</sup> 47 U.S.C. § 642(a)(5).

<sup>43</sup> 47 U.S.C. § 644(b).

<sup>44</sup> 47 U.S.C. § 642(b)(1).

<sup>45</sup> 47 U.S.C. § 642(c)(2)(A)-(B).

<sup>46</sup> Infrastructure Act, div. F, tit. I, § 60104(c).

<sup>47</sup> *Id.* § 60104(b), (c).

<sup>48</sup> *See Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Notice of Inquiry, FCC 21-127 (rel. Dec. 15, 2021) (*Future of USF Notice*).

<sup>49</sup> *See generally id.*

<sup>50</sup> *See generally id.*

17. Other provisions of the Infrastructure Act likewise aim to expand broadband access for all Americans. Section 60102 of the Act directs the National Telecommunications and Information Administration (NTIA) to establish the Broadband Equity, Access, and Deployment Program (BEAD Program), through which NTIA will allocate \$42.45 billion to states for grants “to bridge the digital divide.”<sup>51</sup> NTIA will provide minimum allocations of \$100 million for each state and \$100 million to be divided equally among the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.<sup>52</sup> Remaining funds will be allocated using a formula based on total unserved locations in each state.<sup>53</sup> The Act instructs states to award funding in a way that gives priority to projects that will provide service to unserved locations (defined as those without access to 25/3 Mbps service), then to underserved locations (defined as those without access to 100/20 Mbps service), and next to community anchor institutions (defined as those without gigabit connections).<sup>54</sup> Broadband networks funded by the BEAD Program must provide download speeds of at least 100 Mbps and upload speeds of at least 20 Mbps and “latency that is sufficiently low to allow reasonably foreseeable, real-time, interactive applications.”<sup>55</sup> Grant recipients must provide service to every customer that desires broadband service in the project area and must offer at least one low-cost service option for eligible subscribers.<sup>56</sup>

18. On January 7, 2022, NTIA announced a Request for Comment regarding the BEAD Program and other broadband programs authorized and funded by the Infrastructure Act.<sup>57</sup> As explained in the Request for Comment, NTIA will first provide BEAD funding to states and territories to support planning efforts and coordination with local communities and stakeholders.<sup>58</sup> Next, states and territories must collaborate with local and regional entities in submitting an initial broadband plan to NTIA. After submitting the initial broadband plan, the state or territory must conduct a “transparent, evidence-based, and expeditious challenge process under which a unit of local government, nonprofit organization, or other broadband service provider can challenge a determination made by the [state or territory] in the initial proposal as to whether a particular location or community anchor institution . . . is eligible for the grant funds, including whether a particular location is unserved or underserved.”<sup>59</sup> When NTIA approves a state’s or territory’s initial plan, the state or territory will then be able to access additional funds from its BEAD allocation, and final approval of a plan will permit access to the remaining allocated funds. In preparation for a Notice of Funding Opportunity (NOFO) with further specifics regarding the BEAD Program, NTIA asked commenters to explore how the agency “should treat prior buildout commitments that are not reflected in the updated FCC maps because the projects themselves are not complete,” as well

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<sup>51</sup> Infrastructure Act, div. F, tit. I, § 60102(b)(1).

<sup>52</sup> *Id.* § 60102(c)(2)(A), (B). Puerto Rico and the District of Columbia are included in the Act’s definition of State. *Id.* § 60102(a)(2)(M) (citing 47 U.S.C. § 942).

<sup>53</sup> *Id.* § 60102(c)(3)(B).

<sup>54</sup> *Id.* § 60102(h)(1)(A).

<sup>55</sup> *Id.* § 60102(h)(4)(A)(i). Networks must also be reliable, with outages not exceeding, on average, 48 hours over any 365-day period. *Id.*

<sup>56</sup> *Id.* § 60102(h)(4)(A)(ii), (B), (C).

<sup>57</sup> Press Release, NTIA, NTIA Requests Public Comment on Broadband Programs in President Biden’s Bipartisan Infrastructure Law (Jan. 7, 2022), <https://ntia.gov/press-release/2022/ntia-requests-public-comment-broadband-programs-president-biden-s-bipartisan>. See also National Telecommunications and Information Administration, Infrastructure Investment and Jobs Act Implementation, Notice, Request for Comment, 87 Fed. Reg. 1122 (Jan. 10, 2022) (NTIA Request for Comment).

<sup>58</sup> NTIA Request for Comment, 87 Fed. Reg. at 1124.

<sup>59</sup> Infrastructure Act, div. F, tit. I, § 60102(h)(2).



as “[w]hat risks should be mitigated in considering these areas as ‘served’ in the goal to connect all Americans to reliable, affordable, high-speed broadband.”<sup>60</sup>

19. On May 13, 2022, NTIA released its Notice of Funding Opportunity detailing the process for requesting BEAD Program funding.<sup>61</sup> The NOFO sets a July 18, 2022 deadline for NTIA to receive initial plans from states and territories, as well as an August 15, 2022 deadline for any supplemental information. The NOFO also specifies a number of a program requirements, including principles that states and territories must observe in their subgrantee selection, prioritization, and scoring processes. In particular, the NOFO prohibits states and territories from “treat[ing] as ‘unserved’ or ‘underserved’ any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband” at the conclusion of the state’s or territory’s challenge process.<sup>62</sup> States and territories must also ensure that subgrantees comply with obligations spelled out in the NOFO regarding network capabilities (i.e., speed, latency, and uptime), deployment requirements, and service obligations. Finally, the NOFO requires states and territories to ensure that prospective subgrantees have the managerial and financial capacity to meet the commitments of the subgrant and any BEAD Program requirements.

20. Other federal programs also work to further the goal of universal service. For instance, the U.S. Department of Agriculture (USDA)’s Rural Utilities Service supports broadband through a number of programs, including the Learning, Telemedicine, and Broadband Program, for which the Infrastructure Act provided an additional \$2 billion.<sup>63</sup> The Department of the Treasury also has several programs that may fund broadband projects,<sup>64</sup> and other NTIA programs beyond the BEAD Program provide funding for broadband deployment, affordability, adoption, availability, and equitable access.<sup>65</sup> Pursuant to the Broadband Interagency Coordination Act (BICA),<sup>66</sup> the Commission, USDA, and NTIA must share information regarding these high-cost universal service efforts. Specifically, the BICA required the FCC, USDA, and NTIA to enter into an agreement within six months to provide for sharing information about existing or planned projects that have received, or will receive, funding through the Commission’s high-cost programs and programs administered by NTIA and the USDA.<sup>67</sup> The BICA also mandates that the interagency agreement requires the agencies to “consider basing the distribution of funds for broadband deployment” under the referenced programs “on standardized data regarding broadband coverage.”<sup>68</sup> On June 25, 2021, the agencies announced that they had entered into the agreement, and representatives of the agencies have been meeting regularly pursuant to that agreement.<sup>69</sup>

<sup>60</sup> NTIA Request for Comment, 87 Fed. Reg. at 1125.

<sup>61</sup> See Broadband Equity, Access, and Deployment (BEAD) Program Notice of Funding Opportunity (NOFO) (May 13, 2022), <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (BEAD Program NOFO).

<sup>62</sup> *Id.* at 36.

<sup>63</sup> See Infrastructure Act, div. J, tit. II.

<sup>64</sup> See American Rescue Plan Act, tit. IX, § 9901; U.S. Department of the Treasury, Coronavirus State and Local Fiscal Recovery Funds for Tribal Governments, <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-fund/tribal-governments> (last visited Apr. 27, 2022).

<sup>65</sup> See, e.g., Infrastructure Act, div. J, tit. II.

<sup>66</sup> Consolidated Appropriations Act, div. FF, tit. IX, § 904.

<sup>67</sup> *Id.* § 904(b)(2).

<sup>68</sup> *Id.* § 904(b)(3)(C).

<sup>69</sup> Press Release, FCC, FCC, NTIA, and USDA Announce Interagency Agreement to Coordinate Broadband Funding Deployment (June 25, 2021), <https://www.fcc.gov/document/fcc-ntia-usda-sign-interagency-pact-broadband-funding-deployment>.

**D. ACAM Broadband Coalition Proposal**

21. On October 30, 2020, the ACAM Broadband Coalition filed a Petition for Rulemaking asking the Commission to initiate a proceeding to consider the Coalition's proposal to extend both A-CAM I and A-CAM II.<sup>70</sup> Pursuant to this original proposal, the terms of A-CAM I and A-CAM II would be extended in exchange for increased obligations to deploy 25/3 Mbps service.<sup>71</sup> The Commission initially sought comment on the Petition for Rulemaking on November 4, 2020.<sup>72</sup> In response, several commenters supported the Coalition's request that the Commission initiate a rulemaking.<sup>73</sup> One commenter objected, but said the Commission "should consider alternatives to the Coalition's recommended approach" if the Commission were to adopt a notice of proposed rulemaking.<sup>74</sup> More recently, commenters also discussed the Coalition's proposal in response to the aforementioned *Future of USF Notice*.<sup>75</sup>

22. On December 15, 2021, the Coalition revised its proposal in order to require deployment of at least 100/20 Mbps service to 90% of locations, as determined by the Fabric, in eligible census blocks, and at least 25/3 Mbps service to the remaining 10%.<sup>76</sup> To fund the increased deployment costs, the Coalition proposed increasing monthly support for participating A-CAM carriers to the higher of 80% of a company's model-estimated costs or \$300 per location.<sup>77</sup> The Coalition provided additional details on its proposal on January 19, 2022.<sup>78</sup> On February 17, 2022, the Coalition further proposed support, in exchange for the same revised deployment obligations, for locations in census blocks that had been excluded from A-CAM I because an unsubsidized competitor reported providing at least 10/1 Mbps service.<sup>79</sup>

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<sup>70</sup> *Expanding Broadband Service Through the ACAM Program*, Petition for Rulemaking, ACAM Broadband Coalition, RM-11868 (filed Oct. 30, 2020) (Coalition Petition for Rulemaking).

<sup>71</sup> Coalition Petition for Rulemaking at 11-12.

<sup>72</sup> See *Consumer & Governmental Affairs Bureau Reference Information Center: Petition for Rulemakings Filed*, Public Notice, Report No. 3161 (Nov. 4, 2020).

<sup>73</sup> See generally A-CAM I Cooperatives Comments, RM-11868 (rec. Dec. 4, 2020); NTCA-The Rural Broadband Association Comments, RM-11868 (rec. Dec. 4, 2020); The Nebraska Companies Comments, RM-11868 (rec. Dec. 4, 2020); WTA-Advocates for Rural Broadband Comments, RM-11868 (rec. Dec. 4, 2020); ACAM Broadband Coalition Reply, RM-11868 (rec. Dec. 18, 2020); NTCA-The Rural Broadband Association Reply, RM-11868 (rec. Dec. 21, 2020).

<sup>74</sup> Wireless Internet Service Providers Association Comments, RM-11868, at 1 (rec. Dec. 4, 2020).

<sup>75</sup> See, e.g., NCTA – The Internet & Television Association Comments, WC Docket No. 21-476, at 10 (rec. Feb. 17, 2022) (urging the Commission to “decline to consider [the] ACAM Broadband Coalition’s proposal . . . until the new federal broadband funding has been fully distributed”); Letter from Victoria S. Goldberg, VP & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 21-476 and 10-90 (filed May 5, 2022); WTA – Advocates for Rural Broadband Reply, WC Docket No. 21-476, at 4 (rec. Mar. 17, 2022) (opposing NCTA’s “request for a moratorium on new or additional . . . high-cost support (including consideration of the pending ACAM Broadband Coalition proposals) until the Commission can ‘assess the effects of new broadband programs’”). We encourage these commenters to discuss the Coalition’s proposal in this proceeding as well so that we may develop a complete, thorough record.

<sup>76</sup> See Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868 and WC Docket No. 10-90, at 1 (filed Dec. 17, 2021) (Coalition Dec. 17, 2021 Letter).

<sup>77</sup> See *id.* at 2.

<sup>78</sup> See Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868 and WC Docket No. 10-90, Attach. A (filed Jan. 19, 2022) (Coalition Jan. 19, 2022 Letter).

<sup>79</sup> See Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868 and WC Docket No. 10-90, at 1 (filed Feb. 17, 2022) (Coalition Feb. 17, 2022 Letter).

### III. DISCUSSION

#### A. Seeking Comment on the Coalition's Enhanced A-CAM Proposal

23. The A-CAM programs currently provide support for more than 350,000 locations that could be considered “unserved” pursuant to the Infrastructure Act because the A-CAM carriers have commitments to provide service only at speeds of 10/1 Mbps or 4/1 Mbps, or on reasonable request, and more than 800,000 locations that could be considered “underserved” under the Infrastructure Act because the carriers have commitments to provide service only at 25/3 Mbps.<sup>80</sup> We seek comment on the Enhanced A-CAM proposal and generally regarding how to leverage the existing, supported networks of A-CAM carriers to swiftly meet current legislative requirements and goals while avoiding duplicative support across programs and maximizing the efficient use of universal service funds. Furthermore, we seek comment on how to best and most efficiently implement and sequence Enhanced A-CAM so that it works in concert with the BEAD Program. Throughout, we seek comment regarding how these specific proposals are, or can be, made consistent with Congressional intent expressed through the Infrastructure Act and other legislation, as well as programs at other agencies.<sup>81</sup>

24. We note when the Commission first adopted A-CAM I that it expected in year eight of the mechanism (2024) to conduct a proceeding to address the determination of support after the end of A-CAM. We propose that the rulemaking initiated by this NPRM will satisfy that Commission expectation.<sup>82</sup>

#### 1. Deployment and Service Obligations

25. *Final Deployment Obligations*—The Coalition proposes that carriers electing Enhanced A-CAM support deploy to 100% of eligible “post-Fabric” locations. Post-Fabric locations are the locations identified in the Fabric that are determined to be in eligible census blocks.<sup>83</sup> In some number of census blocks, the number of post-Fabric eligible locations may be fewer than the Connect America Model-estimated number of locations. At the same time, the Coalition proposes to expand the set of eligible locations to include locations in census blocks that were not eligible in the A-CAM I program because they were served by FTTP or cable broadband or were served with at least 10/1 Mbps broadband service by an unsubsidized competitor.

26. The Coalition proposes that carriers electing Enhanced A-CAM would be required to deploy 100/20 Mbps or faster broadband service to 90% of the eligible post-Fabric locations.<sup>84</sup> For the remaining 10% of eligible post-Fabric locations, carriers would be required to deploy 25/3 Mbps or faster broadband service.<sup>85</sup> We seek comment on the Coalition’s proposal. In contrast to the Coalition proposal, we seek comment on whether carriers should be required to deploy at least 100/20 Mbps to all

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<sup>80</sup> These areas would not be considered unserved or underserved if they are receiving higher levels of service from the A-CAM carrier (in excess of the A-CAM obligations), or a higher level of service from a non-A-CAM carrier.

<sup>81</sup> See Infrastructure Act, div. F, tit. I, § 60102(m) (“It is the sense of Congress that Federal agencies responsible for supporting broadband deployment, including the Commission, the Department of Commerce, and the Department of Agriculture, to the extent possible, should align the goals, application and reporting processes, and project requirements with respect to broadband deployment supported by those agencies[.]”).

<sup>82</sup> If the Commission does not adopt the Enhanced A-CAM proposal, or if there are A-CAM companies that do not elect Enhanced A-CAM as adopted by the Commission, the Commission anticipates that it will conduct a proceeding to determine universal service after A-CAM in 2024, and to consider the impact of BEAD and other programs as necessary.

<sup>83</sup> See Coalition Dec. 17, 2021 Letter at 1 n.2 (citing Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, RM-11868 and WC Docket No. 10-90 (filed June 7, 2021)).

<sup>84</sup> See Coalition Jan. 19, 2022 Letter Attach. A.

<sup>85</sup> See *id.*

eligible locations or whether carriers should be required to deploy to all locations where deployment of this level of service is not cost prohibitive. In either scenario, should carriers electing Enhanced A-CAM be required to serve 100% of unserved locations in their study areas, including unserved or underserved locations in currently ineligible census blocks? Should carriers with changes in their study area boundaries since the development of the model also be required to serve locations in eligible census blocks that are newly within their study area boundaries?

27. If Enhanced A-CAM funds 25/3 Mbps broadband service, as the Coalition proposes for 10% of a carrier's eligible post-Fabric locations, when should those carriers be required to identify which specific locations will receive only 25/3 Mbps service? Would some obligations result in double support where recipients receive Enhanced A-CAM to improve speed to 25/3 Mbps and then could apply for BEAD Program funds to deploy 100/20 Mbps broadband to those same locations?

28. Pursuant to the Broadband DATA Act, the Commission must use its new fixed deployment maps "when making any new award of funding with respect to the deployment of broadband internet access service intended for use by residential and mobile customers."<sup>86</sup> In accord with the Broadband DATA Act, we tentatively conclude that we will use the new fixed deployment maps when making any new award of funding to an A-CAM provider. We seek comment, specifically, on how the Commission's new fixed deployment maps should be applied to determine eligible areas and deployment obligations for the Enhanced A-CAM program.<sup>87</sup>

29. We also seek comment on the impact of challenges to the Broadband Data Collection map. The Broadband DATA Act requires the Commission to accept challenges to both the Fabric and the availability maps, and those challenges will occur regularly to help improve all subsequent versions of the Fabric and the map. Given the importance of challenges to the accuracy of the Fabric and the map, and the continuous opportunity for challenges, when for the purposes of the Enhanced A-CAM should the Commission establish the post-Fabric locations? Should we allow for a period of challenges to the fixed deployment reflected in the maps before relying upon them to award funding? Challenges to fixed broadband must be resolved within the timeframe established by the Commission when establishing the rules for the Broadband Data Collection. Can we establish a different deadline for resolution of challenges associated with Enhanced A-CAM locations? If so, how long should challengers and providers have to resolve challenges before we award funding? We seek comment on these questions and any other aspect of how we should comply with the requirements of the Broadband DATA Act in this program.

30. Pursuant to current A-CAM rules, as with other high-cost support mechanisms, the Universal Service Administrative Company (USAC) will recover an amount of support from A-CAM participants that do not meet their final deployment obligations. In those situations, section 54.320(d)(2) of the Commission's rules require that USAC recover "the percentage of support that is equal to 1.89 times the average amount of support per location received in the state for that carrier over the term of support for the relevant number of locations plus 10 percent of the eligible telecommunications carrier's total relevant high-cost support over the support term for that state."<sup>88</sup> We seek comment on the applicability of this general rule to Enhanced A-CAM participants. On the other hand, is a stricter penalty more appropriate, given that the Fabric and Broadband Data Collection may permit the Enhanced A-CAM program to rely on a more accurate location count?

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<sup>86</sup> 47 U.S.C. § 642(c)(2).

<sup>87</sup> Below, we also seek comment regarding how the deployment maps should be used to determine the eligibility of locations or census blocks for support pursuant to the Enhanced A-CAM.

<sup>88</sup> 47 CFR § 54.320(d)(2).

31. The Coalition proposes that Enhanced A-CAM carriers be considered in full compliance with their deployment obligations if they deploy to 95% of their required locations.<sup>89</sup> For A-CAM I and A-CAM II carriers, the Commission has allowed “some flexibility in their deployment obligations” and permitted them to deploy to 95% of the required locations by the end of the 10-year term.<sup>90</sup> Further, the Commission noted that “to the extent that an electing carrier deploys to less than 100 percent of the requisite locations, the remaining percent of locations would be subject to the same deployment obligations as for the carrier’s capped locations.”<sup>91</sup> Because these locations were still subject to deployment obligations, the Commission concluded that, unlike the price cap recipients of Connect America Phase II model support, it was not necessary for A-CAM recipients to refund any support when they took advantage of the 5% flexibility.<sup>92</sup> For Enhanced A-CAM carriers, however, as with RDOF recipients,<sup>93</sup> we expect that using the Fabric will ensure that the location counts are more accurate than the data upon which the Commission developed previous deployment obligations. Moreover, under the Enhanced A-CAM proposal, there are no “capped locations” or associated deployment obligations to apply to locations that are not fully funded. Thus, we propose not to extend the same kind of location count flexibility to Enhanced A-CAM carriers and seek comment on our proposal. Nonetheless, are there reasons why a buffer of this type may be appropriate or necessary under Enhanced A-CAM? Would a smaller buffer (i.e., one that considered Enhanced A-CAM carriers to be in full compliance if they deployed to 99% of their required locations) be sufficient to protect the Commission’s interests in full deployment? How would this comport with our goal of creating enforceable commitments?

32. With other agencies’ ongoing broadband initiatives, including NTIA’s BEAD Program, there is the potential for two providers to receive funding from different sources to deploy broadband to the same locations.<sup>94</sup> We seek comment on how we may avoid such overlap in the Enhanced A-CAM program to maximize broadband deployment to unserved and underserved locations. For example, should we require Enhanced A-CAM carriers to make binding commitments regarding specific locations based on the Fabric after it is created? Should any such binding commitments include an obligation to deploy at least 100/20 Mbps broadband service for all or some percentage of those specific locations? Should we instead require carriers to commit to deployment at particular speeds at the census block level? If the BEAD Program requires full deployment by the end of a particular year, should Enhanced A-CAM likewise require full deployment by the end of that same year or even sooner? We also seek comment on the sequencing of Enhanced A-CAM with the BEAD Program. Should the Commission proceed with Enhanced A-CAM commitments before BEAD Program allocations? Should the Commission instead refrain from acting on the Enhanced A-CAM proposal until after the BEAD Program has awarded funding? What are the impacts of these options? Finally, should we require, as a condition of accepting

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<sup>89</sup> See Coalition Jan. 19, 2022 Letter Attach. A (participating A-CAM companies that build to a minimum of 95% of their total post-Broadband Serviceable Location Fabric locations in eligible census blocks at the required speeds “would be deemed in compliance with the requirements of the Enhancement Plan at the end of the revised program term”).

<sup>90</sup> *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3101, para. 33. See also *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11914-15, para. 67 (citing *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3101, para. 33 & n.68).

<sup>91</sup> *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3101, para. 33.

<sup>92</sup> *Id.* at 3101, n.68.

<sup>93</sup> See *RDOF Order*, 35 FCC Rcd at 730, para. 45 (concluding that, with “access to more accurate location data in the next few years . . . winning bidders will be required to serve the number of locations subsequently identified in each respective area”).

<sup>94</sup> We note that states and territories participating in the BEAD Program “may not treat as ‘unserved’ or ‘underserved’ any location that is already subject to an enforceable federal, state, or local commitment to deploy qualifying broadband as of the date that the [state’s or territory’s] challenge process described in . . . this NOFO is concluded.” BEAD Program NOFO at 36.

Enhanced A-CAM support, that carriers coordinate with the states in which they are receiving support to mitigate the risk of duplicative funding?<sup>95</sup> We invite states, in particular, to comment on these issues.

33. *Interim Deployment Milestones*—Consistent with other high-cost support mechanisms, including the existing A-CAM I and A-CAM II mechanisms, the Coalition proposes that Enhanced A-CAM participants meet interim deployment milestones before the final milestone of 100% of locations.<sup>96</sup> Specifically, the Coalition proposes that Enhanced A-CAM carriers deploy 100/20 Mbps broadband service to at least 30% of eligible locations by the end of the second year after the program begins. Each subsequent year, carriers would be required to deploy to an additional 10% of eligible locations until meeting the final obligation of deploying 100/20 Mbps service to 90% of eligible locations. We seek comment on whether these particular interim deployment milestones would be appropriate if we were to adopt the eight-year deployment timeframe the Coalition has proposed, and also what interim deployment milestones would be appropriate if we were to require deployment in four years, such as in the BEAD program, or a different timeframe. Should we require deployment to the same number of additional locations each year?

34. We tentatively conclude that any new interim milestones, for carriers that elect Enhanced A-CAM support, would supersede those associated with A-CAM I and A-CAM II. Retaining the interim milestones associated with the existing programs would introduce unnecessary administrative complexity. Moreover, we expect that the Enhanced A-CAM milestones will require accelerated deployment at higher speeds, rendering previous milestones moot. We seek comment on this tentative conclusion. If we were to retain the existing interim milestones for carriers electing Enhanced A-CAM support, is there a way to simplify deployment milestones in a way that is both fair and ensures regular progress?

35. Likewise, we seek comment on the applicability of the existing mechanisms for withholding support from A-CAM I and A-CAM II participants that do not meet interim deployment milestones, and whether a similar mechanism should apply to Enhanced A-CAM. Section 54.320(d)(1) of the Commission's rules specifies different tiers of compliance gaps associated with different percentages of withheld support,<sup>97</sup> with the goal of encouraging carriers to come into compliance and complete deployment in order to recover support. Should Enhanced A-CAM participants be subject to the same mechanisms for withholding support as A-CAM I and A-CAM II participants for failing to meet interim deployment milestones?

36. *Coordination of Deployment Obligations with BEAD Program*. The Coalition proposes that carriers electing Enhanced A-CAM support meet the proposed deployment obligations set forth above by the end of the eighth year under the enhanced program.<sup>98</sup> We seek comment on the Coalition's proposal and whether we should adopt a timeframe aligned closer to the BEAD Program, which generally requires buildout in four years after subgrants are made.<sup>99</sup> To minimize administrative complexity and

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<sup>95</sup> Under the BEAD Program, a state “must seek to identify as part of its challenge process those unserved locations and underserved that will not be served by qualifying broadband service as a result” of an enforceable commitment for the deployment of qualifying broadband to less than 100 percent of the locations in that area “and use that information in determining whether to treat each location as unserved or underserved within the relevant area.” BEAD Program NOFO at 36-37, n.52. Given this BEAD Program requirement, we seek comment on whether there are specific coordination procedures that we should require for Enhanced A-CAM providers.

<sup>96</sup> See Coalition Jan. 19, 2022 Letter Attach. A.

<sup>97</sup> See 47 CFR § 54.320(d)(1).

<sup>98</sup> See Coalition Jan. 19, 2022 Letter Attach. A.

<sup>99</sup> See Infrastructure Act, div. F, tit. I, § 60102(h)(4)(C) (“An entity that receives a subgrant . . . shall deploy the broadband network and begin providing broadband service to each customer that desires broadband service not later than 4 years after the date on which the entity receives the subgrant, except that an eligible entity may extend the deadline under this subparagraph if—(i) the eligible entity has a plan for use of the grant funds; (ii) the construction  
(continued....)

prioritize higher-speed broadband deployment, we tentatively conclude that any carriers electing Enhanced A-CAM support would be subject only to the final deployment obligations associated with Enhanced A-CAM support, which would supersede existing A-CAM I and A-CAM II final deployment obligations. We seek comment on this proposal.

37. *Performance Measures*—To ensure that recipients of high-cost universal service support deploy networks meeting their performance obligations, the Commission requires that those carriers annually test and report the speed and latency of a random sample of locations.<sup>100</sup> Carriers that fail to meet the required performance standards are subject to additional reporting and may have a percentage of universal service support withheld based on the level of non-compliance.<sup>101</sup> However, those carriers subject to support withholding that later come into compliance may have their support restored. A-CAM I carriers have begun the required performance testing as of this year,<sup>102</sup> while A-CAM II carriers are currently required to conduct pre-testing, under which no support reductions are assessed as long as the carrier performs the pre-testing and reports the results in a timely manner.<sup>103</sup> We invite comment on whether these existing performance testing requirements applicable to A-CAM I and A-CAM II carriers should continue to apply to Enhanced A-CAM carriers, or whether any improvements to the testing requirements should be made.

38. *Affordability*—We next consider the issue of affordability for customers of Enhanced A-CAM carriers. Promoting access to affordable, high-speed broadband is a priority for the Commission. And we note the important role that the Affordable Connectivity Program (ACP) is playing to help consumers obtain affordable or in many cases no cost Internet services. In the context of the FCC's high-cost support programs, we note that all recipients of those funds, including A-CAM participants, must certify that broadband rates do not exceed the reasonably comparable benchmark announced annually by the Wireline Competition Bureau.<sup>104</sup> We also note that, pursuant to the Infrastructure Investment and Jobs Act, subgrantees of the BEAD Program are required to offer at least one “low-cost broadband option.”<sup>105</sup> We seek comment on the extent to which A-CAM providers are participating in the ACP or Lifeline programs or otherwise offer affordable Internet plans. We also seek comment on whether we should require or incentivize Enhanced A-CAM carriers to participate in ACP.<sup>106</sup> If so, should there be any minimum performance characteristics for the affordable option (e.g., minimum download and upload speeds, usage allowances, and maximum latency)? We seek comment on this approach, how to implement this approach, and how the Commission should determine the appropriate characteristics. At the same time, we note that the Commission did not require similar minimum performance characteristics

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project is underway; or (iii) extenuating circumstances require an extension of time to allow the project to be completed”).

<sup>100</sup> *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10110, para. 2 (2019) (*Performance Measures Reconsideration Order*).

<sup>101</sup> *Id.* at 10133-38, paras. 65-75; *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6530-33, paras. 56-67 (WCB 2018) (*First Performance Measures Order*).

<sup>102</sup> *See Connect America Fund*, WC Docket No. 10-90, Order, DA 22-1, at 2, para. 3 (WCB 2022) (*January 2022 Performance Measures Waiver Order*).

<sup>103</sup> *See id.* at 4, para. 9 (waiving the pre-testing requirement such that A-CAM II carriers may pre-test a smaller sample size than what the rules would require for the first two quarters of 2022).

<sup>104</sup> *See* 47 CFR §54.313(a)(3).

<sup>105</sup> *See* Infrastructure Act, div. F, tit. I, § 60102(h)(4)(B); BEAD Program NOFO at 66-67.

<sup>106</sup> We note that all eligible telecommunications carriers, including A-CAM participants, must make Lifeline service available. *See* 47 CFR § 54.405(a).

for plans from providers electing to participate in ACP. What other interactions between an affordable option, the Lifeline program, and the ACP should the Commission consider?<sup>107</sup>

## 2. Support Amounts

39. To achieve these deployment obligations, the Coalition proposes to retain the basic framework of A-CAM support but increase the total amount paid by increasing the cap on support, increasing the number of eligible locations, and extending the term of support.<sup>108</sup> The Coalition estimates that, if all eligible carriers elect the Enhanced A-CAM, as it is proposed, the impact of increasing the cap and the number of eligible locations would be to increase A-CAM support by \$389.5 million per year from approximately \$1.1 billion per year to \$1.49 billion per year, a 35.4% increase.<sup>109</sup> Further, the proposal adds six years of support for most A-CAM I and A-CAM II carriers (eight years of additional support in the case of A-CAM I carriers that did not accept Revised A-CAM I support in 2019).<sup>110</sup>

40. We seek comment regarding whether the A-CAM framework, and especially the model on which it is based, continues to be an appropriate method of calculating support going forward. Given the amount of time that has passed and the pace of technological developments since the development of the model, it seems likely that some model inputs are no longer the most appropriate for estimating the cost to provide service. We note in particular that location data and the need for assumptions about the placement of locations, which have a significant impact on model cost estimates, likely have changed or improved since the development of the model. On the other hand, a proceeding to develop an updated model would be time consuming and may not yield significantly different or more accurate results. What are the costs and benefits associated with relying on the existing model? Should we develop a new cost model based upon 2020 census geographies and updated inputs?

41. We also seek comment on the overall plan and scope of the Coalition's support proposal, particularly in context of the deployment obligations discussed above. We recognize that the Coalition's proposal is intended to match its members' estimated long-term revenue requirements with the proposed deployment obligations and term of support. Do the proposed deployment obligations justify the proposed support increases, both in the aggregate and for specific A-CAM recipients? Are there other support mechanisms we should explore to increase the efficiency of the support amounts in these areas? For example, the Commission has recognized the benefits of competitive mechanisms to efficiently allocate high-cost universal service support.<sup>111</sup> We seek comment on what mechanism would be appropriate to allocate support most efficiently in this instance, given the time-sensitivity of receiving binding commitments to provide service at a level of at least 100/20 Mbps and the ongoing commitments to provide support for 25/3 Mbps service to A-CAM I and A-CAM II carriers through 2028. To the extent that these general questions have particular bearing on specific changes proposed by the Coalition, we seek comment below.

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<sup>107</sup> See *Affordable Connectivity Program, Emergency Broadband Benefit Program*, WC Docket Nos. 21-450, 20-445, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2, at 129-31, paras. 287-93 (2022) (seeking additional comment on the Infrastructure Act's requirement for the Commission "to establish a mechanism by which a participating [ACP] provider in a high-cost area, as defined in a separate section of the Infrastructure Act and to be determined by the National Telecommunications Information Administration (NTIA) in consultation with the Commission, may receive an enhanced benefit of up to \$75 per month for broadband service 'upon a showing that the applicability of the lower limit under subparagraph A [the \$30 rate] to the provision of the affordable connectivity benefit by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network.'").

<sup>108</sup> See Coalition Feb. 17, 2022 Letter File 3\_ACAM Enhancement Plan Summary.

<sup>109</sup> Coalition Dec. 17, 2021 Letter.

<sup>110</sup> *Id.*

<sup>111</sup> See, e.g., *RDOF Order*, 35 FCC Rcd at 695, para. 19.



42. *Support Calculation*—We seek comment on the Coalition’s proposal to increase the cap on support. Currently, support for most eligible locations is capped at \$200 per month.<sup>112</sup> For A-CAM II carriers, eligible locations in Tribal areas are capped at \$213.12 in order to accommodate a lower support threshold.<sup>113</sup> The Coalition proposes increasing the cap on support to \$300 per location or 80% of model costs, whichever is greater.<sup>114</sup> The Coalition’s proposal would significantly increase the amount of model-based support to A-CAM carriers. For the 291 carriers to which the \$300 cap would apply, Commission staff estimates that the number of locations in currently eligible census blocks that would be “fully funded” at \$300 would increase to 719,061 from 682,200.<sup>115</sup> The alternative support calculation equal to 80% of model-estimated costs implies a funding cap in excess of \$300 for 136 companies. While 40 companies would have an implied cap of less than \$400, pursuant to Commission staff analysis, 29 would have an implied cap of more than \$1000.<sup>116</sup> To provide the amount of support proposed by the Coalition, without the 80% of costs provision, the funding cap would need to be set at approximately \$500. Is this methodology consistent with the model design and framework? What is the rationale or justification for providing support as a percentage of model costs in some instances, rather than relying on a higher cap? Also, because upgrading capacity of existing fiber is less costly than installing new fiber, should the Commission offer a lower level of support for those areas where the provider has already deployed fiber? We invite economic studies that address the efficiency of authorizing funding to existing A-CAM providers to build networks providing service of at least 100/20 Mbps as compared to maintaining the current A-CAM programs. We seek further comment on how to determine the appropriate amount of support recognizing existing commitments and funding to build networks in these areas. What are the incremental costs of the proposed commitments under the Enhanced A-CAM proposal? Would a subsidy that covered those costs be sufficient, and if not, what other costs should be covered, such as recovery of costs for existing A-CAM locations and why?

43. Pursuant to A-CAM II, census blocks in Tribal lands have a lower support threshold of \$38.38 and a funding cap of \$213.12, along with separately enforceable deployment obligations.<sup>117</sup> We seek comment regarding how this Tribal Broadband Factor should be incorporated into Enhanced A-CAM. Do the generally increased support amounts and universal deployment obligations relieve the need for a separate Tribal Broadband Factor? Further, we seek comment on how to address intergovernmental coordination and eligibility for locations on Tribal lands. We note that, under the BEAD Program, a commitment to deploy broadband will not be considered enforceable “unless it includes a legally binding agreement, which includes a Tribal Government Resolution, between the Tribal Government of the Tribal Lands encompassing that location, or its authorized agent, and a service provider offering qualifying broadband service to that location.”<sup>118</sup>

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<sup>112</sup> For a small number of A-CAM I carriers that did not accept Revised A-CAM I support in 2019, support is capped at less than \$200 per location.

<sup>113</sup> *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11911, para. 56.

<sup>114</sup> See Coalition Dec. 17, 2021 Letter; Coalition Jan. 19, 2021 Letter.

<sup>115</sup> This estimate excludes locations that are not currently eligible, but would become eligible pursuant to the Coalition’s proposal, including locations excluded from A-CAM I because they were in FTTP-served census blocks or census blocks with an unsubsidized competitor providing at least 10/1 Mbps service. It also excludes current A-CAM recipients that the Coalition omitted from its initial analysis, such as A-CAM I carriers that did not elect Revised A-CAM I.

<sup>116</sup> This analysis also includes only currently eligible census blocks and A-CAM recipients that Coalition included in its analysis. There are some additional minor differences between the Commission staff estimates and the Coalition’s analysis, which may be due to rounding and other limits of the data available to the Coalition for its analysis.

<sup>117</sup> *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11910-11, paras. 55-56.

<sup>118</sup> See BEAD Program NOFO at 36-37, n.52.

44. *Eligible Locations*—The Coalition proposes to use eligible model locations, rather than eligible post-Fabric locations, to calculate support. However, the Broadband DATA Act requires that, after the creation of the Fabric and associated maps, the Commission use those maps “when making any new award of funding with respect to the deployment of broadband internet access.”<sup>119</sup> We seek comment on the use of eligible model locations to calculate support, and specifically how we can reconcile the difference between model locations and Fabric locations, especially in cases where the number of model locations significantly exceeds the number of serviceable locations in the Fabric. We note that model costs are significantly affected by location density, and if the model were run with fewer locations, in many cases the per-location cost of providing service would likely increase. For that reason, it may not be appropriate to reduce support on a pro rata basis simply because the number of actual locations in the Fabric is ultimately fewer than in the model. Nonetheless, there may be instances in which the number of locations to be served is so greatly overstated by the model that it may create an apparent windfall to provide support based on model locations. In similar circumstances, the Commission requires a pro rata support adjustment when an RDOF support recipient’s updated location count is less than 65% of the Connect America Cost Model locations within the recipient’s area in a state.<sup>120</sup> Would such an approach be useful for the Enhanced A-CAM plan and comply with the Broadband DATA Act?

45. The Coalition additionally proposes expanding the number of eligible locations in two ways. First, the Coalition proposes to add census blocks that were ineligible for A-CAM I because they were FTTP-served by the incumbent or an affiliate.<sup>121</sup> In the *2016 Rate-of-Return Reform Order*, the Commission excluded from eligibility for A-CAM I census blocks that were FTTP-served in order to prioritize model support to those areas that were then unserved.<sup>122</sup> In the *December 2018 Rate-of-Return Reform Order*, however, the Commission made such census blocks eligible for A-CAM II, concluding that their inclusion would “promote more and higher speed deployment to location in those census blocks that do not currently have 25/3 Mbps or better service” while recognizing that areas with partially or fully deployed fiber to the premises may still require high-cost support to maintain existing service.<sup>123</sup> The Commission did not, in the same Order, make such census blocks eligible for revised A-CAM I offers. Given the Commission’s recognition that areas with partial or complete fiber deployment may still require ongoing support for expenses, it may be reasonable to provide some support for these census blocks. Further, doing so could harmonize the treatment of A-CAM I and A-CAM II carriers. We seek comment on the Coalition’s proposal to make eligible for Enhanced A-CAM census blocks excluded from A-CAM I because they were FTTP-served.

46. Nonetheless, we also recognize that it may not be cost-effective to provide support for census blocks where an A-CAM carrier is already offering service of at least 100/20 Mbps, and therefore seek comment on the Enhanced A-CAM treatment of census blocks that are fully served. We note that A-CAM carriers have already reported deployment of 100/20 Mbps or faster service to over 347,000 eligible locations.<sup>124</sup> Thirty-three A-CAM carriers have deployed at least 100/20 Mbps service to at least 90% of

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<sup>119</sup> 47 U.S.C. § 642(c)(2)(B).

<sup>120</sup> *RDOF Order*, 35 FCC Rcd at 711, para. 51.

<sup>121</sup> Coalition Jan. 19, 2022 Letter Attach. A.

<sup>122</sup> *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3109, para. 56. The Commission noted that “the carriers that have already deployed FTTP or cable broadband have done so within the existing legacy support framework” and, because they were not required to elect model-based support, they could continue to receive support through CAF-BLS. *Id.*

<sup>123</sup> *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11907, para. 45.

<sup>124</sup> Staff Analysis of HUBB data. In addition to these “fully served” locations, A-CAM carriers have reported providing 25/3 Mbps or faster service, which would be considered under-served, but not unserved, to an additional 324,000 locations.

the eligible locations in their service areas.<sup>125</sup> We therefore seek comment regarding how to use the post-Fabric broadband deployment maps to establish eligibility for Enhanced A-CAM of census blocks to which an A-CAM carrier has already deployed 100/20 Mbps or faster to service to all locations in the block. One possibility would be for the Enhanced A-CAM offer to simply exclude locations in fully deployed census blocks, which would no longer be eligible for A-CAM support if a carrier elected the offer, and support for those locations would cease upon authorization of Enhanced A-CAM. However, we recognize that an A-CAM provider reporting 100/20 Mbps or faster service for certain locations may require continued support for those locations, particularly if the provider relied on loans to fund deployment under the terms of the existing A-CAM programs. If continued support is required for the fully deployed census blocks, the remaining authorized support associated with those census blocks could be incorporated into the Enhanced A-CAM support. Another option would be for the Enhanced A-CAM offers to include fully deployed census blocks, but only at the current A-CAM I or A-CAM II funding levels.<sup>126</sup> We seek comment on these options.<sup>127</sup>

47. The Coalition's second proposed expansion of eligibility is for census blocks that were excluded from A-CAM I because they were served by an unsubsidized competitor with at least 10/1 Mbps service.<sup>128</sup> Given that locations with 10/1 Mbps service are considered "unserved" pursuant to the Infrastructure Act, it may be reasonable to expand eligibility to include these census blocks. On the other hand, some unsubsidized competitors serving these census blocks may now provide at least 100/20 Mbps. We therefore propose to re-assess the eligibility of census blocks under Enhanced A-CAM for all carriers based on the provision of service by unsubsidized competitors. We seek comment regarding what test should be applied to determine whether census blocks should be ineligible because they are served by an unsubsidized competitor. We tentatively conclude that locations, rather than census blocks, in which an unsubsidized competitor provides at least 100/20 Mbps should be ineligible for support because those locations would be considered "served" pursuant to the Infrastructure Act. We seek comment on whether eligibility by served location, rather than census block, will be feasible for an Enhanced A-CAM offer.

48. Under A-CAM II census blocks were ineligible if an unsubsidized competitor provided at least 25/3 Mbps service. Should census blocks served by an unsubsidized competitor with at least 25/3 Mbps also be ineligible for support under Enhanced A-CAM? We note that such census blocks would be considered underserved pursuant to the Infrastructure Act. However, the provision of at least 25/3 Mbps service by an unsubsidized competitor may be evidence that the A-CAM carrier is not the most efficient provider of service in that area and that another program, such as BEAD, may be able to more cost effectively achieve deployment of 100/20 Mbps or faster service. Finally, we note that in some cases, these may be census blocks that were split by a study area boundary and a price cap carrier reported providing service in the census block. We seek comment regarding how those census blocks should be tested for eligibility. For both A-CAM I and A-CAM II carriers, should competitive overlap be re-assessed in all census blocks before making a new offer? What criteria should be used?

49. What other considerations should be made with respect to the eligibility of locations under an Enhanced A-CAM offer? We propose to remove from eligibility locations that are already funded through another federal/state program at 100/20 Mbps or higher, such as the Broadband

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<sup>125</sup> Staff Analysis of HUBB data.

<sup>126</sup> Under this option, any newly eligible census blocks (for example, FTTP-served A-CAM I census blocks pursuant to the Coalition's proposal) that are fully served with 100/20 Mbps would receive support calculated at the \$200 per location cap currently utilized by both A-CAM I and A-CAM II.

<sup>127</sup> See Letter from Genevieve Morelli, ACAM Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 9, 2022); Letter from Robert DeBroux, Bob DeBroux Consulting, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed May 10, 2022); Letter from Diana Eisner, USTelecom, to Marlene Dortch, FCC, WC Docket No. 10-90 et al. (filed May 12, 2022) (USTelecom Letter).

<sup>128</sup> Coalition Feb. 17, 2022 Letter.

Infrastructure Program (BIP),<sup>129</sup> American Rescue Plan Act (ARPA) Coronavirus State and Local Fiscal Recovery Funds (SLFRF),<sup>130</sup> and Tribal Broadband Connectivity Program (TBCP).<sup>131</sup> Is it necessary to independently address the funding commitments made by each of these programs, or do any of the other eligibility rules proposed above effectively cover the locations associated with these commitments? To the extent that locations are funded through state mechanisms, rather than federal mechanisms, how should the Commission incorporate that into the eligibility requirements? How can the Commission collect state funding information in an efficient and complete manner? We seek comment on this proposal. On the other hand, are there other unserved or underserved locations in census blocks currently ineligible for A-CAM I or A-CAM II that can and should be made eligible for support?

50. *Extended Term*—The Coalition proposes that the increased support take effect immediately, with increased support paid retroactively to the beginning of 2022, and extend through 2034. We recognize that a primary purpose of extending the term of support is to provide additional time to recover the capital used to meet deployment obligations. As a result, we would expect the term could be adjusted to coincide with adjustments to support amounts or deployment obligations, such as because of reconciliation with the Fabric. We seek comment on the Coalition’s proposed term. What is the justification to pay increased support retroactively and prior to the imposition of the new Enhanced A-CAM obligations? How should the term be adjusted, if at all, if changes are made to the deployment obligations or annual support amounts?

51. *Glide Path Carriers*—Under A-CAM I and A-CAM II, carriers receive additional transitional support if their model-based support is less than the amount of legacy support they received prior to their election of model-based support (glidepath carriers).<sup>132</sup> This transitional support declines over time based on the size of each carrier’s support reduction. The Coalition proposes that glidepath companies that elect Enhanced A-CAM would “either (1) continue to receive support pursuant to their current schedule until such time as their total annual support is less than that under the Enhancement Plan and, at that time, they would convert to the Enhancement Plan funding level; or (2) receive support at the level provided for in the Enhancement Plan.”<sup>133</sup> We seek comment on this proposal. Alternatively, should the glidepath carriers’ transitional support amounts and schedule be re-assessed based on their new, Enhanced A-CAM support amounts?

### 3. Carrier Eligibility

52. The Coalition proposes that each A-CAM I or A-CAM II participant be permitted to elect, on a state-by-state basis, whether to participate in the Enhanced A-CAM program. A-CAM participants that decline to participate in the enhanced program would continue under the terms of the participant’s existing A-CAM program, “with no changes to the company’s deployment schedule, obligations, term, or support level.”<sup>134</sup> We seek comment on this proposal and whether alternatively, they should be subject to an “all or nothing” election.

53. We seek comment regarding whether all current A-CAM I and A-CAM II carriers should be eligible to participate in Enhanced A-CAM. We note that some A-CAM carriers already have

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<sup>129</sup> Authorized by the Consolidated Appropriations Act, 2021, Division N, Title IX, Section 905, Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020)

<sup>130</sup> See American Rescue Plan Act of 2021, Subtitle M, Public Law 117-2 (Mar. 11, 2021).

<sup>131</sup> Authorized by the Consolidated Appropriations Act, 2021, Division N, Title IX, Section 905(c), Public Law 116-260, 134 Stat. 1182 (Dec. 27, 2020).

<sup>132</sup> See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3115-16, paras. 72-75; *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11912-13, para. 60-63.

<sup>133</sup> Coalition Feb. 17, 2022 Letter.

<sup>134</sup> Coalition Petition for Rulemaking at 13.

widespread deployment of 100/20 Mbps or faster service.<sup>135</sup> We estimate that 75 companies have deployed at least 100/20 Mbps to 75% or more of their proposed Enhanced A-CAM locations, including 33 companies that serve 90 percent of their locations. Of these, 20 companies serve all proposed Enhanced A-CAM locations with at least 100/20 Mbps. In all, 347,620 A-CAM eligible locations are served with 100/20 Mbps or faster service. Given that the stated purpose of providing additional support pursuant to Enhanced A-CAM is to permit carriers to deploy higher levels of 100/20 Mbps or faster broadband, is it an effective use of limited universal service funds to provide support to carriers that have already achieved universal or near-universal deployment of such speeds? Given that such carriers may require support for ongoing provision of service in these areas and may have obtained financing to deploy networks with these higher speed levels, is it reasonable to permit them to elect the extended A-CAM term for that purpose?

54. We seek comment regarding whether eligibility for Enhanced A-CAM should be extended to include rate-of-return carriers that currently receive legacy support.<sup>136</sup> We note that including carriers currently receiving legacy support would be generally consistent with the Commission's longstanding objective of transitioning away from legacy rate-of-return support mechanisms and providing high-cost support based on a carrier's forward-looking, efficient costs.<sup>137</sup> Would extending Enhanced A-CAM offers otherwise be consistent with the Commission's goals? Are there other eligibility considerations, at the company or census block levels, that should be applied specifically to legacy carriers?

#### 4. Elections and Other Enhanced A-CAM Processes

55. In the event that we adopt an Enhanced A-CAM mechanism, we seek comment on the procedures for carriers to make this election. We anticipate that we would instruct the Bureau to follow the same processes for making offers and processing elections as were used for A-CAM II.<sup>138</sup> How much time do carriers require to evaluate their offers and make an election? Above, we seek comment regarding whether locations should be re-assessed for eligibility based on unsubsidized competitors offering at least 100/20 Mbps. Assuming data from the Broadband Data Collection are used to determine exclusion from eligibility, should the BDC challenge processes (i.e., challenges to provider availability data and to the Fabric data) be used to determine eligible locations for Enhanced A-CAM, or is a separate process warranted? If the BDC processes are used for this purpose, how much time would be appropriate for these processes to run before we make eligibility determinations based on them? Are there any other procedural considerations related to the election process that we should consider?

56. We also seek comment on adopting a minimum carrier participation threshold for implementing the Enhanced A-CAM program. If participation in any Enhanced A-CAM program is low, increasing broadband deployment in A-CAM I and A-CAM II areas may be more efficient and effective through another program. If we adopt a minimum threshold, what should the parameters be? For example, should there be a set percentage of eligible locations in the entire program beyond which the program continues, or should the minimum threshold be a set percentage of A-CAM I and A-CAM II carriers opting into an enhanced program? In the event the we do not adopt an Enhanced A-CAM mechanism, we seek comment on how to use support efficiently and effectively in these areas, including

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<sup>135</sup> Based on Commission staff analysis high-cost data reflecting deploying as of December 31, 2021.

<sup>136</sup> "Legacy support" refers to support mechanisms based on historical costs, and includes CAF BLS and High Cost Loop Support (HCLS).

<sup>137</sup> See *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11903, para. 31.

<sup>138</sup> *2018 Rate of Return Report Order*, at 33 FCC Rcd 11915, para. 69 (providing carriers with 45 days to confirm that they will accept the revised offer).

where broadband deployment funding is provided by another agency to either an Eligible Telecommunications Carrier (ETC) high-cost recipient or another provider.<sup>139</sup>

57. As discussed above, we seek to align key aspects of the proposed Enhanced A-CAM program with NTIA's BEAD Program. To implement a requirement from the Infrastructure Investment and Jobs Act, service providers receiving BEAD funding must attest that they have a cybersecurity risk management plan and a supply-chain risk management plan.<sup>140</sup> The cybersecurity risk management plan must specify security and privacy controls and reflect the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity.<sup>141</sup> The supply chain risk management plan must be based on key practices in NIST publication NISTIR 8276 and other supply chain risk management guidance from NIST that specifies the supply chain risk management controls being implemented.<sup>142</sup> Service providers must reevaluate and update both plans periodically and as events warrant, and provide the plans to NTIA at NTIA's request. We seek comment on whether we should require similar cybersecurity and supply chain risk management practices and certifications for A-CAM recipients or, alternatively, for all carriers receiving high-cost support.

58. We note that providers receiving CAF BLS support are subject to mandatory deployment obligations to deploy broadband service of at least 25/3 Mbps to a carrier-specific number of locations by the end of 2023.<sup>143</sup> We plan to separately and subsequently consider the deployment obligations and funding levels for such providers that will apply beginning in 2024. In considering how to update these commitments going forward, we anticipate addressing questions regarding the level of services to be delivered, identifying eligible locations, and the level of support required. We seek comment now on whether and how we should align the deployment obligations and required timeframes for deployment for CAF BLS carriers with any Enhanced A-CAM plan adopted by the Commission.<sup>144</sup> We note that such alignment would ensure similar deployment in areas served by carriers receiving support from an Enhanced A-CAM Plan and those receiving support from CAF BLS. In addition, such alignment would ease administration of the programs by minimizing the number of interim and final milestones in high-cost programs. Accordingly, we invite comment generally on any additional benefits and potential costs of aligning the high-cost funding programs for rate of return areas.

#### **B. Proposals to Improve the Administration of the High-Cost Program**

59. In this NPRM, we also evaluate opportunities to improve the administration of the high-cost program to enhance its efficiency and efficacy and better safeguard the USF. Specifically, we seek comment on: changes to annual reporting requirements and certification obligations; review of mergers between rate-of-return local exchange carriers (LECs); support for exchanges acquired by a CAF BLS recipient; the process to merge commonly-owned study areas; the schedule for CAF BLS recipients to file optional quarterly line counts; and the process to relinquish ETC status. We also seek comment on whether stakeholders have any additional recommendations to improve the administration of the high-cost program. Many high-cost support recipients are small businesses; we therefore seek comment generally on how the proposed rule changes will affect them.

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<sup>139</sup> See *supra* note 80.

<sup>140</sup> BEAD Program NOFO at 70.

<sup>141</sup> The cybersecurity risk management plan must also reflect the standards and controls set forth in Executive Order 14028. *Id.*

<sup>142</sup> This includes NIST 800-161, *Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations*. *Id.*

<sup>143</sup> *December 2018 Rate-of-Return Reform Order*, 33 FCC Rcd at 11926, para. 110.

<sup>144</sup> See Letter from Michael Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 20, 2022); see also USTelecom Letter.

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

60. We seek comment regarding several changes that would improve or streamline annual reporting and certification requirements.<sup>145</sup>

61. The Commission has established performance and other programmatic reporting obligations to ensure accountability for high-cost support recipients and monitor compliance. By March 1 annually, support recipients that serve fixed locations must report locations deployed to in the prior year in satisfaction of build-out obligations and certify compliance with deployment milestones, as applicable.<sup>146</sup> By July 1 annually, recipients must file certain financial and operations information.<sup>147</sup> By October 1 annually, each state or ETC, if the ETC is not subject to the jurisdiction of a state, must file a certification that support was used during the preceding calendar year and will only be used in the coming calendar year for “the provision, maintenance, and upgrading of facilities and services for which support is intended.”<sup>148</sup>

62. *First*, we seek comment on modifying section 54.313(i) of our rules to streamline the process for submitting annual high-cost reports by requiring that such filings be made only with the universal service program administrator, USAC. In the *2017 Annual Report Streamlining Order*, the Commission decided it would “no longer require ETCs to file duplicate copies of Form 481 with the FCC and with states, U.S. Territories, and/or Tribal governments beginning in 2018.”<sup>149</sup> However, because the change was contingent upon USAC completing the rollout of an online portal for the annual report, the Commission did not modify the rule at that time.<sup>150</sup> That rollout has since been completed<sup>151</sup> and we propose to revise 54.313(i) to clarify that annual reports must only be filed with USAC. We find that this modification would remove ambiguity and reduce administrative burdens on support recipients, while ensuring that governmental entities continue to have ready access to the information they need. We seek comment on this proposal.

63. *Second*, and along similar lines, current rules require an annual certification be filed with both the Office of the Secretary of the Commission and USAC stating that support has been and will be used only for the intended purposes.<sup>152</sup> To ease administrative burdens by eliminating duplication, we propose to remove the requirement to file with the Office of the Secretary and require only submission with USAC. Because Commission staff routinely coordinates with USAC, we do not expect that the ability of the Commission to monitor the annual certification would be diminished in any way. We seek comment on this proposal and whether removing the requirement to file with the Office of the Secretary would inhibit the filing becoming “part of the public record maintained by the Commission.”<sup>153</sup> We

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<sup>145</sup> See 47 CFR §§ 54.313, 54.314, 54.316 (Commission’s rules requiring annual report and certification for high-cost support recipients).

<sup>146</sup> 47 CFR § 54.316.

<sup>147</sup> 47 CFR § 54.314.

<sup>148</sup> 47 CFR § 54.314.

<sup>149</sup> *Connect America Fund; ETC Annual Reports and Certification*, WC Docket Nos. 10-90, 14-58, Report and Order, 32 FCC Rcd 5944, 5948, para. 15 (2017) (*2017 Annual Report Streamlining Order*).

<sup>150</sup> *Id.* at 5948, para. 15.

<sup>151</sup> See USAC High Cost, Tools, Data Tools, <https://apps.usac.org/hc/tools/default.aspx> (High Cost State Access Toll) (last visited Apr. 27, 2022).

<sup>152</sup> 47 CFR § 54.314(c), (d).

<sup>153</sup> 47 CFR § 54.314(c)(1), (2).

invite commenters to identify any other opportunities to streamline filing and reporting obligations to improve efficiency without compromising the effective oversight of the high-cost program.

64. *Third*, we seek comment on a proposal to more closely link support reductions with failing to certify locations in order to minimize confusion and improve carrier accountability. The Commission's rules establish deadlines for carriers to file reports and certifications, as well as a schedule for reducing support if the deadlines are missed.<sup>154</sup> Currently, support reductions do not occur until January of the following year, well after the carrier may have come into compliance.<sup>155</sup> We propose to more closely align any support reduction with the failure to comply with the reporting deadline by reducing support in the month immediately following the date of the missed deadline. We believe this change will eliminate confusion that has occurred when support decreases unexpectedly months after a deadline is missed (and well after a carrier may have come into compliance) and facilitate carrier accountability. Since support reductions are based on the number of days late and payments usually occur mid-month, there may be situations where a filing is not received in time for USAC to calculate the requisite support reduction for the next month's payment. In those instances, we propose that USAC implement the support reduction in the following month as needed. We seek comment on this proposal. Alternatively, should the Commission continue to defer support reductions until January 1 of the following year? What is the best process to reduce support to ensure carriers comply with the reporting and certification deadlines and avoid confusion?

65. *Fourth*, we seek comment on modifying reporting requirements for performance testing to require all high-cost support recipients serving fixed locations to report on a quarterly basis. High-cost support recipients must perform broadband performance testing one week out of each quarter.<sup>156</sup> Recipients that are not in compliance with speed and latency requirements must report the results of the performance tests quarterly, while other recipients must only report the results of tests conducted in the preceding calendar year annually on July 1.<sup>157</sup> Support reductions are assessed for non-compliant carriers, but withheld support is returned once they achieve compliance.<sup>158</sup>

66. We seek comment on making the quarterly reporting of performance test results mandatory for all recipients and not just those that are not in compliance with speed and latency requirements. Currently, there can be a lengthy lag between when quarterly performance testing is completed and when it is reported to the Commission and USAC. For example, under our current rules, a performance test conducted in January 2022 would not have to be reported until July 2023. Monitoring network performance to make sure consumers in supported areas are receiving service consistent with commitments is critical. Our experience with the current lag time is that it has inhibited such monitoring. While we already monitor non-compliant carriers through quarterly reporting, there are benefits to requiring it for all carriers. Quarterly reporting would allow the Commission to better track that carriers are meeting our requirements and determine if there are significant problems with a carrier's network. In addition, quarterly reporting would allow the Commission to better monitor trends that may interfere with consumer service and testing results, to more quickly adopt any necessary changes to our testing mechanism. While quarterly reporting could increase the burden on carriers, we do not anticipate that any increased burden will be significant given that carriers are obligated to conduct tests on a quarterly basis already. Furthermore, we believe that any increase in the burden is offset by the benefits. We believe

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<sup>154</sup> 47 CFR §§ 54.316(c), 54.313(j), 54.314(d).

<sup>155</sup> See, e.g., 47 CFR § 54.316(c) ("to continue to receive support for the following calendar year"), which has led Commission staff to direct USAC to impose reductions in January of the following year.

<sup>156</sup> See *First Performance Measures Order*, 33 FCC Rcd at 6520, para. 29; *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10128-29, paras. 50-52.

<sup>157</sup> *First Performance Measures Order*, 33 FCC Rcd at 6532-33, paras. 63, 67; see also 47 CFR § 54.313(a)(6), (j).

<sup>158</sup> *First Performance Measures Order*, 33 FCC Rcd at 6532, para. 63.



that some carriers may find additional reporting helpful—given that the performance measures can be a large volume of data, it could be helpful to report less of the data more often rather than all of it once a year. We seek comment regarding this analysis and our proposal. Also, we note that some carriers have not yet reported locations when they are scheduled to begin performance pre-testing or testing. We seek comment on the timeframe for such carriers to begin pre-testing or testing once such a carrier reports HUBB locations for first time.<sup>159</sup>

67. We also seek comment on revising the filing schedule for quarterly reporting of performance tests. Currently, the Commission requires quarterly reporting of carriers' pre-testing data, reflecting the results of tests conducted prior to the commencement of the official test period.<sup>160</sup> Those results must be reported within one week after the end of the quarter in which the tests are conducted, to provide insight into carriers' experience with the testing process. We propose that the same schedule be adopted to report other carrier testing. Does this provide carriers with sufficient time to prepare the results for filing? If not, we seek comment on how much time is required, and what filing deadlines we should require instead. Our goal in establishing a specific reporting schedule is to provide certainty, promote accountability and conform with timelines for other testing protocols to minimize confusion.

68. *Fifth*, we seek comment on whether to relieve privately held rate-of-return carriers that receive A-CAM support of the requirement to file annually a report of the company's financial condition and operations—an issue raised by NTCA—The Rural Broadband Association (NTCA) in a petition for rulemaking.<sup>161</sup> The Commission's rules require all privately held rate-of-return carriers that obtain high-cost support to provide “a full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year.”<sup>162</sup> The Commission adopted this requirement at a time when all rate-of-return support recipients received support through cost-based support mechanisms.<sup>163</sup>

69. The Commission declined to impose such a requirement on price cap carriers receiving model-based support, concluding that it was not “necessary to require the filing of such information by recipients of funding determined through a forward-looking cost model . . . even if those recipients are privately held.”<sup>164</sup> The design of the model, the Commission expected, would produce a level of support “sufficient but not excessive,” thereby negating the need for reporting audited financial information.<sup>165</sup> Should we apply the same rationale to extend similar relief to A-CAM carriers, as NTCA requests? Commenters are invited to address NTCA's assertion that granting relief to A-CAM carriers will provide regulatory parity.<sup>166</sup> Given that the term of support for CAF Phase II model-based carriers ended, and A-

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<sup>159</sup> For instance, CAF Phase II auction carriers must begin testing in the first quarter of 2023 and their first required deployment milestone is December 31, 2022. Some carriers will report locations in the HUBB for first time by March 1, 2023—in the first quarter of 2023—but, absent any change, would be required to also conduct performance testing in the same quarter.

<sup>160</sup> *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139, para. 78.

<sup>161</sup> See *Petition for Rulemaking of NTCA—The Rural Broadband Association*, WC Docket Nos. 10-9 et al. (filed Oct. 20, 2020), <https://ecfsapi.fcc.gov/file/102079774741/10.20.20%20ACAM%20Petition%20Rulemaking.pdf> (NTCA Petition for Rulemaking). This petition was put out for comment, but no comments were received. See *Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice, Report No. 3160, (CGB Oct. 28, 2020).

<sup>162</sup> See 47 CFR § 54.313(f)(2).

<sup>163</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17856, para. 596.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> See NTCA Petition for Rulemaking at 5-7 (advocating that relief will “promote regulatory parity” and “enable meaningful relief”).

CAM carriers are the only high-cost recipients remaining on model-based support, should the Commission take a fresh look at this obligation? We note, however, that most carriers that received CAF Phase II model-based support are publicly traded companies, and we can obtain such information directly for Securities and Exchange Commission registrants.<sup>167</sup> What are the benefits, if any, in retaining the financial reporting requirement for privately held A-CAM carriers in enhancing our ability to assess the efficacy of our models?<sup>168</sup> We also seek comment on other, potentially less burdensome, mechanisms that would allow us to monitor as needed. For instance, should we collect financial information on a less frequent but recurring basis or collecting on an as-needed basis instead?<sup>169</sup>

70. The NTCA Petition for Rulemaking also requests the same relief for Alaska Plan recipients. Alaska Plan recipients receive frozen support—essentially support set at 2011 cost-based levels.<sup>170</sup> We seek comment on NTCA’s request. We note, however, that the frozen support Alaska Plan carriers receive was not model-based, and we seek comment on the benefits and burdens of keeping the filing requirement in place for Alaska Plan carriers.<sup>171</sup>

71. *Sixth*, we propose to modify our rules to create a consistent one-time grace period for all compliance filings. Currently, several rules have a specific date, after the due date, by which carriers may file reports without a support reduction if they have not previously missed a deadline.<sup>172</sup> For example, filings under section 54.316 for certain ETCs are due annually March 1 and have a grace period until March 5,<sup>173</sup> but that same rule provides a grace period of “three days” for other ETCs.<sup>174</sup> Filings under section 54.314 are due annually October 1 and have a grace period until October 5.<sup>175</sup> Filings submitted under Section 54.313 are due annually July 1 and have a grace period until July 5.<sup>176</sup> We propose to modify all grace periods to “within four business days.” For instance, this change would mean that where a filing is due March 1, recipients must file by the end of March 5 or be subject to a support reduction. Consistent with our Computation of Time rule, if March 5 falls on a weekend or holiday, the filing must be made by the end of the next business day to avoid the support reduction.<sup>177</sup> We expect that establishing a uniform grace period will reduce confusion, and we seek comment on our proposal.

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<sup>167</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17858, para. 596 (concluding that “is not necessary to require submission of such information from publicly traded companies, as we can obtain such information directly for SEC registrants”).

<sup>168</sup> While the Commission expected both model and auction support to “drive support to efficient levels,” the Commission distinguished model-based support and auction support—the former “developed through a transparent and rigorous process” and the latter “disciplined by market forces.” See *USF/ICC Transformation Order*, 26 FCC Rcd at 17858, para. 596.

<sup>169</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17858, para. 596 (emphasizing that “we may request additional information on a case-by-case basis from all ETCs, both private and public, as necessary to discharge our universal service oversight responsibilities”).

<sup>170</sup> See 47 CFR § 54.306(c).

<sup>171</sup> See *Connect America Fund; Universal Service Reform—Mobility Fund; Connect America Fund—Alaska Plan*, WC Docket No. 10-90, WT Docket No. 10-208, WC Docket No. 16-271, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10142, para. 6 (2016) (*Alaska Plan Order*).

<sup>172</sup> See 47 CFR §§ 54.313(j)(2) (for late filings made before July 5), 54.314(d)(2) (for late filings made by October 8), 54.316(c)(1)(iii) (for late filings made by March 5). See also 47 CFR § 1.4(e)(2).

<sup>173</sup> 47 CFR § 54.316(c)(1)(iii) (after March 1 but by March 5).

<sup>174</sup> 47 CFR § 54.316(c)(2)(iii).

<sup>175</sup> 47 CFR § 54.314(d)(2) (after October 1 but by October 5).

<sup>176</sup> 47 CFR § 54.313(j)(2) (after July 1 but by July 5, since July 4th is a federal holiday).

<sup>177</sup> See 47 CFR § 1.4.

72. *Seventh*, we propose to codify uniform deployment, certification and location reporting deadlines for all CAF Phase II auction funding recipients to reduce confusion and facilitate efficient program administration. As originally adopted, these deadlines were tied to the date that individual funding recipients were authorized to receive support, resulting in a patchwork compliance scheme due to the rolling nature of the authorizations. Recognizing that the varied deadlines could create confusion and unnecessarily burden program administration and oversight, the Wireline Competition Bureau (Bureau) waived sections 54.310(c), 54.316(b)(4), and 54.316(c)(2), and instead adopted uniform deadlines governing deployment, certification, and location reporting obligations.<sup>178</sup> Consistent with the waiver, which will remain in effect through the support term, deployment deadlines for all CAF Phase II auction support recipients, including New York’s New NY Broadband Program, fall at the end of the calendar year, and certification and location reporting deadlines fall on March 1 annually.<sup>179</sup> We propose to make the waiver permanent by formally modifying the rules consistent with the waiver<sup>180</sup> and seek comment on this proposal. Along similar lines, and to bring some clarity in our rules to the certification deadlines for the Bringing Puerto Rico Together Fund stage 2 fixed program and the Connect USVI Fund stage 2 fixed program, we propose to make explicit the March 1 deadline in the respective authorization public notices, which will also align the programs’ rules with the rules for other high-cost programs.<sup>181</sup> We seek comment on these proposals.

73. *Eighth*, we seek comment on methods to obtain more accurate information on the speeds of broadband service provided through the high-cost programs. Section 54.316(a) requires recipients of high-cost support to report the geocoded locations to which they have deployed facilities capable of meeting the Commission’s requirements.<sup>182</sup> The current language directs ETCs to report “whether they are offering service providing speeds of at least 4 Mbps downstream/1 Mbps upstream, 10 Mbps downstream/1 Mbps upstream, and 25 Mbps downstream/3Mbps upstream,”<sup>183</sup> consistent with their required minimum deployment obligations. While this reporting enables USAC and the Commission to determine whether carriers have met their minimum obligations, it does not require carriers to provide a complete picture of the maximum speeds actually being offered, advertised, or delivered to customers, where the carrier is providing speeds higher than the obligated minimum. We seek comment regarding how to get a better overall understanding of actual deployment.<sup>184</sup> Should the Commission require carriers to report the speeds they would offer a location, in addition to the required speeds that the

<sup>178</sup> See *Connect America Fund, Connect America Fund Phase II Auction*, WC Docket Nos. 10-90, 17-187, Order, 35 FCC Rcd 109, para. 1 (WCB 2020).

<sup>179</sup> See *id.* at 112, 113, paras. 9-11 (40 percent milestone falls on December 31, 2022, 60 percent milestone falls on December 31, 2023, 80 percent milestone falls on December 31, 2024, and 100 percent milestone falls on December 31, 2025).

<sup>180</sup> See 47 CFR §§ 54.310(c), 54.316(b)(4) and 54.316(c)(2).

<sup>181</sup> See 47 CFR § 54.316(b)(7), *Connect USVI Fund Stage 2 Support Authorized For Broadband VI*, WC Docket No. 18-143, 10-90, Public Notice, 36 FCC Rcd 9405 (WCB 2021); *Wireline Competition Bureau Authorizes Stage 2 Support for Puerto Rico Telephone Company and Liberty Communications of Puerto Rico*, WC Docket No. 18-143, 10-90, Public Notice, 36 FCC Rcd 9914, 9916-17 (WCB 2021).

<sup>182</sup> 47 CFR § 54.316(a). To facilitate the reporting of the location data, the Commission directed the Bureau to work with USAC to develop an online portal for carriers to submit location information on a rolling basis throughout the year. *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3117, para. 79, 3166, para. 214. Consistent with this direction, USAC developed the High-Cost Universal Broadband (HUBB) portal. See <https://www.usac.org/high-cost/annual-requirements/submit-data-in-the-hubb/>

<sup>183</sup> 47 CFR § 54.316(a)(2).

<sup>184</sup> We note that the HUBB FAQs say the carriers *should* report the maximum speed, but do not say it is *required*. As such, we are seeking comment on rule modifications here, and we are looking to clarify any perceived ambiguities between the rules and the guidance provided by USAC. See HUBB Frequently Asked Questions, <https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/HC-HUBB-FAQ.pdf>.

deployment meets? How would the Commission define such “maximum available speeds”? Would it be most appropriate to define these maximum speeds in terms of advertised speeds or is there some other measure of available speeds that could be used? Are there any other methods the Commission can use to ensure that we have reliable data regarding available broadband speeds at each location? Would it be feasible to extrapolate maximum available speeds for locations in an area from the data produced by the performance testing?

74. *Ninth*, we propose to amend section 54.316(a)(1) to more accurately reflect the current scope of our location reporting obligations. This rule directs “recipients of high-cost support with defined broadband deployment obligations” to “provide to the Administrator on a recurring basis information regarding the locations to which the [ETC] is offering broadband service in satisfaction of its public interest obligations . . . .”<sup>185</sup> Given that all filers subject to this requirement have an established deadline to submit information, we find some of the qualifying language to be extraneous and therefore propose to delete “on a recurring basis” from the rule. We seek comment on this proposal.

75. *Tenth*, we propose to modify the voice and broadband rate certifications to clarify the reporting period. The original requirements for the FCC Form 481 were adopted in the *USF/ICC Transformation Order*. The Commission’s discussion makes clear that the reports, which include voice and broadband pricing, are annual and would be due April 1, covering the prior year.<sup>186</sup> Therefore, for the annual report due in a particular year, the relevant time period for the pricing data was originally intended to be January 1 to December 31 of the prior year. The Commission then moved the date of the annual reports to July 1.<sup>187</sup> As a result of moving the date to July 1, the Commission moved the date for the relevant voice rates to the rate in place as of June 1 the year the report was filed, as opposed to the prior year.<sup>188</sup> This was done to facilitate the implementation of the rate floor provision,<sup>189</sup> which was subsequently eliminated.<sup>190</sup> However, the Commission did not change the applicable reporting period for broadband rates.

76. Since the rate floor has been eliminated, there is no longer the same justification for carving out voice rates so they cover the year the report is filed rather than the prior year. Because all other reporting in the FCC Form 481 covers the prior calendar year, including compliance with the broadband rates, it creates confusion to treat voice rates differently. Recipients, not infrequently, have expressed confusion as to what year’s rate benchmarks they are certifying compliance with when completing the FCC Form 481. To address this confusion and aid in program administration, we propose to modify the voice and broadband rate certification rules to make explicit that recipients are certifying to compliance with pricing benchmarks in the prior year. In other words, when certifying the FCC Form 481 by July 1, 2022, recipients will be certifying compliance with voice and broadband benchmarks for 2021. We seek comment on this proposal, and we also propose to modify the rules to reflect that the Public Notice announcing the benchmarks is issued by the Bureau and the Office of Economics and Analytics.

77. *Finally*, we propose a new rule to allow high-cost support recipients to report locations that were deployed to during a given year, even after the reporting period has ended. We require that recipients with defined deployment obligations annually certify all locations deployed to in satisfaction of

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<sup>185</sup> 47 CFR § 54.316(a)(1).

<sup>186</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd. at 17851-53, paras. 576-581.

<sup>187</sup> See *Connect America Fund, A National Broadband Plan for Our Future*, et. al, WC Docket No. 10-90 et. al, Third Order on Reconsideration, 27 FCC Rcd 5622, 5626, para. 10 (2012).

<sup>188</sup> *Id.* at 5626, para. 19.

<sup>189</sup> See *id.*

<sup>190</sup> See *Connect America Fund*, WC Docket No. 10-90, Report and Order, 34 FCC Rcd 2621, 2636, para. 9 (2019).

public interest obligations in the prior calendar year.<sup>191</sup> For example, by March 1, 2023, recipients must certify all locations deployed to in 2022 where they began offering voice and at least one broadband plan that meets or exceeds the minimum speed and minimum usage, complies with latency requirements, and is offered at or below the applicable benchmark rate.

78. The Commission's rules set forth an explicit support reduction mechanism when recipients fail to certify on time.<sup>192</sup> However, the Commission's rules do not allow a recipient that certified locations by the deadline to later certify additional locations that were deployed to during that reporting year. Since our rules require recipients to certify all locations deployed to in the prior year by the deadline, currently recipients must seek a waiver showing good cause to certify additional locations after the deadline.<sup>193</sup>

79. There are sound reasons to prohibit recipients from filing deployed to locations after the reporting deadline (untimely reported locations) absent good cause. For instance, if we were to freely allow recipients to certify additional locations after the deadline, recipients would have no incentive to file locations on time unless the locations were needed to meet a build-out obligation. Accurate and timely location data are critical for the Commission and USAC to monitor compliance and for USAC to conduct verifications.<sup>194</sup>

80. However, we also believe that it is inequitable and undesirable to prohibit recipients from certifying untimely reported locations under all circumstances. Such prohibition may ultimately result in recipients falling short of a deployment milestone and then facing support recovery and/or withholding when they have in actuality sufficiently and timely met their deployment obligations. Moreover, it seems unreasonable that a recipient that, for example, misses the March 1st deadline completely and certifies all locations by March 21st is permitted to count all those locations towards its milestone, but a recipient that certifies the vast majority of its locations by March 1st and subsequently seeks to certify additional locations by March 18th, for example, could not do so absent good cause—resulting in not being able to count those locations towards milestones. Furthermore, allowing recipients to certify untimely reported locations comports with their duty to correct or amend submitted information.<sup>195</sup> Finally, prohibiting recipients from certifying untimely reported locations would leave us without a fully accurate representation of deployment using high-cost support.

81. To balance these considerations, we seek comment on whether we should amend our rules to allow recipients to file untimely reported locations, but also to apply a corresponding support

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<sup>191</sup> 47 CFR § 54.316(a); *see also Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding Their Broadband Location Reporting Obligations*, WC Docket No. 10-90, Public Notice, 31 FCC Rcd 12900, 12909-11 (WCB 2016) (*HUBB Public Notice*).

<sup>192</sup> *See* 47 CFR § 54.316(c). An eligible telecommunications carrier that files after the March 1 deadline, but by March 8, has its support reduced in an amount equivalent to seven days in support; and an ETC that files on or after March 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction. The rules also provide for a one-time grace period for recipients if its holding company, operating companies, and affiliates have not missed a March 1 deadline in any prior year.

<sup>193</sup> Several waivers requesting that carriers be allowed to submit late-filed locations remain pending. *See* Petition for Waiver of TDS Telecommunications LLC, WC Docket Nos. 10-90 et al. (filed Oct. 1, 2020); Petition of Nucla Natria Telephone Company Request for Waiver of Section 54.316, WC Docket Nos. 10-90 et al. (filed Feb. 22, 2021); Petition of Zenda Telephone Company, Emergency Request for Expediated Treatment, WC Docket Nos. 10-90 et al. (filed Apr. 30, 2019); Petition of Waiver of United Utilities, Inc., WC Docket Nos. 10-90, 16-271, 14-58 (filed Oct. 6, 2021). We note that any rules adopted pertaining to late filed locations in this proceeding will apply prospectively. We seek comment on how we should address these pending waivers for relief.

<sup>194</sup> As part of verifications, USAC generates a statistically valid random sample of certified location records in the HUBB. Allowing locations to be filed after the reporting period would affect a statistically valid random sample.

<sup>195</sup> *See HUBB Public Notice*, 31 FCC Rcd at 12909-11.

reduction to provide a continued incentive for timely filing. We propose that the amended rule would apply, prospectively, a support reduction mechanism where recipients' support will be reduced for untimely reported locations based on the percentage of a recipient's total locations for the reporting year being reported after the deadline and the number of days after the deadline.<sup>196</sup> Such a mechanism, which bases the reduction on the number of days late, is consistent with the existing mechanism that reduces support for failure to complete the annual certification. In addition, factoring in the number (percentage) of untimely reported locations for the reporting year further helps make the reduction in support proportional to the severity of the rule violation.<sup>197</sup>

82. We seek comment on this proposal and whether it strikes the right balance of allowing untimely report locations to count towards deployment but also ensuring timely filing and efficient administration of the program. We also seek comment on any alternative proposals and whether there should be a cap on a support reduction for untimely reported locations. To further help efficiently administer this regime, unlike in our rule regarding late certifications, we do not propose to apply a one-time grace period or to reduce support at a minimum a full week given that in these situations recipients will have filed some locations by the deadline.<sup>198</sup>

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

83. We propose to amend our rules to provide a simpler process for rate-of-return carriers seeking to merge, consolidate, or acquire one or more rate-of-return study areas to calculate the new entity's Access Recovery Charge; CAF ICC support; and reciprocal compensation and switched access rate caps.<sup>199</sup> We anticipate that adopting such revisions to our rules would reduce the burden on carriers that currently have to seek waivers of the existing rules whenever they seek to merge, consolidate or acquire one or more rate-of-return study areas. Such rule revisions would also reduce the burden on the Commission of acting on these waiver requests and facilitate the Commission's goal of encouraging carriers to become more efficient and to increase productivity.<sup>200</sup> We seek comment on these proposals and on the costs and benefits of adopting these proposals.

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<sup>196</sup> Prospectively here would mean beginning with the first March 1st deadline after the effective date of the rule.

<sup>197</sup> To illustrate our proposal, suppose a recipient certifies 10,000 locations deployed to in 2022 by March 1, 2023 but on June 7, 2023 reports an additional 100 locations deployed to in 2022—meaning the total number of locations deployed to in 2022 is now 10,100. Based on our rules, the carrier should have certified 100% of locations deployed to in 2022 by March 1, 2023. However, that the carrier timely certified 99% of locations (10,000/10,100) deployed in 2022, which means 1% of locations certified were untimely. In this example, if the recipient's daily support is \$1,000, and the recipient reported the 100 locations 99 days after the deadline, the support reduction would be  $\$1,000 \times 99 \times 0.01$ , which equals \$990.00—(daily support) x (number of days after the deadline) x (percentage of locations for the reporting year filed after the deadline).

<sup>198</sup> See 47 CFR § 54.316(c)(1)(i), (iii), (c)(2)(i), (iii).

<sup>199</sup> 47 CFR § 51.909 (rules governing transition of rate-of-return carrier access charges); 47 CFR § 51.917 (rules governing revenue recovery for rate-of-return carriers).

<sup>200</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17984-85, para. 902 (“Our framework allows rate-of-return carriers to profit from reduced switching costs and increased productivity, ultimately benefitting consumers. We note in this regard that the transition to broadband networks affords smaller carriers opportunities for efficiencies not previously available. For example, small carriers may be able to realize efficiencies through measures such as sharing switches, measures that preexisting regulations, such as the thresholds for obtaining LSS support, may have deterred.”). See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, DA 20-217, 35 FCC Rcd 1869 (WCB 2020) (*TrioTel-Farmers-ICTC Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 34 FCC Rcd 9617 (WCB 2019) (*Sunflower-Lakeland Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 34 FCC Rcd 4777 (WCB 2019) (*Titonka-ITC-Northeast Order*).

84. In the *USF/ICC Transformation Order*, the Commission capped rate-of-return carriers' reciprocal compensation and interstate switched access rates and most intrastate switched access rates at the rates in effect on December 29, 2011.<sup>201</sup> At the same time, the Commission adopted a multi-year transition for reducing most terminating switched access rates to bill-and-keep.<sup>202</sup> As part of these reforms, the Commission adopted an Access Recovery Charge that allows rate-of-return carriers to recover a portion of the intercarrier compensation revenues lost due to the Commission's reforms, up to a defined amount (Eligible Recovery) for each year of the transition.<sup>203</sup> If the projected Access Recovery Charge revenues are not sufficient to cover the entire Eligible Recovery amount, rate-of-return carriers may elect to collect the remainder in CAF ICC support.<sup>204</sup>

85. The calculation of a rate-of-return LEC's Eligible Recovery begins with its Base Period Revenue.<sup>205</sup> A rate-of-return carrier's Base Period Revenue is the sum of certain intrastate switched access revenues and net reciprocal compensation revenues received by March 31, 2012, for services provided during Fiscal Year (FY) 2011,<sup>206</sup> and the projected revenue requirement for interstate switched access services for the 2011-2012 tariff period.<sup>207</sup> The Base Period Revenue for rate-of-return carriers was reduced by 5% initially and is reduced by an additional 5% in each year of the transition.<sup>208</sup> A rate-of-return carrier's Eligible Recovery is equal to the adjusted Base Period Revenue for the year in question, less, for the relevant year of the transition, the sum of: (1) projected intrastate switched access revenue; (2) projected interstate switched access revenue; and (3) projected net reciprocal compensation revenue.<sup>209</sup> The adjusted Base Period Revenue is also adjusted to reflect certain demand true-ups.<sup>210</sup> A rate-of-return LEC's Base Period Revenue is calculated only once, but is used during each step of the intercarrier compensation recovery mechanism calculations for each year of the transition.<sup>211</sup>

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

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<sup>201</sup> See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff'd*, *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014); 47 CFR § 51.909(a). Originating intrastate switched access rates for rate-of-return carriers were exempt from the rate cap.

<sup>202</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17934-36, para. 801 & fig. 9.

<sup>203</sup> See *id.* at 17956-57, paras. 847, 850; *id.* at 17958-61, para. 852; 47 CFR §§ 51.917(d)-(e).

<sup>204</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17994-95, para. 918; 47 CFR § 51.917(f).

<sup>205</sup> See 47 CFR § 51.917(b)(7).

<sup>206</sup> For purposes of the recovery mechanism, FY 2011 is defined as October 1, 2010 through September 30, 2011. See 47 CFR § 51.903(e).

<sup>207</sup> See 47 CFR § 51.917(b)(7).

<sup>208</sup> See 47 CFR § 51.917(b)(3).

<sup>209</sup> See 47 CFR § 51.917(d).

<sup>210</sup> The carrier would reflect forward any required true-ups resulting from the operation of the pre-merger study areas in the proper year for the merged study area. See, e.g., 47 CFR § 51.917(b)(6).

<sup>211</sup> See 47 CFR § 51.917(d).

87. Since the Eligible Recovery rules have taken effect, several rate-of-return LECs have partially or fully merged study areas or acquired new study areas. Because the intercarrier compensation and CAF ICC rules adopted in the *USF/ICC Transformation Order* do not contemplate study area changes, these carriers have had to file petitions for waiver of portions of sections 51.917 and 51.909 of the Commission's rules to reset the applicable Base Period Revenue associated with the study areas they have merged or acquired.<sup>212</sup> In this line of waiver orders, the Bureau has permitted carriers to add together the relevant interstate revenues from FY 2011 of the merging study areas and the 2011-2012 interstate revenue requirement of the merging study areas.<sup>213</sup> This calculation then creates a combined Base Period Revenue which serves as the baseline for calculating the Eligible Recovery of the company serving the combined study area going forward.<sup>214</sup> To facilitate mergers for entities that participate in the National Exchange Carrier Association (NECA) Tariff, the Bureau has granted waivers to allow NECA to place the consolidated study area in the rate band that most closely approximates the merged entities' cost characteristics.<sup>215</sup> The rate for that rate band then becomes the rate cap for that rate element in the merged study area.<sup>216</sup>

88. The waiver process has imposed additional costs on these carriers and, in some instances, delayed mergers or acquisitions. Our experience in reviewing these waiver requests has shown that certain patterns recur with predictable outcomes that can be addressed through rule revisions rather than by requiring individual waiver requests in the future. Adopting such revisions to our rules would reduce the burden on carriers and on the Commission. We, therefore, propose to revise our rules to eliminate the need for a rate-of-return LEC that is involved in a merger, consolidation, or acquisition with another rate-of-return carrier to obtain a waiver of these intercarrier compensation rules when certain conditions apply.

89. First, we propose to revise section 51.917 of our rules to provide that merging, consolidating, or acquiring rate-of-return carriers shall combine separate Base Period Revenue and interstate revenue requirement factors when two or more entire study areas are being merged. This approach is consistent with our precedent and the proposed rule revisions will eliminate the need for individual waiver requests in these circumstances.<sup>217</sup> If only a portion of a study area is being acquired and merged into another study area, we propose to allow the acquiring entity and the remaining entity to allocate the Base Period Revenue and interstate revenue requirement levels of the partial study area on the

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<sup>212</sup> See, e.g., *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 33 FCC Rcd 1152, 1157-58, paras. 15-16 (WCB 2018) (*Butler-Panora Order*) (outlining and applying relevant Commission precedent to approve the merger of two rate-of-return study area waiver petitions); *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781, paras. 8-10 (similar).

<sup>213</sup> See generally *Butler-Panora Order*, 33 FCC Rcd at 1152, 1157-58; *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781.

<sup>214</sup> See *Butler-Panora Order*, 33 FCC Rcd at 1157, para. 15.

<sup>215</sup> See, e.g., *id.* at 1157-58, para. 16; *Titonka-ITC-Northeast Order*, 34 FCC Rcd at 4781-82, para. 10.

<sup>216</sup> *Sunflower-Lakeland Order*, 34 FCC Rcd 9617, 9621, para. 10.

<sup>217</sup> See, e.g., *Butler-Panora Order*, 33 FCC Rcd at 1157-58, paras. 15-16; *Joint Petition of Price Cap Holding Companies for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief et al.*, WC Docket No. 12-63, Order, 27 FCC Rcd 15753 (2012) (*2012 Average Schedule Conversion Order*) (approving a methodology for establishing initial interstate switched and special access rates for the study areas in new tariff filings in order to allow the requesting carriers to operate more efficiently post waiver); *CenturyLink Petition for Conversion of Average Schedule Affiliates to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 14-23, Order, 29 FCC Rcd 5140, 5146, para. 15 (WCB 2014) (allowing CenturyLink to establish a single interstate access tariff with blended switched and special access rates for three consolidating study areas and simultaneously allowing the three affiliates requesting the waiver to withdraw from the NECA pool). These proposed rule modifications would not apply to average schedule companies that have not converted to cost companies. *Windstream Petition for Conversion to Price Cap Regulation and for Limited Waiver Relief*, WC Docket No. 07-171, Order, 23 FCC Rcd 5294, at 5296, para. 5 (2008).



proportion of access lines acquired compared to the total access lines in the pre-merger study area of the remaining entity.<sup>218</sup> This proposal is consistent with the approach the Commission has previously taken when dealing with transactions affecting only part of a study area.<sup>219</sup>

90. Similarly, we propose to revise section 51.909 of our rules to establish procedures that will allow us to set new rate caps for merging rate-of-return carriers without requiring the merging carriers to file a waiver request. We propose to amend our rule to provide that, for merging, acquiring or consolidating carriers that will file their own tariffs, the new rate cap for each rate element shall be the weighted average of the preexisting rates in each of the study areas. For merging carriers that participate in the NECA traffic-sensitive tariff and that have to establish a single switched access rate for a rate element, we propose that the new consolidated rate, as determined by NECA pursuant to the rate bands in its traffic-sensitive tariff,<sup>220</sup> will serve as the new rate cap if the merged entity's CAF ICC support will not increase as a result of the merger by more than 2% above the amount received by the merging entities, using the demand and rate data for the preceding calendar year.<sup>221</sup> We invite comment on these proposals. In particular, we seek comment on whether the two percent factor represents a reasonable level for determining that a merger should be allowed at the rate(s) determined by NECA.

91. Finally, we propose to streamline the process by which rate-of-return carriers seeking to merge, consolidate, or acquire study areas can establish new reciprocal compensation and switched access rate caps if the impact of using the weighted average of the preexisting rates in the previous study areas to establish the rates for the new combined study area would result in the new entity's CAF ICC support exceeding the 2 percent threshold described above. Under those circumstances, we propose to require carriers to file a petition for waiver, specifying the impact of the merger, acquisition or consolidation on the new entity's rates and CAF ICC support, but we propose to adopt a streamlined public notice period

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<sup>218</sup> For example, if a partially acquired study area has 1,000 lines and 400 are acquired, forty percent of the BPR and the interstate revenue requirement would separately be allocated to the acquiring entity, which would become a new study area, and sixty percent would remain with the original study area.

<sup>219</sup> *Connect America Fund et al.*, WC Docket No. 10-90 et al., Order, 31 FCC Rcd 10683, 10691, para. 27 (WCB 2016) (*Mutual Telephone-Winnebago Order*) (approving the allocation of Base Period Revenue amounts using a simple average of the access line count for FY 2011 when only a portion of a study area is involved).

<sup>220</sup> NECA's traffic-sensitive tariff includes rate bands to which participating carriers' study area rates for services are assigned. National Exchange Carrier Assoc. Access Service Tariff F.C.C. No. 5, Transmittal No. 1314 at 42-43 (June 16, 2011) ("Rate banding is a tariff pricing structure that provides multiple rates (*i.e.* one rate per rate band) for the same access service element. Rate banding involves the grouping of study areas into 'rate bands' based on study area cost characteristics. . . . Study areas are assigned to rate bands based on their relative cost per demand unit using forecast data for cost companies and settlement data for Average Schedule companies.") (available via the Commission's Electronic Tariff Filing System); *id.* at n.40 ("Rate banding was initially added to NECA Tariff FCC No. 5 on January 1, 1998." See National Exchange Carrier Association, Inc., Access Tariff Revisions, Transmittal No. 776, filed Nov. 17, 1997); 47 CFR § 69.601(a).

<sup>221</sup> We propose two percent based on review of carriers' recently submitting petitions for waiver of section 51.909 which have predicted increases between zero and two percent to CAF ICC as a result of the waiver. See, e.g., Titonka Telephone Company and The Burt Telephone Company Petition for Waiver of Sections 51.917(b)(1) and 51.917(b)(7) of the Communications Rules to Modify 2011 Base Period Revenue in Connection with the Merger of Affiliated Study Areas in Iowa, WC Docket No. 18-69, at 5 (filed Feb. 9, 2018) (predicting no change to CAF ICC support upon waiver grant); Sunflower Enterprises, Inc. Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Mississippi, WC Docket No. 19-90, at 6 (filed Mar. 27, 2019) (predicting a 0.43% increase in CAF ICC support upon waiver grant); Lakeland Communications Group, LLC Petition for Waiver of Sections 51.909(a), 51.917(b)(1) and 51.917(b)(7) of the Commission's Rules to modify access rate bands and charges, and 2011 Base Period Revenue in connection with merger of affiliated study areas in Wisconsin, WC Docket No. 19-103, at 6 (filed Apr. 15, 2019) (predicting a 2% increase in CAF ICC support upon waiver grant).

after which petitions for waiver would be deemed granted after 60 days if there is no opposition and the Bureau or Commission has not acted to extend the review period. We propose that the petitions for waiver be submitted for consideration via the Commission's Electronic Comment Filing System and a courtesy copy emailed to the Chief, Pricing Policy Division, Wireline Competition Bureau.

92. We further propose that carriers filing petitions under these revised rules must include: 1) a description of the merging study areas, or portions of study areas involved; 2) the switched access demand; 3) relevant pre- and post-merger rates for the study areas involved, as proposed; 4) the effect on CAF ICC resulting from the merger; and 5) a brief statement of the benefits of the merger. The Bureau would then release a public notice announcing receipt of a petition and a 30-day comment period would begin upon release of that public notice. Reply comments would be due 45 days after the release of the public notice. If no oppositions are received, the petition for waiver will be deemed granted on the 60th day after the public notice, unless the Bureau or Commission acts to prevent the "automatic" grant. If an opposition is received during the comment or reply comment period, we propose that the petition would be automatically removed from the streamlined grant process. We invite parties to comment on this proposal and whether the requested information to be included in the petition is sufficient to permit interested parties and the Bureau or Commission to determine whether the proposed merger is in the public interest. We propose to delegate to the Bureau the authority to review, analyze and approve these petitions for waiver.

### 3. Acquisition of Exchanges by a CAF BLS Recipient

93. We seek comment on amending section 54.902 of our rules, which governs the amount of CAF BLS support a rate-of-return carrier receives when it acquires exchanges from another incumbent local exchange carrier, to better reflect the current state of high-cost universal service.<sup>222</sup>

94. Currently, section 54.902(a) describes how CAF BLS support is calculated when a rate-of-return carrier acquires exchanges from another rate-of-return carrier, while section 54.902(b) specifies that when a rate-of-return carrier acquires exchanges from a price cap carrier, the acquired exchanges remain subject to the support amounts and obligations established by CAF Phases I and II.<sup>223</sup> Since this rule was last amended, the Commission has adopted and implemented several new high-cost support mechanisms, for areas served by both rate-of-return and price cap carriers, as well as non-incumbent LECs. These new mechanisms include auction-based mechanisms and model-based support for rate-of-return carriers (A-CAM I and II).

95. We propose to modify section 54.902(a) to expressly limit its application, so that a carrier would only be eligible to receive CAF BLS support for exchanges acquired from existing CAF BLS recipients.<sup>224</sup> We further propose to modify section 54.902(b) to include any model-based, auction-based or frozen support. Specifically, we propose that any transferred exchanges subject to 54.902(b) would be subject to the support and obligations in place at the time of the exchange. These proposed modifications would be consistent generally with the rule as originally adopted, when all rate-of-return carriers were subject to the Interstate Common Line Support (ICLS) mechanism (which was renamed CAF BLS when

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<sup>222</sup> 47 CFR § 54.902.

<sup>223</sup> *Id.*

<sup>224</sup> We note that any acquisition of exchanges is subject to the grant of a study area waiver by the Commission. Without regard to this proposed rule change, the Commission would consider whether the study area waiver to permit the acquisition of exchanges subject to A-CAM support by a CAF BLS recipient would be in the public interest without continued application of the support and obligations pursuant to A-CAM. As a result, even though the current rule does not exclude the provision of CAF BLS to exchanges acquired from A-CAM recipients, it is unlikely that any such acquisition would be approved by the Commission without conditions to prevent receipt of CAF BLS support for those exchanges.

modernized by the Commission in 2016).<sup>225</sup> Because the Commission also created a voluntary pathway to model-based support for rate-of-return carriers in 2016, it is no longer accurate to assume, as section 54.902(a) does, that all rate-of-return carriers are subject to CAF BLS.<sup>226</sup> Similarly, because the Commission has adopted competitive bidding processes to allocate high-cost support in many areas, rate-of-return carriers may acquire exchanges from carriers that are not subject to rate-of-return or price cap regulation.<sup>227</sup> The proposed rule would clarify that only transferred exchanges that are already eligible for CAF BLS would be eligible for CAF BLS after their transfers. Though exchanges not subject to ICLS (or CAF BLS) would have been eligible for ICLS (or CAF BLS) as the rule was originally designed in 2001, today the alternatives to CAF BLS are model-based or auction-based support mechanisms in which support recipients have agreed to fixed support amounts in exchange for defined obligations over specified terms, and it would not typically be appropriate for those fixed obligations and support amounts to be changed because some exchanges were transferred. This includes exchanges served by rate-of-return carriers under the A-CAM I and A-CAM II mechanisms. The Commission, of course, may address unique circumstances justifying a different result through the waiver process. We seek comment on these proposals.

#### 4. Study Area Boundary Waivers

96. We seek comment on several proposals to modify the study area boundary waiver process. A study area is a geographic segment of an incumbent LEC's telephone operations and forms the basis of the jurisdictional separations of its costs and its cost studies. The Commission froze all study area boundaries effective November 15, 1984<sup>228</sup> to prevent incumbent LECs from establishing separate study areas made up of only high-cost exchanges to maximize their receipt of high-cost universal service support.<sup>229</sup> The study area freeze also prevents incumbent LECs from transferring exchanges among existing study areas for the purpose of increasing interstate revenue requirements and maximizing universal service compensation. Carriers operating in more than one state typically have one study area for each state, and carriers operating in a single state typically only have a single study area.

97. In 1996, the then Common Carrier Bureau (now known as the Wireline Competition Bureau) issued an order stating that "carriers are not required to seek study area waivers if: (1) a

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<sup>225</sup> See *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket Nos. 00-256 *et al.*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613, 19752-53, App. A, § 54.902 (2001) (*MAG Order*).

<sup>226</sup> *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3094-117, paras. 17-79.

<sup>227</sup> See *CAF Phase II Auction Order and/or FNPRM*, 31 FCC Rcd 5949; *RDOF Order*, 35 FCC Rcd 686 (2020).

<sup>228</sup> 47 CFR § 36 app. (defining "study area"). See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, *Recommended Decision and Order*, 49 Fed. Reg. 48325 (1984) (*1984 Joint Board Recommended Decision*); *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, FCC 84-637, *Decision and Order*, 50 Fed. Reg. 939 (1985) (*1985 Order Adopting Recommendation*); see also *Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board*, CC Docket No. 80-286, *Notice of Proposed Rulemaking*, 5 FCC Rcd 5974 (1990).

<sup>229</sup> See *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision and Order*, CC Docket Nos. 78-72, 80-286, 49 Fed. Reg. 48325, para. 66 (1984); and *MTS and WATS Market Structure; Establishment of a Joint Board, Amendment, Decision and Order*, CC Docket Nos. 78-72, 80-286, FCC 84-637, 50 Fed. Reg. 939, paras. 1, 5 (1985). The Commission created the USF to preserve and promote universal service. See *Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Decision and Order*, 96 F. 2d 781 (1984). The USF rules allow ILECs with high local loop plant costs to allocate a portion of those costs to the interstate jurisdiction, thus enabling the states to establish lower local exchange rates in study areas receiving such assistance. See 47 CFR § 54.1301.

separately incorporated company is establishing a study area for a previously unserved area; (2) a company is combining previously unserved territory with one of its existing study areas in the same state; and (3) a holding company is consolidating existing study areas in the same state.”<sup>230</sup> Accordingly, any carrier seeking to merge study areas that does not fall into one of those three categories must petition the Commission for a waiver. In 2004, the Commission adopted the *Skyline Order*, which stated that “the Commission has never enunciated an exception to its study area waiver requirements for unserved areas [and] that treating an area as unserved when it was previously within an existing study area would be inconsistent with the purpose of the study area freeze.”<sup>231</sup> It clarified that “a study area waiver request must be filed with the Commission where a company is seeking to create a new study area from within one or more existing study areas.”<sup>232</sup> The *Skyline Order* therefore modified the 1996 Bureau-level order by prohibiting the establishment of a new study area in previously unserved territory if the unserved area was within an existing study area.

98. In the *USF/ICC Transformation Order*, the Commission recognized the administrative burden the ad hoc approach placed on the Bureau.<sup>233</sup> Because most petitions are “routine in nature,” the Commission adopted a streamlined process to address all study area waiver petitions.<sup>234</sup> Under this process, once a carrier submits a petition the Bureau will issue a public notice seeking comment and noting whether the waiver is appropriate for streamlined treatment.<sup>235</sup> Absent any further action by the Bureau, if the waiver is subject to streamlined treatment, it is granted on the 60<sup>th</sup> day after the reply comment due date.<sup>236</sup> Alternatively, if the petition requires further analysis and review, the public notice will state that the petition is not suitable for streamlined treatment.<sup>237</sup>

99. Since then, the Commission has substantially reformed how universal service support is awarded. Incumbent LECs now receive support in different ways, including model-based support and auction support, in addition to traditional rate-of-return regulation (legacy support).<sup>238</sup> Currently, when a carrier that owns multiple study areas within a state wants to merge these commonly-owned study areas, the carrier is not required to petition the Commission. However, allowing carriers to merge study areas that receive support under different mechanisms could create opportunities for carriers to manipulate the Commission’s support. For example, if a carrier sought to merge two study areas in a state, one of which receives legacy rate-of-return support and another that receives model-based support, it would be difficult for the Commission to determine which lines in the new study area are entitled to rate-of-return support, which typically increases as the number of lines increases. Similarly, such a merger could create confusion regarding tracking carrier mandatory build-out obligations by changing the areas in which they must deploy broadband. For example, an A-CAM carrier receives a fixed amount of support in exchange for deploying broadband to a specific number of locations based on costs as determined by a model. If

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<sup>230</sup> *Request for Clarification Filed by the National Exchange Carrier Association, Inc., and Petitions for Waiver Filed by Alaska Telephone Company, Ducor Telephone Company, and Kingsgate Telephone, Inc., Concerning the Definition of “Study Area: in the Part 36 Appendix-Glossary of the Commission’s Rules*, AAD 95-173, AAD 96-29, AAG 96-51, Memorandum Opinion and Order, 11 FCC Rcd 8156, 8160 (CCB July 16, 1996).

<sup>231</sup> *M&L Enterprises, d/b/a Skyline Telephone Company Petition for Waiver of Sections 36.311, 36.312, and 69.2(hh) of the Commission’s Rules*, CC Docket No. 96-45, 19 FCC Rcd 6761, 6766, para. 11 (2004) (*Skyline Order*).

<sup>232</sup> *Id.* at 6766, para. 13.

<sup>233</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17763, para. 267.

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* at 17709, paras. 115-120.

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

100. In addition, allowing carriers to add unserved areas to their study areas, even if those areas are not within an existing study area, could undermine the Commission's goal of distributing universal service support in the most efficient manner possible.<sup>239</sup> In furtherance of this objective, the Commission has encouraged the transition to model-based support and auction-awarded support over traditional rate-of-return regulation.<sup>240</sup> If rate-of-return carriers can extend their existing study area into unserved areas, this could result in the use of legacy support in additional areas when such areas could be served with broadband more efficiently using model-based or auction-based support.

101. To avoid the issues created by merging study areas receiving different types of support or the expanded use of less efficient support methodologies, we seek comment on requiring waivers for all study area boundary changes. Requiring changes in study area boundaries to be reviewed by the Bureau would ensure that any proposed changes are not approved until the effects on the Fund are taken into account. Because the Commission has already established a streamlined process for such waivers, those requests that do not present any support or other concerns could be swiftly granted, thereby minimizing the burden on those carriers proposing mergers that promote efficiency and are clearly in the public interest. We seek comment on this proposal. Are there any alternatives that we should consider that would address these concerns?

#### 5. Quarterly Line Count Updates for CAF BLS Recipients

102. We seek comment on eliminating optional line count filings for CAF BLS support recipients reported on FCC Form 507, or, alternatively, updating the filing schedule for optional quarterly line counts to better align with the mandatory annual filing deadline.<sup>241</sup>

103. The Commission adopted quarterly filing provisions for rate-of-return carriers in 2001 in the *Multi-Association Group (MAG) Order*.<sup>242</sup> The filing schedule tracked the existing schedule for reporting line counts for high cost loop support (HCLS), with annual line counts due on July 31 each year (reporting line counts as of the prior December 31), and quarterly updates due on September 30, December 31, and March 31 (each reporting lines as of six months earlier).<sup>243</sup> The quarterly line counts were mandatory for rate-of-return carriers serving areas in which a competitive ETC was operating, and permissive for all other rate-of-return carriers.<sup>244</sup> In 2012, mandatory quarterly filings were eliminated because competitive ETCs no longer received support based on the incumbent rate-of-return carriers' per-line support amounts.<sup>245</sup> In the *December 2018 Rate-of-Return Reform Order*, the Commission changed the date of the mandatory annual filing from July 31 to March 31 but did not address the optional

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<sup>239</sup> *Id.* at 17667, para.1.

<sup>240</sup> *Id.* at 17707, para. 117.

<sup>241</sup> 47 CFR § 54.903(a)(2). Carriers receiving CAF BLS are required to file line counts annually pursuant to section 54.903(a)(1) of the Commission's rules. 47 CFR § 54.903(a)(1). Rate-of-return carriers receiving Alternative Connect America Model support or Alaska Plan support must file annual line counts pursuant to section 54.313(h)(5). 47 CFR § 54.313(h)(5).

<sup>242</sup> See *MAG Order*, 16 FCC Rcd at 19686, para. 170. In the *MAG Order*, the Commission adopted ICLS, which was renamed CAF BLS when the Commission modernized the mechanism to include support for broadband-only loops. *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3117, para. 80.

<sup>243</sup> *MAG Order*, 16 FCC Rcd at 19686, para. 170.

<sup>244</sup> *Id.* The quarterly line counts were used to calculate each rate-of-return carrier's per-line support amount, which was necessary, in turn, to calculate the amount of support received by any competitive ETC serving the area.

<sup>245</sup> *Connect America Fund*, WC Docket No. 10-90 et al., Order, 27 FCC Rcd 605, 609-10, para. 17 (WCB 2012).

quarterly updates.<sup>246</sup> As a result, the optional quarterly update of lines as of September 30 is due on the same day, March 31, as the mandatory annual filing of line counts as of December 31, and other optional line count filings have an unnecessary six-month lag.

104. We seek comment on whether to eliminate the option of submitting quarterly line counts or alternatively to align the schedule to conform to the recently revised schedule for annual line count filings. The optional line counts are currently used for two purposes. First, USAC uses the quarterly line count updates to administer the monthly per-line cap on high-cost universal service support each quarter.<sup>247</sup> In practice, only 17 carriers filed updated line counts on December 31, 2020, and most of those were not subject to the per-line cap. We note that using the quarterly line counts to calculate a carrier's per-line support gives carriers that may be subject to monthly per-line cap a benefit, in that they can choose to file updated line counts only if the change would increase support to the carrier. Second, the quarterly line counts are used to determine preliminary CAF BLS when a CAF BLS support recipient acquires exchanges from another CAF BLS support recipient.<sup>248</sup> This preliminary CAF BLS amount is ultimately subject to true-up based on the carrier's actual cost and revenue data, including the transferred exchanges. Under either scenario, it is possible that the Commission could rely on the mandatory annual line counts with minimal loss of utility. Given the limited utility of the quarterly line count filings, should the Commission eliminate them altogether?

105. In the event that we decide to retain the optional quarterly filings, we seek comment on revising the filing schedule to align with the recently revised schedule for reporting annual lines. Consistent with section 54.903(a)(1), carriers must annually report lines counts as of December 31 on March 31.<sup>249</sup> We propose to revise section 54.903(a)(2) to permit carriers optionally to report updated lines as of March 31 on June 30, lines as of June 30 on September 30, and lines as of September 30 on December 31. This would eliminate confusion and provide a more consistent flow of line count data over the course of the year. We seek comment on this proposal.

## 6. Process for Relinquishment of ETC Designation

106. We seek comment on revising the process by which a support recipient subject to a state commission's jurisdiction can relinquish its ETC designation by requiring the ETC to provide advance notice to the Commission prior to seeking relinquishment and within 10 days after such relinquishment has been granted.

107. Section 254(e) of the Communications Act of 1934 provides that "only an eligible telecommunications carrier . . . shall be eligible to receive specific Federal universal service support."<sup>250</sup> States have primary jurisdiction for designating ETCs;<sup>251</sup> the Commission generally has authority only when "a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>252</sup> An ETC may relinquish its designation "in any area served by more than one" ETC so long as "the remaining [ETCs] ensure that all customers served by the

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<sup>246</sup> See *Connect America Fund*, WC Docket 10-90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893, 11937, para. 149 (2018).

<sup>247</sup> 47 CFR § 54.302.

<sup>248</sup> See 47 CFR § 54.902.

<sup>249</sup> See 47 CFR § 54.903(a)(1).

<sup>250</sup> 47 U.S.C. § 254(e).

<sup>251</sup> 47 U.S.C. § 214(e)(2).

<sup>252</sup> See 47 U.S.C. § 214(e)(6); see also 47 U.S.C. § 214(e)(3).

relinquishing carrier will continue to be served.”<sup>253</sup> Once the requesting carrier makes the required showing, the state commission or the Commission grants the request for relinquishment.

108. Where states designate ETCs, the Commission currently has no oversight over the ETC relinquishment process. As a result, a carrier could seek and be granted relinquishment of its ETC designation while it still has high-cost support obligations, such as an outstanding debt to USAC or unfulfilled deployment commitment.

109. Section 54.205 of the Commission’s rules requires an ETC seeking to relinquish its ETC designation granted by a state commission to give advance notice to the state commission.<sup>254</sup> We propose to extend that obligation to also require advance notice to the Commission. In addition, after the state commission grants its request to relinquish its designation, we propose to require the ETC to notify the Commission within 10 days. We believe the proposed notification requirements would help deter waste, fraud, and abuse in the management of the USF. In that regard, we note that, while states are largely responsible for granting ETC status, ETCs receive universal service support from the Commission on the basis of this designation. Moreover, such notification would enable the Commission to end support payments in a timely fashion and, where applicable, take action where a carrier fails to meet its deployment, performance, or other obligations. Conversely, when an ETC does not receive any federal USF support, we believe such notification is appropriate as it would allow us to confirm that in fact, there are not federal USF issues at stake. Given the impact of relinquishments on federal USF support, we believe we have ample legal authority to adopt the foregoing notice requirements, under Section 254 and as reasonably ancillary thereto.<sup>255</sup> We also propose to find that the benefits of providing an additional safeguard to protect the integrity of the Fund outweighs any modest burden resulting from the proposed notification obligation. We seek comment on these proposals and assessments of legal authority and costs and benefits.

## 7. Other Recommended Changes

110. We seek comment on whether we should consider any other clarifications, modifications or additions to our rules in this proceeding. Are there modifications that would improve administrative efficiency or reduce unnecessary burdens in the high-cost program? Are there examples where our rules have not kept pace or are otherwise not aligned with Commission orders? Are there any high-cost rules that are reflected solely in Commission orders but not in the Commission’s rules? In considering additional changes, we seek to balance our goals of facilitating the efficient operation of the high-cost program for all parties, while ensuring that the Commission continues to protect the fund from waste, fraud and abuse. Commenters are invited to specifically address how any suggested modifications will meet those goals.

111. The Commission, as part of its continuing effort to advance digital equity for all,<sup>256</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty

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<sup>253</sup> 47 U.S.C. § 214(e)(4).

<sup>254</sup> 47 CFR § 54.205.

<sup>255</sup> The Commission may adopt rules pursuant to its ancillary jurisdiction when ““(1) the Commission’s general jurisdictional grant under Title I [of the Communications Act] covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”” *Comcast Corp. v. FCC*, 600 F.3d 642, 646 (D.C. Cir. 2010) (quoting *American Library Ass’n v. FCC*, 406 F.3d 689, 691-92 (D.C. Cir. 2005)).

<sup>256</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

or inequality, invites comment on any equity-related considerations<sup>257</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

#### IV. PROCEDURAL MATTERS

112. *Paperwork Reduction Act Analysis.* This document contains proposed new information collection requirements. The Commission as part of its continuing effort to reduce paperwork burdens, invites the general public and 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, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

113. *Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act,<sup>258</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on a substantial number of small entities of the policies and rules addressed in this *NPRM*. The IRFA is set forth in Appendix C. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the *NPRM*, and should have a separate and distinct heading designating them as responses to the IRFA.

114. *Ex Parte Presentations- Permit-But-Disclose.* The proceeding this Notice of Proposed Rulemaking initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>259</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).

115. In light of the Commission's trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, we find the public interest requires a limited modification of the *ex parte* rules in this proceeding.<sup>260</sup> Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.<sup>261</sup> However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from disclosure in permit-but-disclose proceedings<sup>262</sup> and exempt from the prohibitions during the Sunshine Agenda period.<sup>263</sup> To be clear, while the Commission

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<sup>257</sup> The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

<sup>258</sup> 5 U.S.C. § 603.

<sup>259</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>260</sup> *See* 47 CFR § 1.1200(a).

<sup>261</sup> 5 U.S.C. §§ 551 *et seq.*

<sup>262</sup> *See generally* 47 CFR § 1.1206.

<sup>263</sup> *See* 47 CFR § 1.1203.



recognizes consultation is critically important, we emphasize that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.<sup>264</sup>

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

117. *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: [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs).
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>265</sup> See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788, 2788-89 (OS 2020).

118. Comments and reply comments exceeding ten pages must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also

<sup>264</sup> See *Updating of the Commission's Ex Parte Rules*, GN Docket No. 20-21, Notice of Proposed Rulemaking, 35 FCC Rcd 6947, 6950-54, paras. 9-21 (2020).

<sup>265</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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 of Proposed Rulemaking in order to facilitate our internal review process.

119. *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).

120. *Contact Person.* For further information about this proceeding, please contact, Theodore Burmeister, Special Counsel, Telecommunications Access Policy Division, Wireline Competition Bureau, at [Theodore.Burmeister@fcc.gov](mailto:Theodore.Burmeister@fcc.gov), or Jesse Jachman, Assistant Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, at [Jesse.Jachman@fcc.gov](mailto:Jesse.Jachman@fcc.gov).

## V. ORDERING CLAUSES

121. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 214, 218-220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 218-220, 254, 303(r), and 403, and sections 1.1, 1.3, 1.407, 1.411, and 1.412 of the Commission's rules, 47 CFR §§ 1.1, 1.3, 1.407, 1.411, and 1.412, the petition for rulemaking filed by the ACAM Broadband Coalition, RM-11868, IS GRANTED to the extent discussed herein, and this Notice of Proposed Rulemaking IS ADOPTED.

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

123. IT IS FURTHER ORDERED that this Notice of Proposed Rulemaking will be EFFECTIVE upon publication in the Federal Register, with comment dates indicated therein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A**  
**PROPOSED RULES**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36, 51 and 54 to read as follows:

**PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES**

1. The authority citation for Part 36 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 154(i) and (j), 201, 205, 220, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

2. 36.4 by adding paragraph (c) to read as follows:

\* \* \* \* \*

(c) As of 30 days after the effective date of this paragraph, incumbent local exchange carrier must seek waiver for study area boundary changes notwithstanding any prior exemptions from such waiver requests including, but not limited to, when a company is combining previously unserved territory with one of its study areas or a holding company is consolidating existing study areas within the same state. The Wireline Competition Bureau or the Office of Economics and Analytics may accept study area boundary corrections without a waiver.

**PART 51—INTERCONNECTION**

1. The authority citation for Part 51 continues to read as follows:

AUTHORITY: 47 U.S.C. 151-55, 201-05, 207-09, 218, 225-27, 251-52, 271, 332, unless otherwise noted.

2. Amend § 51.909 by adding paragraph (a)(7) to read as follows:

**§ 51.909 Transition of rate-of-return carrier access charges.**

(a) \* \* \*

- (7) Rate-of-return carriers subject to section 51.917 that merge with, consolidate with, or acquire, other rate-of-return carriers shall establish new rate caps as follows:
- (i) If the merged entity will file its own access tariff, the new rate cap for each rate element shall be the average of the preexisting rates of each study area weighted by the number of access lines in each study area; or
  - (ii) If the merged entity participates in the Association traffic-sensitive tariff and has to establish a single switched access rate for one or more rate elements, the new consolidated rate reflecting the cost characteristics of the merged entity, as determined by the Association, will serve as the new rate cap if the merged entity's CAF ICC support will not be more than two percent higher than the combined amount received by the entities prior to merger, using rate and demand levels for the preceding calendar year. A merging entity that does not satisfy this requirement may file a streamlined waiver petition that will be subject to the following procedure:

- (A) *Public Notice and Review Period.* The Wireline Competition Bureau will issue a public notice seeking comment on a petition for waiver of the two-percent threshold established by this rule.
- (B) *Comment Cycle.* Comments on petitions for waiver may be filed during the first 30 days following public notice, and reply comments may be filed during the first 45 days following public notice, unless the public notice specifies a different pleading cycle. All comments on petitions for waiver shall be filed electronically, and shall satisfy such other filing requirements as may be specified in the public notice.
- (C) *Effectuating Waiver Grant.* A waiver petition filed pursuant to this paragraph will be deemed granted 60 days after the release of the public notice seeking comment on the petition, unless opposed or the Commission acts to prevent the waiver from taking effect. The Association and the petitioner shall coordinate the timing of any tariff filing necessary to effectuate this change. The revised rate filed by the Association shall be the rate cap for purposes of applying section 51.909(a).

\* \* \* \* \*

3. Amend § 51.917 by revising paragraph (c) to read as follows:

**§ 51.917 Revenue Recovery for Rate-of-Return Carriers.**

\* \* \* \* \*

(c) Base Period Revenue

- (1) *Adjustment for Access Stimulation activity.* 2011 Rate-of-Return Carrier Base Period Revenue shall be adjusted to reflect the removal of any increases in revenue requirement or revenues resulting from Access Stimulation activity the Rate-of-Return Carrier engaged in during the relevant measuring period. A Rate-of-Return Carrier should make this adjustment for its initial July 1, 2012, tariff filing, but the adjustment may result from a subsequent Commission or court ruling.
- (2) *Adjustment for Merger, Consolidation or Acquisition.* Rate-of-return carriers subject to this section that merge with, consolidate with, or acquire, other rate-of-return carriers shall establish combined Base Period Revenue and interstate revenue requirement levels as follows:
- (i) If the merger or acquisition is of two or more study areas, the Base Period Revenue and interstate revenue requirement levels of the study areas shall be added together to establish a new Base Period Revenue and interstate revenue requirement for the newly combined entity; or
- (ii) If a portion of a study area is being acquired and merged into another study area, the Base Period Revenue and interstate revenue requirement levels of the partial study area shall be based on the proportion of access lines acquired compared to the total access lines in the pre-merger study area.

\* \* \* \* \*

**PART 54 – UNIVERSAL SERVICE**

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

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302 unless otherwise noted.

2. Amend § 54.205 by revising the last sentence of paragraph (a) to read as follows:

**§ 54.205 Relinquishment of universal service.**

(a) \* \* \* An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the state commission and the Commission of such relinquishment.

\* \* \* \* \*

3. Amend § 54.310 by revising paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) *Deployment obligation.* Recipients of Connect America Phase II model-based support must complete deployment to 40 percent of supported locations by December 31, 2017, to 60 percent of supported locations by December 31, 2018, to 80 percent of supported locations by December 31, 2019, and to 100 percent of supported locations by December 31, 2020. Recipients of Connect America Phase II awarded through a competitive bidding process, including New York’s New NY Broadband Program, must complete deployment to 40 percent of supported locations by December 31, 2022, to 60 percent of supported locations December 31, 2023, to 80 percent of supported locations by December 31, 2024, and to 100 percent of supported locations by December 31, 2025. Compliance shall be determined based on the total number of supported locations in a state.

\* \* \*

\* \* \* \* \*

4. Amend § 54.313 by revising paragraphs (a), (i), the first sentence of subparagraph (j)(1) and subparagraph(j)(2), and adding subparagraphs ) (j)(3) and (4) to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(2) A certification that the pricing of the company’s voice services during the prior calendar year is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the public notice issued by the Wireline Competition Bureau and the Office of Economics and Analytics;

(3) A certification that the pricing of a service that meets the Commission's broadband public interest obligations during the prior calendar year is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau and the Office of Economics and Analytics, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support;

\* \* \*

(i) All reports pursuant to this section shall be filed with the Administrator.

(j) \* \* \*

(1) In order for a recipient of high-cost support to continue to receive support or to retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. \* \* \*

\* \* \*

(2) *Grace period.* An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1, or the quarterly reporting required by subparagraph (j)(3) of this section after the required date, but within 4 business days will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to paragraph (a)(4) of this section have not missed the July 1 deadline in any prior year.

(3) Reports of network performance testing results pursuant to subparagraph (a)(6) of this section shall be filed quarterly on the first day of the second month following the quarter in the tests were conducted, except reports for the first quarter of each year may be reported on July 1 in conjunction with the annual reports.

(4) Any support reductions resulting from a failure to make required filing pursuant to this section shall be applied in the next month following the missed deadline.

\* \* \* \* \*

5. Amend § 54.314 by revising paragraphs (a), (b), (c) and (d) as follows:

**§ 54.314 Certification of support for eligible telecommunications carriers.**

(a) *Certification.* States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

\* \* \* \* \*

(b) *Carriers not subject to State jurisdiction.* An eligible telecommunications carrier not subject to the jurisdiction of a State that desires to receive support pursuant to the high-cost program must file an annual certification with the Administrator stating that all federal high-cost support provided to such carrier was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

(c) *Certification format.* (1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with the Administrator of the high-cost universal mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section.

(d) *Filing deadlines.* (1) In order for an eligible telecommunications carrier to receive federal high-cost support, the state or the eligible telecommunications carrier, if not subject to the jurisdiction of a state, must file an annual certification, as described in paragraph (c) of this section, with the Administrator by October 1 of each year. If a state or eligible telecommunications carrier files the annual certification after the October 1 deadline, the carrier subject to the certification shall receive a reduction in its support pursuant to the following schedule:

(i) An eligible telecommunications carrier subject to certifications filed after the October 1 deadline, but by October 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier subject to certifications filed on or after October 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(iii) Any support reductions resulting from a failure to make required filing pursuant to this section shall be applied in the next month following the missed deadline.

(2) *Grace period.* If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but within 4 business days, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(4) have not missed the October 1 deadline in any prior year.

6. Amend § 54.316 to revise paragraphs (a) (b) and (c) to read as follows.

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

(a) \* \* \* \* \*

(1) Recipients of high-cost support with defined broadband deployment obligations pursuant to § 54.308(a), 54.308(c), or § 54.310(c) shall provide to the Administrator information regarding the locations to which the eligible telecommunications carrier is offering broadband service in satisfaction of its public interest obligations, as defined in either § 54.308 or § 54.309.\* \* \*

\* \* \* \* \*

(b) Broadband deployment certifications. ETCs that receive support to serve fixed locations shall have the following broadband deployment certification obligations:

\* \* \*

(4) Recipients of Connect America Phase II auction support, including New York's New NY Broadband Program, shall provide: No later than March 1, 2023, and every year thereafter ending March 1, 2026 a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations specific in §54.309 to the required percentage of its supported locations in each state as set forth in §54.310(c).

\* \* \*

(7) Recipients of Uniendo a Puerto Rico Fund Stage 2 fixed and Connect USVI Fund fixed Stage 2 fixed support shall provide: No later than March 1 following each service milestone in § 54.1506, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specified in § 54.1507 to the required percentage of its supported locations in Puerto Rico and the U.S. Virgin Islands as set forth in § 54.1506. The annual certification shall quantify the carrier's progress toward or, as applicable, completion of deployment in accordance with the resilience and redundancy commitments in its application and in accordance with the detailed network plan it submitted to the Wireline Competition Bureau.

\* \* \* \* \*

(c) *Filing deadlines.* In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designations, it must submit the annual reporting information by March 1 as described in paragraphs (a) and (b) of this section. ETCs that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

- (1) An ETC that certifies after the March 1 deadline, but by March 8, will have its support reduced in an amount equivalent to seven days in support.
- (2) An ETC that certifies on or after March 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;
- (3) *Grace period.* An ETC that certifies the information required by this section within 4 business days of March 1 will not receive a reduction in support if the ETC and its holding company, operating companies, and affiliates as reported pursuant to §54.313(a)(4) in their report due July 1 of the prior year, have not missed the deadline in any prior year.
- (4) Any support reductions resulting from a failure to make a required filing pursuant to this section shall be applied in the next month following the missed deadline.
- (5) An ETC that met the March 1 deadline by reporting locations pursuant to paragraph (a)(1), is permitted to report locations after the March 1 deadline (untimely reported locations) but shall have support reduced based on the percentage of the ETC's total locations for the reporting year being reported after March 1 and the number of days after March 1. The grace period in paragraph (c)(3) does not apply to support reductions for untimely reported locations.



7. Revise subpart K to read as follows:

**Subpart K—Connect America Fund Broadband Loop Support**

8. Amend § 54.902 by revising paragraphs (a) and (b) to read as follows:

**§ 54.902 Calculation of CAF BLS Support for Transferred Exchanges.**

(a) In the event that a rate-of-return carrier receiving CAF BLS acquires exchanges from an entity that also receives CAF BLS, CAF BLS for the transferred exchanges shall be distributed as follows:

\*\*\*\*\*

(b) In the event that a rate-of-return carrier receiving CAF BLS acquires exchanges from an entity receiving frozen support, model-based support, or auction-based support, absent further action by the Commission, the exchanges shall receive the same amount of support and be subject to the same public interest obligations as specified pursuant to the frozen, model-based, or auction-based program.

9. Amend § 54.903 by revising the first sentence of paragraph (a)(2) to read as follows:

**§ 54.903 Obligations of rate-of-return carriers and the Administrator.**

(a) \*\*\*

(2) A rate-of-return carrier may submit quarterly updates of the information in paragraph (a) of this section, reporting data as of the last day of a quarter on the final day of the next quarter. \* \* \*

\*\*\*\*\*

10. Amend § 54.1302 by adding two sentences to paragraph (a) to read as follows:

**§ 54.1302 Calculation of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment for rate-of-return carriers.**

(a) \*\*\* Beginning January 1, 2021, and each calendar year thereafter, the base amount of the nationwide loop cost expense adjustment shall be the annualized amount of the final six months of the preceding calendar year. The total amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment for the first six months of the calendar year shall be the base amount divided by two and for the second six months of the calendar year shall be the base amount divided by two, multiplied times one plus the Rural Growth Factor calculated pursuant to §54.1303.\*\*\*\*\*

11. Amend § 54.1307 by adding a sentence to subparagraph (2) of paragraph (a) to read as follows:

**§ 54.1307 Submission of Information by the National Exchange Carrier Association**

(a) \*\*\*

(1) \*\*\*

(2) \*\*\* The amounts for January 1 to June 30 and for July 1 to December 31 shall be shown separately.

\*\*\*\*\*

## APPENDIX B

## 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 small entities by the policies and rules proposed in this NPRM. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the 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 NPRM 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. In this NPRM, we seek comment on a proposal by the Coalition to achieve widespread deployment of 100/20 Mbps broadband service throughout the areas served by carriers currently receiving Alternative Connect America Cost Model (A-CAM) support, and we initiate a targeted inquiry into the management and administration of the high-cost program of the Universal Service Fund (USF). For more than a decade, the Commission has made substantial progress in reforming and modernizing the various high-cost universal service support mechanisms. This NPRM continues the progress by seeking methods to increase efficiency and efficacy of the program.

**B. Legal Basis**

3. The proposed action is authorized pursuant to sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), and 403.

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

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the Notice seeks comment, 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 that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>7</sup>

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 845 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See 5 U.S.C. § 603(a).

<sup>4</sup> See 5 U.S.C. § 603(b)(3).

<sup>5</sup> See 5 U.S.C. § 601(6).

<sup>6</sup> 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.

5. *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 Small Business Administration's (SBA) 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 32.5 million businesses.<sup>10</sup>

6. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise that is independently owned and operated and is not dominant in its field."<sup>11</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>12</sup> Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>13</sup>

7. 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>14</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>15</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>16</sup> Of this number there were

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<sup>8</sup> See 5 U.S.C. § 601(3)-(6).

<sup>9</sup> See SBA, Office of Advocacy, Frequently Asked Questions, "What is a small business?," <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

<sup>10</sup> *Id.*

<sup>11</sup> See 5 U.S.C. § 601(4).

<sup>12</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), "Who must file,"

<https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>13</sup> See Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000, for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>14</sup> See 5 U.S.C. § 601(5).

<sup>15</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>16</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

36,931 general purpose governments (county<sup>17</sup>, municipal and town or township<sup>18</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>19</sup> with enrollment populations of less than 50,000.<sup>20</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>21</sup>

8. *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.<sup>22</sup> 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.<sup>23</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>24</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>25</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>26</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry

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<sup>17</sup> See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>18</sup> See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>19</sup> See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>20</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>21</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

<sup>22</sup> See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

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

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

<sup>25</sup> Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

<sup>26</sup> See 13 CFR § 121.201, NAICS Code 517311.

for the entire year.<sup>27</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>28</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.<sup>29</sup> Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.<sup>30</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

9. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers<sup>31</sup> is the closest industry with an SBA small business size standard.<sup>32</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>33</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>34</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>35</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>36</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers.<sup>37</sup> Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.<sup>38</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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<sup>27</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>28</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>29</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/d.lic/attachments/DOC-379181A1.pdf>.

<sup>30</sup> *Id.*

<sup>31</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>32</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>33</sup> Fixed Local Exchange Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>34</sup> *Id.*

<sup>35</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>36</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>37</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/d.lic/attachments/DOC-379181A1.pdf>.

<sup>38</sup> *Id.*

10. *Incumbent LECs.* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers<sup>39</sup> is the closest industry with an SBA small business size standard.<sup>40</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>41</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>42</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>43</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers.<sup>44</sup> Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees.<sup>45</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

11. *Competitive Local Exchange Carriers (Competitive LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers.<sup>46</sup> Wired Telecommunications Carriers<sup>47</sup> is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>48</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>49</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>50</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were

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<sup>39</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>40</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>41</sup> *Id.*

<sup>42</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>43</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>44</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2021)*, <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

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

<sup>46</sup> Competitive Local Exchange Service Providers include the following types of providers: Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, Local Resellers, and Other Local Service Providers.

<sup>47</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>48</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>49</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>50</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

competitive local exchange service providers.<sup>51</sup> Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees.<sup>52</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

12. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers<sup>53</sup> is the closest industry with an SBA small business size standard.<sup>54</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>55</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>56</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>57</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees.<sup>58</sup> Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

13. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard.<sup>59</sup> 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.<sup>60</sup> Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>61</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>62</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>63</sup> U.S. Census Bureau data for 2017

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<sup>51</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

<sup>52</sup> *Id.*

<sup>53</sup> See U.S. Census Bureau, 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>54</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>55</sup> *Id.*

<sup>56</sup> See U.S. Census Bureau, 2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>57</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>58</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>.

<sup>59</sup> See U.S. Census Bureau, 2017 NAICS Definition, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>60</sup> *Id.*

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

<sup>62</sup> *Id.*

<sup>63</sup> See 13 CFR § 121.201, NAICS Code 517911.



show that 1,386 firms in this industry provided resale services for the entire year.<sup>64</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>65</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services.<sup>66</sup> Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees.<sup>67</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers<sup>68</sup> is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>69</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>70</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>71</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>72</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>73</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services.<sup>74</sup> Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees.<sup>75</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

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<sup>64</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>65</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>66</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId/lic/attachments/DOC-379181A1.pdf>.

<sup>67</sup> *Id.*

<sup>68</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517911 Telecommunications Resellers," <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>72</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>73</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>74</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId/lic/attachments/DOC-379181A1.pdf>.

<sup>75</sup> *Id.*



15. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers<sup>76</sup> is the closest industry with an SBA small business size standard.<sup>77</sup> The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>78</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year.<sup>79</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>80</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services.<sup>81</sup> Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees.<sup>82</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered 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. Telecommunications Resellers<sup>83</sup> is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure.<sup>84</sup> Mobile virtual network operators (MVNOs) are included in this industry.<sup>85</sup> The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees.<sup>86</sup> U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year.<sup>87</sup> Of that number, 1,375 firms operated with fewer than 250 employees.<sup>88</sup>

<sup>76</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>77</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>78</sup> *Id.*

<sup>79</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>80</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>81</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2021)*, <https://docs.fcc.gov/pub/ld.lic/attachments/DOC-379181A1.pdf>.

<sup>82</sup> *Id.*

<sup>83</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517911 Telecommunications Resellers,"* <https://www.census.gov/naics/?input=517911&year=2017&details=517911>.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> See 13 CFR § 121.201, NAICS Code 517911.

<sup>87</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517911, <https://data.census.gov/cedsci/table?y=2017&n=517911&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePreview=false>.

<sup>88</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services.<sup>89</sup> Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees.<sup>90</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>91</sup> 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>92</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>93</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>94</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>95</sup> Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.<sup>96</sup> Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.<sup>97</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Cable and Other Subscription Programming*. The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis.<sup>98</sup> 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.<sup>99</sup> 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>100</sup> The SBA small business size standard for this industry classifies firms with

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<sup>89</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

<sup>90</sup> *Id.*

<sup>91</sup> See U.S. Census Bureau, 2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)," <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>92</sup> *Id.*

<sup>93</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>94</sup> See U.S. Census Bureau, 2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>95</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>96</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

<sup>97</sup> *Id.*

<sup>98</sup> See U.S. Census Bureau, 2017 NAICS Definition, "515210 Cable and Other Subscription Programming," <https://www.census.gov/naics/?input=515210&year=2017&details=515210>.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

annual receipts less than \$41.5 million as small.<sup>101</sup> Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year.<sup>102</sup> Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more.<sup>103</sup> Based on this data, the Commission estimates that a majority of firms in this industry are small.

19. *Cable Companies and Systems (Rate Regulation)*. The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Based on available data, as of December 2020, there were approximately 45,308,192 basic cable video subscribers in the top Cable MSOs in the United States.<sup>104</sup> Only five cable operators serving cable video subscribers in the top Cable MSOs had more than 400,000 subscribers.<sup>105</sup> Accordingly, the Commission estimates that the majority of cable operators are small.

20. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, contains a size standard for small cable system operators, which classifies "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," as small.<sup>106</sup> As of December 2020, there were approximately 45,308,192 basic cable video subscribers in the top Cable MSOs in the United States.<sup>107</sup> Accordingly, an operator serving fewer than 453,082 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>108</sup> Based on available data, all but five of the cable operators in the Top Cable MSOs have less than 453,082 subscribers and can be considered small entities under this size standard.<sup>109</sup> We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>110</sup> Therefore, we

<sup>101</sup> See 13 CFR § 121.201, NAICS Code 515210.

<sup>102</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515210, <https://data.census.gov/cedsci/table?y=2017&n=515210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. The US Census Bureau withheld publication of the number of firms that operated for the entire year to avoid disclosing data for individual companies (see Cell Notes for this category).

<sup>103</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in all categories of revenue less than \$500,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices)

<sup>104</sup> S&P Global Market Intelligence, *Top Cable MSOs 12/20Q*, <https://platform.marketintelligence.spglobal.com/> (Dec. 2020).

<sup>105</sup> *Id.*

<sup>106</sup> 47 U.S.C. § 543(m)(2); see also 47 CFR § 76.901(e).

<sup>107</sup> S&P Global Market Intelligence, *Top Cable MSOs 12/20Q*, <https://platform.marketintelligence.spglobal.com/> (Dec. 2020).

<sup>108</sup> 47 CFR § 76.901(e).

<sup>109</sup> S&P Global Market Intelligence, *Top Cable MSOs 12/20Q*, <https://platform.marketintelligence.spglobal.com/> (Dec. 2020).

<sup>110</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(e) of the Commission's rules. See 47 CFR § 76.910(b).

are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

21. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.<sup>111</sup> 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.<sup>112</sup> Providers of Internet services (e.g. dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.<sup>113</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>114</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>115</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>116</sup> Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

22. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.<sup>117</sup> Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.<sup>118</sup> The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.<sup>119</sup> U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.<sup>120</sup> Of this number, 624 firms had fewer than 250

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<sup>111</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>115</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>116</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>117</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>118</sup> *Id.*

<sup>119</sup> See 13 CFR § 121.201, NAICS Code 334220.

<sup>120</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

employees.<sup>121</sup> Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

23. *Semiconductor and Related Device Manufacturing.* This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices.<sup>122</sup> Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices.<sup>123</sup> The SBA small business size standard for this industry classifies entities having 1,250 or fewer employees as small.<sup>124</sup> U.S. Census Bureau data for 2017 show that there were 729 firms in this industry that operated for the entire year.<sup>125</sup> Of this total, 673 firms operated with fewer than 250 employees.<sup>126</sup> Thus under the SBA size standard, the majority of firms in this industry can be considered small.

24. *Software Publishers.* This industry comprises establishments primarily engaged in computer software publishing or publishing and reproduction.<sup>127</sup> Establishments in this industry carry out operations necessary for producing and distributing computer software, such as designing, providing documentation, assisting in installation, and providing support services to software purchasers.<sup>128</sup> These establishments may design, develop, and publish, or publish only.<sup>129</sup> The SBA small business size standard for this industry classifies businesses having annual receipts of \$41.5 million or less as small.<sup>130</sup> U.S. Census Bureau data for 2017 indicate that 7,842 firms in this industry operated for the entire year.<sup>131</sup> Of this number 7,226 firms had revenue of less than \$25 million.<sup>132</sup> Based on this data, we conclude that a majority of firms in this industry are small.

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<sup>121</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>122</sup> See U.S. Census Bureau, *2017 NAICS Definition, "334413 Semiconductor and Related Device Manufacturing,"* <https://www.census.gov/naics/?input=334413&year=2017&details=334413>.

<sup>123</sup> *Id.*

<sup>124</sup> See 13 CFR § 121.201, NAICS Code 334413.

<sup>125</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 334413, <https://data.census.gov/cedsci/table?y=2017&n=334413&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>126</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>127</sup> See U.S. Census Bureau, *2017 NAICS Definition, "511210 Software Publishers,"* <https://www.census.gov/naics/?input=511210&year=2017&details=511210>.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> See 13 CFR § 121.201, NAICS Code 511210.

<sup>131</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 511210, <https://data.census.gov/cedsci/table?y=2017&n=511210&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>132</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

25. *Wired Broadband Internet Access Service Providers. (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.<sup>133</sup> Wired broadband internet services fall in the Wired Telecommunications Carriers industry.<sup>134</sup> The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.<sup>135</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>136</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>137</sup> Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.<sup>138</sup> The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2020 Communications Marketplace Report*,<sup>139</sup> we believe that the majority of wireline internet access service providers can be considered small entities.

26. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).* Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as “[a] company that provides end-users with wireless access to the Internet[.]”<sup>140</sup> Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.<sup>141</sup> Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except

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<sup>133</sup> See 47 CFR § 1.7001(a)(1).

<sup>134</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers,” <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>135</sup> See 13 CFR § 121.201, NAICS Code 517311.

<sup>136</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>137</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>138</sup> See *IAS Status 2018*, Fig. 30 (The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

<sup>139</sup> See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 44, paras. 34-35, Figs. II.B.2-4, 6. (2020) (*2020 Communications Marketplace Report*).

<sup>140</sup> Federal Communications Commission, *Internet Access Services: Status as of December 31, 2018 (IAS Status 2018)*, Industry Analysis Division, Office of Economics & Analytics (September 2020). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

<sup>141</sup> See 47 CFR § 1.7001(a)(1).



Satellite).<sup>142</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>143</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>144</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>145</sup> Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.<sup>146</sup> The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2020 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,<sup>147</sup> as well as on terrestrial fixed wireless broadband providers in general,<sup>148</sup> we believe that the majority of wireless internet access service providers can be considered small entities.

27. *Internet Service Providers (Non-Broadband)*. Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.<sup>149</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>150</sup> For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>151</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>152</sup> Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

28. *All Other Information Services*. This industry comprises establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet

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<sup>142</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite)"*, <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

<sup>143</sup> See 13 CFR § 121.201, NAICS Code 517312.

<sup>144</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFFIRM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFFIRM&hidePreview=false>.

<sup>145</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

<sup>146</sup> See *IAS Status 2018*, Fig. 30.

<sup>147</sup> See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 4, paras. 9-13. (2020) (*2020 Communications Marketplace Report*).

<sup>148</sup> *Id.* at para. 91.

<sup>149</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications"*, <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>150</sup> See 13 CFR § 121.201, NAICS Code 517919.

<sup>151</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFFIRM&hidePreview=false>.

<sup>152</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

publishing and broadcasting, and Web search portals).<sup>153</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$30 million or less as small.<sup>154</sup> U.S. Census Bureau data for 2017 show that there were 704 firms in this industry that operated for the entire year.<sup>155</sup> Of those firms, 556 had revenue of less than \$25 million.<sup>156</sup> Consequently, we estimate that the majority of firms in this industry are small entities.

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

29. In this NPRM we seek comment on ways to improve the management, administration, and oversight of the high-cost program, including: streamlining reporting and certification requirements; improving review of mergers between rate-of-return local exchange carriers; clarifying support for exchanges acquired by a CAF BLS recipient; establishing a streamlined process to merge jointly-owned study areas; aligning the schedule for CAF BLS recipients to file optional quarterly line count updates; improving the process to relinquish eligible telecommunications carrier (ETC) status; and improving our audit program. At this time we cannot quantify the cost of compliance with the potential rule changes discussed herein. However, we do not believe that the costs and/or administrative burdens associated with any of the proposal rule changes will unduly burden small entities. We discuss the new or modified obligations that result below, and seek comment on these matters, including cost and benefit analyses supported by quantitative and qualitative data from the parties in the proceeding.

30. Specifically, the NPRM seeks comment on a proposal by the by Coalition for new A-CAM. The NPRM also seeks comment regarding several changes that would improve or streamline annual reporting and certification requirements. First, the NPRM seeks comment on and proposes modifying section 54.313(i) of our rules from the Code of Federal Regulations (CFR) because, pursuant to a previous Commission order, high-cost recipients are no longer subject to the requirement to file annual reporting and certifications with the Commission, relevant state commissions, relevant or authority in a U.S. Territory, or Tribal government now that the information is available from USAC. Second, the Commission proposes to align more closely support reductions for a carrier's actual failure to comply with the reporting and certification deadline by directing USAC to reduce support in the month immediately following the date of failure. Third, the NPRM seeks comment on quarterly reporting requirements for performance testing, on making such requirements mandatory for all high-cost support recipients, and on the filing schedule. Fourth, we seek comment on relieving privately held Alternative Connect America Model (A-CAM) carriers of the requirement to file audited financials annually. Fifth, the NPRM proposes to modify the Commission's rules to create a consistent grace period for all compliance filings by modifying all grace periods to "within four business days." Sixth the NPRM seeks comment on provisions related to the location reporting and certification requirements for ETCs receiving high-cost USF support. Seventh, the NPRM proposes to codify uniform deployment,

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<sup>153</sup> See U.S. Census Bureau, *2017 NAICS Definition, "519190 All Other Information Services,"* <https://www.census.gov/naics/?input=519190&year=2017&details=519190>.

<sup>154</sup> See 13 CFR § 121.201, NAICS Code 519190.

<sup>155</sup> See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 519190, <https://data.census.gov/cedsci/table?y=2017&n=519190&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

<sup>156</sup> *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue of less than \$100,000 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see [https://www.census.gov/glossary/#term\\_ReceiptsRevenueServices](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).



certification and location reporting deadlines for all CAF Phase II auction recipients and clarify deadlines for the Bringing Puerto Rico Together and Connect USVI stage 2 fixed funds. Eighth, the NPRM seeks comment on methods to obtain more accurate information on the actual speeds of broadband service provided through the high-cost programs. Ninth, the NPRM proposes amending section 54.316(a)(1) by deleting extraneous language to more accurately reflect the current scope of the Commission's location reporting obligations. Tenth, the NPRM proposes to modify the voice and broadband rate certifications rules to clarify the reporting period. Finally, the NPRM proposes a support reduction scheme for when a carrier reports some locations after the deadline for the reporting period.

31. In addition, the NPRM seeks comment on proposals to eliminate the need for a rate-of-return LEC that is involved in a merger, consolidation, or acquisition with another rate-of-return carrier to obtain a waiver of specified intercarrier compensation rules when certain conditions apply. The NPRM also seeks comment on amending section 54.902, which governs the amount of CAF BLS received by a rate-of-return carrier when it acquires exchanges from another incumbent local exchange carrier. The NPRM proposes to modify section 54.902(a) to expressly limit its application, so that a carrier would only be eligible for CAF BLS for exchanges acquired from existing CAF BLS recipients, and to modify section 54.902(b) to include any model-based, auction-based or frozen support. The NPRM also seeks comment on several proposals to modify the study area boundary process.

32. The NPRM also seeks comment on updating the schedule for CAF BLS support recipients to file optional quarterly line counts on the FCC Form 507 or, alternatively, eliminating optional quarterly line counts entirely. Additionally, the NPRM seeks comment on revising the process by which a support recipient can relinquish its ETC designation by requiring a certification that all outstanding universal service issues have been satisfied prior to relinquishment. Taken together, all of these proposals will reduce burdens on carriers and the Commission and will encourage carriers to become more efficient and productive.

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

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.<sup>157</sup>

34. In the NPRM, the Commission seeks comment from all entities, including small entities, regarding the impact of these proposed rules to improve the efficiency and efficacy of the high-cost program. The NRPM proposes changes that would improve or streamline annual reporting and certification requirements and proposes to eliminate a codified rule that is no longer applicable. These changes will eliminate ambiguity and reduce administrative burdens on all recipients, including small entities. The NPRM seeks comment on relieving privately held carriers receiving A-CAM support, most of which are small entities, of the requirement to file audited financial statements annually. The NPRM proposes to adopt consistent grace periods of "four business days" which will eliminate confusion for all entities from grace periods falling on a weekend or holiday. The NPRM also proposes to eliminate the need for rate-of-return local exchange carriers, most of which are small entities, involved in a merger, consolidation, or acquisition with another rate-of-return carrier to obtain a waiver of certain intercarrier compensation rules. For carriers that do not satisfy the criteria identified for transactions when waiver is not required, the NPRM proposes to streamline the CAF ICC merger approval process. The Commission

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<sup>157</sup> 5 U.S.C. § 603(c)(1)-(4).

asks and will consider alternatives to the proposals and on alternative ways of implementing the proposals.

35. 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 NPRM are 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**

36. None.

**STATEMENT OF  
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Connect America Fund, et al.*, WC Docket Nos. 10-90, No. 14-58, 09-197, 16-271, RM-11868, Notice of Proposed Rulemaking (May 19, 2022).

We're on a mission to connect everyone, everywhere in this country to high-speed broadband. We've got new tools to do it courtesy of new laws like the Infrastructure Investment and Jobs Act and new initiatives like the Broadband Equity, Access and Deployment Program. But the old tools matter, too. One of the most consequential you'll find is in Section 254 of the Communications Act. It charges the Federal Communications Commission with supporting communications networks in "rural, insular, and high cost areas."

A lot turns on that phrase. It is the foundation of FCC universal service programs that help deliver communications services to remote communities across the country. That brings us to the Alternative Connect America Cost Model, known as A-CAM. This is a universal service program that the FCC developed for rate-of-return carriers serving high-cost and hard-to-reach areas. It provides a fixed amount of funding in return for commitments to build broadband. It has led to fiber facilities deeper in the networks of carriers serving these rural communities—bringing higher speeds and greater bandwidth to consumers.

But like all good programs, it requires review when time advances and technology changes. That is what we start here today. We propose a modernized, enhanced A-CAM program. This means raising deployment obligations to 100 Megabits down and 20 Megabits up. It also means finding other ways to align our work with recent legislation like the Infrastructure Investment and Jobs Act. On that score, I want to thank Commissioner Starks and Commissioner Carr for their efforts to harmonize our proposal with the cyber standards in the Broadband, Equity, Access and Deployment Program as well as participation in the Affordable Connectivity Program.

This is not the only effort we're making to ensure that new broadband programs are working hand-in-glove with long-standing FCC efforts. Last year, we signed a Memorandum of Understanding with the National Telecommunications and Information Administration and Department of Agriculture to memorialize how we plan to work together and share broadband data. And just one week ago, we signed an agreement to do the same with the Department of Treasury.

To reach everyone, everywhere it will take this kind of coordination. It will also take thoughtful effort to update our existing programs—as we do here with A-CAM.

Thank you to the staff who worked on this rulemaking, including Allison Baker, Ted Burmeister, Rebekah Douglas, Lynne Engledow, Jodie Griffin, Trent Harkrader, Jesse Jachman, Sue McNeil, Joe Sorresso, Hayley Steffen, Gil Strobel, Stephen Wang, and Suzanne Yelen from the Wireline Competition Bureau; Jim Eisner, Peter Gingeleskie, Michael Janson, and Craig Stroup from the Office of Economics and Analytics; Malena Barzilai, Rick Mallen, Linda Oliver, and Bill Richardson from the Office of General Counsel; and Matthew Duchesne and Barbara Esbin from the Consumer and Governmental Affairs Bureau.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Connect America Fund, et al.*, WC Docket Nos. 10-90, No. 14-58, 09-197, 16-271, RM-11868, Notice of Proposed Rulemaking (May 19, 2022).

Canistota is one of South Dakota's classic small towns. Like many of the farming communities that dot the eastern part of the state, Canistota's founders carved the town's main streets out of the clay, sand, and gravel that dominate the Drift Prairie region in the late 1800s. The 200 or so houses that make up the community are surrounded by wide acres and miles of corn and soybean fields. And it's an exciting time for Canistota-ans. Today, the community is served by a new, high-speed connection that is equivalent to what you would expect in a far bigger city. About a year ago, I had the chance to join Congressman Dusty Johnson as a crew from Golden West Telecommunications pushed aside old copper lines that dated back to the 1970s and pulled the fiber needed to deliver high-speed service to the town.

Golden West began serving the area nearly 20 years ago, and thanks to the FCC's A-CAM program, they've made steady progress expanding access to high-speed broadband to the homes and businesses located there. The new high-speed connections are a game changer. The increased bandwidth has opened up new opportunities for telehealth, education, and precision agriculture for the families that live there. Given the low-population density throughout the area, it would likely be impossible for any ISP to find the capital necessary to construct a high-speed network. That's why A-CAM, as well as our other high-cost programs, are so important.

So I am pleased today that we are considering ways to enable A-CAM recipients to build out even more high-speed connections. And our focus on this is coming at the right time. As I've talked about before, there is no shortage of dollars out there available for broadband. In fact, by my calculations there's at least \$800 billion spread across various departments and agencies. And just last week, NTIA released rules for their new \$42.5 billion BEAD program. Going forward, it's imperative that these programs be coordinated in order to prevent subsidized overbuilding in areas already funded by other federal or state programs.

We have an historic opportunity before us to close the digital divide once and for all. But we will fail unless we have smart policies in place to guide those efforts. So I look forward to working with my colleagues on steps we can take to leverage existing programs—such as A-CAM—to deliver more high-speed connections across America while recognizing any potential actions would not occur in a vacuum.

I thank staff from the Wireline Competition Bureau for their work on this item and Chairwoman Rosenworcel for bringing it forward for consideration. It has my support.

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: *Connect America Fund, et al.*, WC Docket Nos. 10-90, No. 14-58, 09-197, 16-271, RM-11868, Notice of Proposed Rulemaking (May 19, 2022).

The availability and affordability of broadband access nationwide is one of the highest priorities of the Commission, and personally, to me as a Commissioner. Another is ensuring that our networks are secure. This Notice of Proposed Rulemaking offers the opportunity to vote to seek comment on both, and I am proud to do so.

First, the item seeks comment on a proposal by the ACAM Broadband Coalition to expand our Alternative Connect American Model (A-CAM) plans in both scope and duration. With additional funding and an expansion of the length of time under which electing carriers would receive support, these carriers would increase deployment speeds up to 100 Mbps download, and 20 Mbps upload in some of the most challenging and expensive areas to serve in the country. If the Commission accepts this proposal, after a thorough review of the record that develops, some consumers served by A-CAM carriers could see a 4-fold, 10-fold, or even 20-fold increase in their speeds. That would be a big win. At the same time, the item appropriately seeks comment on affordability, and how to ensure those least available to afford broadband can participate in the benefits of these federally subsidized networks. Additionally, the increase in funding available could encourage other rate-of-return carriers to sign up for this Enhanced A-CAM. Moving carriers from legacy support to model-based support has been a Commission goal, and I support it.

This is a fitting time to be discussing the future of A-CAM. NTIA only days ago released its Notice of Funding Opportunity for the \$42 billion dollar Broadband Equity, Access, and Deployment Program, often referred to as BEAD. It is instructive—in particular on our expectations of future build-outs. Specifically, one place where I look forward to understanding further after reviewing the record is the alignment between the short BEAD build-out window and the proposed timeframe submitted by the A-CAM providers. More holistically, our Notice appropriately seeks comment on how our A-CAM program can complement BEAD, and I look forward to reviewing the comments to see how the programs can work together.

It is critical that we look at any A-CAM expansion with an eye on BEAD, because one thing that can't happen is for either A-CAM or BEAD to overbuild or waste support. I take our role as a steward of the Universal Service Fund seriously, and we must ensure that this once-in-a-lifetime federal support is used to deliver broadband at competitive speeds in places where it has so far been lacking. The two programs, if they work together, will be able to expand broadband to benefit previously unserved and underserved communities, especially, in low-income communities, communities of black and brown majorities that have so often been overlooked, and in rural communities desperate for access to service to participate in our connected society. The stakes are high: for our part here at the FCC, we're spending an enormous amount of ratepayer money, and the communities waiting for broadband infrastructure have been waiting too long.

Second, networks that are subsidized and built with federal funds must be secure. This is evident in the constant barrage of attacks on American networks from hostile state and non-state actors. To mention a few, in March 2022, hackers linked to the Chinese government penetrated the networks belonging to government agencies of at least six different U.S. states in an espionage operation.<sup>1</sup> Kremlin-linked threat actors hacked into numerous defense contractors between January 2020 and

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<sup>1</sup> Center for Strategic and International Studies, *Significant Cyber Incidents*, <https://www.csis.org/programs/strategic-technologies-program/significant-cyber-incidents> (CSIS Significant Cyber Incidents).

February 2022,<sup>2</sup> and ransomware continues to be an ongoing problem for critical infrastructure<sup>3</sup> and local governments.<sup>4</sup> Further, while not domestic, we have all seen the constant attacks against Ukrainian networks.<sup>5</sup>

So I'm proud to announce that my colleagues have agreed with my ask to include, for the first time, a request for comment on whether we should require A-CAM carriers and carriers receiving high cost support to have baseline cybersecurity and supply chain risk management plans. The Notice now seeks comment on whether these plans should spell out specific security and privacy controls, in the case of cybersecurity, and supply chain risk management controls being implemented. It also asks whether the plans should reflect the resources of our expert government agencies, such as the National Institute of Standards and Technology. These cybersecurity and supply chain risk management plans, if ultimately included as a requirement in future A-CAM and other high cost support programs, will ensure a baseline of support to protect American communications networks and United States citizens from threats from adversaries and bad actors. I note, again, that this proposal is aligned with a similar requirement in the BEAD program, which makes sense, because as we seek comment on how the two programs can support each other, it is imperative for us to ensure that FCC-funded networks are as equally secure as those from other portions of the federal government. These A-CAM networks must stand shoulder to shoulder with the BEAD build-out.

I fully expect that going forward, as the Commission reviews and supports broadband build-out such as the high cost program, these types of cybersecurity and supply chain risk management baseline requirements will be fundamental to our consideration. While this Notice seeks comment on the ACAM Broadband Coalition's proposal, it also seeks comment on how to improve administration of the high cost program, and whether baseline cybersecurity and supply chain risk management plans should be required for carriers receiving high cost support. It is critical that federally subsidized networks are secure if consumers are to have the confidence to use them to their fullest.

I'm excited for the Commission to take this initial step, and I thank the Chairwoman for agreeing to my additions and for her leadership in protecting our networks more generally, and for the support of my fellow Commissioners as well. I also thank the Commission's staff that has worked tirelessly on these broadband programs. The item has my full support.

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

<sup>3</sup> Department of Energy, Office of Cybersecurity, Energy Security, and Nuclear Response, *Colonial Pipeline Cyber Incident*, <https://www.energy.gov/ceser/colonial-pipeline-cyber-incident>.

<sup>4</sup> Ionut Arghire, FBI Warns of Ransomware Attacks Targeting Local Governments, Securityweek.com, <https://www.securityweek.com/fbi-warns-ransomware-attacks-targeting-local-governments> (Apr. 1, 2022).

<sup>5</sup> *See, e.g.*, CSIS Significant Cyber Incidents.