Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Pai, Commissioner Clyburn, and Commissioner O'Rielly issuing separate statements.

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I. INTRODUCTION

1. Despite the growing expansion of 4G Long Term Evolution (LTE) service, rural and high-cost areas of our country have been left behind. At the same time, the Universal Service Fund spends $25 million a month (a conservative estimate) distributing legacy subsidies to mobile carriers that compete with private capital and millions more distributing duplicative subsidies to multiple carriers in the same area.

2. In this Order, we adopt the framework for moving forward with the Mobility Fund Phase II (MF-II) and Tribal Mobility Fund Phase II, which will allocate up to $4.53 billion over the next decade to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. The funding for this effort will come from the redirection of legacy subsidies and distributed using a market-based, multi-round

reverse auction and will come with defined, concrete compliance requirements so that rural consumers will be adequately served by the mobile carriers receiving universal service support. We also propose a robust challenge process to supplement our own coverage maps and to ensure that we are targeting support where it is most needed.

3. We expect to release a list of presumptively eligible areas shortly, to finalize the challenge process in the coming months, and to conclude the challenge process by January 31, 2018. We expect to commence the auction shortly thereafter. We schedule the phase-down of legacy support to commence in the first month following the close of the MF-II auction.

II. BACKGROUND

4. In the *USF/ICC Transformation Order*, the Commission sought to achieve the universal availability of "mobile networks capable of delivering mobile broadband and voice service in areas where Americans live, work, or travel."[1] This goal was "designed to help ensure that all Americans in all parts of the nation, including those in rural, insular, and high-cost areas, have access to affordable technologies that will empower them to learn, work, create, and innovate."[2] At the same time, the Commission recognized the importance of minimizing the universal service contribution burden on consumers and businesses.[3] The Commission sought to balance the objective of "providing support that is sufficient but not excessive so as to not impose an excessive burden on consumers and businesses who ultimately pay to support the Fund."[4]

5. Applying those goals, the Commission targeted funding to expand mobile coverage, while ensuring that the funding is "cost-effective and targeted to areas that require public funding to receive the benefits of mobility."[5] As a result, the Commission eliminated the "identical support rule," which previously had set the level of support for competitive eligible telecommunications carriers (CETCs), including those providing mobile services, at the level received by the incumbent local exchange carrier, and had limited CETC support to those areas where wireline providers received support because of their high costs.[6] The Commission concluded that "[t]he support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile voice service in a particular geography,"[7] and established the Mobility Fund to assure that universal service support for mobile service would be targeted in a more cost effective manner.[8] The Mobility Fund included two phases. For MF-I, the Commission provided up to $300 million in one-time support payments, to be awarded through a reverse

[1] *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17682, para. 53 (2011) (*USF/ICC Transformation Order and/or FNPRM*).

[2] *Id.*

[3] *Id*. at 17682, para. 57.

[4] *Id.*

[5] *Id.* at 17772-73, para. 298.

[6] *Id*. at 17825-37, paras. 498-532.

[7] *Id*. at 17828, para. 504.

[8] *Id.* at 17773, para. 299.

auction.[9] The Commission also provided an additional $50 million in one-time support dedicated to Tribal lands.[10] For MF-II, the Commission decided it would provide up to $500 million per year in ongoing support – including support to Tribal lands – and sought comment in the *USF/ICC Transformation FNPRM* on the structure and operational details of that fund.[11]

6. To minimize "shocks to service providers that may result in service disruptions for consumers,"[12] the *USF/ICC Transformation Order* provided for a five-year transition period during which legacy support going to CETCs would phase down 20 percent per year beginning July 1, 2012.[13] The Commission noted that, during the transition period, mobile carriers would have the opportunity to seek one-time MF-I support to expand 3G or better service to areas where such service was unavailable while also receiving phase-down legacy support.[14] The Commission also provided that if MF-II were not operational by July 1, 2014, the phase down of legacy support for CETCs would pause at the 60 percent level in effect on that date.[15]

7. On September 27, 2012, the Commission conducted Auction 901 for MF-I support. Upon close of the auction, 33 winning bidders were eligible to receive a total of up to $299,998,632.25 in MF-I support to provide 3G or better mobile voice and broadband services covering more than 83,000 U.S. road miles. On February 25, 2014, the Commission conducted Auction 902 for Tribal Mobility Fund Phase I in which five winning bidders were eligible to receive up to $49,806,874 in support to provide 3G or better mobile voice and broadband services covering a population of 56,932 in 80 biddable areas.

8. Following the comments filed in response to the *USF/ICC Transformation Order FNPRM* accompanying the *USF/ICC Transformation Order*, the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the Bureaus) issued a Public Notice in November 2012 seeking to develop a more comprehensive, robust record on certain issues related to the award of ongoing support for advanced mobile services.[16] The Bureaus sought to build upon their experience in implementing a reverse auction to distribute universal service support and the experiences of carriers that participated in MF-I. In particular, among other things, the Bureaus sought further feedback on issues pertaining to the method for identifying the geographic areas that are eligible for Phase II support and establishing the base unit for bidding and measuring coverage, performance obligations, and the term of support.

9. In April 2014, the Commission again took the opportunity to expand upon what it had learned from its efforts to modernize universal service as well as the considerable developments in the

[9] *See id.* at 17675, para. 28.

[10] *See id*. at 17819-20, para. 481.

[11] *See id.* at 17675, para. 28.

[12] *Id.* at 17830, para. 513.

[13] *See id*. at 17832, para. 519.

[14] *See id.* at 17831, para. 517.

[15] *See id.* at 17830, para. 519. Further, the Commission provided that the phase-down of legacy support for CETCs serving Tribal lands would pause at that time if Phase II of the Tribal Mobility Fund were not implemented. *Id.*

[16] *See Further Inquiry Into Issues Related to Mobility Fund Phase II*, Public Notice, 27 FCC Rcd 14798 (WTB/WCB 2012) (*Further Inquiry Public Notice*).

marketplace for mobile wireless services that had occurred since adoption of the *USF/ICC Transformation Order*.[17] Given the significant commercial deployment of 4G LTE, the Commission proposed to retarget the focus of MF-II to address those areas of the country where LTE would not be available absent support and existing mobile voice and broadband service would not be preserved without support.[18]

10. In September 2016, the Wireless Telecommunications Bureau released its analysis of mobile broadband providers' December 2015 Form 477 submissions in order to identify and quantify the areas in the country that may require support on an ongoing basis in order to have 4G LTE coverage.[19] In addition to identifying the specific areas of the country without 4G LTE coverage, Wireless Telecommunications Bureau staff examined the current distribution of high-cost support to assess the efficacy of that support.[20] That analysis reveals that 4G LTE is absent from or only provided with support in one-fifth of the area of the United States excluding Alaska and that a conservative estimate is that three-quarters of support currently distributed to mobile providers is being directed to areas where it is not needed.[21] In other words, carriers are receiving approximately $300 million or more each year in subsidies to provide service even though such subsidies are unnecessary and may deter investment by unsubsidized competitors from increasing competition in those areas.

III. GOALS OF THE MOBILITY FUND PHASE II

11. We reaffirm the following goals for Phase II of the Mobility Fund.

12. *First*, we reaffirm that universal service funding for the preservation and advancement of high-speed advanced services such as 4G LTE is an appropriate and necessary use of universal service funds. Because they are unmoored from a fixed point, mobile devices empower Americans to make calls and access the web and web-based applications while on the go.[1]

13. *Second*, we reaffirm that we should target universal service funding to support the deployment of the highest level of mobile service available today—4G LTE. In the *2014 CAF Further Notice*, the Commission observed that two major wireless providers had widely deployed 4G LTE throughout the country.[2] Since that time, consumers increasingly demand 4G LTE service in order to take

[17] *See Connect America Fund et al.*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051 (2014) (*2014 CAF Order and/or Further Notice*).

[18] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7127-28, para. 239.

[19] *See* FCC, Wireless Telecommunications Bureau, *Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis* (2016) (*Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-341539A1.pdf.

[20] *Id*.

[21] *Id.* at 15, 16, 25, para. 28, Tables 3-i, 4b.

[1] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 712, para. 30 (2016) (*2016 Broadband Progress Report*).

[2] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7127, para. 238.

advantage of the significantly better performance characteristics, including faster data transfer speeds that 4G LTE provides while using the web or web-based applications. Targeting MF-II support to expand and preserve 4G LTE coverage will ensure that we do not relegate rural areas to substandard service.

14. *Third*, we reaffirm that we should target universal service funding to coverage gaps, not areas already built out by private capital. Despite a surge in private investment in mobile deployment,[3] recent analysis shows that at least 575,000 square miles (approximately 750,000 road miles and 3 million people) either lack 4G LTE service or are being served only by subsidized 4G LTE providers.[4] Virtually all commenters agree that proceeding with MF-II is critically important to supporting mobile voice and broadband coverage.[5] Thus, by proceeding to MF-II, we seek to assure that 4G LTE service is preserved and advanced to those areas of the country where there is no unsubsidized service, all consonant with the Commission's goal of "ubiquitous availability of mobile services."[6]

15. *Fourth*, we reaffirm that we are committed to minimizing the overall burden of universal service contributions on consumers and businesses by expending the finite funds we have available in the most efficient and cost effective manner.[7] The Wireless Telecommunications Bureau's latest analysis indicates that a substantial majority of current ongoing legacy CETC support is allocated to census blocks that already have complete 4G LTE coverage from one or more unsubsidized competitors.[8]

IV. FRAMEWORK FOR MOBILITY FUND PHASE II

16. We adopt a reverse auction to distribute high-cost support for mobile services to areas that lack unsubsidized 4G LTE service, while completing the phase-down of legacy support going to mobile CETCs, thereby eliminating duplicative and unnecessary CETC support, and better managing our finite financial resources. Utilizing an annual budget of $453 million for a term of ten years, we will provide ongoing support for provision of service in areas that would lack mobile voice and broadband coverage

[3] Since 2011, private investment, supplemented by MF-I support, has led to the extensive provision of mobile voice and broadband services throughout the country. Recent analysis indicates that excluding Alaska, 84.2 percent of square miles have access to 4G LTE mobile broadband coverage from at least one service provider. *Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis* at 17, Table 3-ii.

[4] *Id.* at 15, para. 28.

[5] *See, e.g.*, Letter from Caressa D. Bennet, General Counsel, Rural Wireless Association (RWA), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Aug. 23, 2016) (explaining that RWA "supports the creation of a mechanism that will provide specific, predictable, and sufficient support to sustain and advance the availability of mobile services in high-cost areas"); Letter from Rebecca Murphy Thompson, EVP & General Counsel, Competitive Carriers Association (CCA), to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, at 2 (filed Aug. 18, 2016) ("[F]unding should be made available to meet the Commission's goal of expanding mobile broadband networks to portions of the country that are currently unserved, while ensuring that rural areas that are served in part because of USF support are not stranded or do not experience services turned down."); Letter from Scott K. Bergmann, Vice President, Regulatory Affairs, CTIA−The Wireless Association® (CTIA), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3 (filed Jan. 22, 2015) ("A permanent and robust Mobility Fund is necessary to bring rural Americans access to wireless services who currently lack such access.").

[6] *USF/ICC Transformation Order*, 26 FCC Rcd at 17773, para. 298.

[7] *Id.* at 17670, para. 11.

[8] *Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis* at 22, para. 39.

absent government subsidies. Likewise, consistent with the Commission's decision in the *USF/ICC Transformation Order* to abandon the identical support rule and to depart from duplicative investments in multiple CETCs in the same geographic area, we will award support to one provider per eligible geographic area.[1] In this section, we describe this basic framework for MF-II and our conclusions on these issues. We intend before the commencement of the MF-II auction to adopt performance goals and measures for the program.[2]

A. Reverse Auction to Award Mobility Fund Phase II Support

17. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed to use a reverse auction mechanism to distribute MF-II support.[3] The Commission noted that a reverse auction would be consistent with its general decision to use market-driven policies to maximize the impact of finite universal service resources and would enable it to identify those providers that will make most effective use of the budgeted funds.[4] The Commission also sought comment on alternative methods, including the use of a model that estimates costs and revenues, to determine amounts of support to be made available in particular geographic areas.[5]

18. *Discussion.* We adopt a nationwide, multi-round reverse auction with competition within and across geographic areas to award MF-II support.[6] Utilizing an auction mechanism will allow us to distribute support consistent with our policy goals and priorities in a transparent, speedy, and efficient manner. An auction provides a straightforward means of identifying those providers that are willing to provide 4G LTE service at the lowest cost to the budget, targeting support to prioritized areas, and determining support levels that awardees are willing to accept in exchange for the obligations we impose. Moreover, a reverse auction is consistent with our decision to provide support to at most one provider per area. While auction alternatives suggested by commenters may address some of these objectives – for example, a cost model could theoretically determine appropriate support amounts for an area – we are not persuaded that there is an alternative approach that would achieve all our core policy objectives that could be implemented in a timely manner. Furthermore, our experience in administering Auction 901 for MF-I funding was a new endeavor in 2012, and we can apply the lessons learned to the MF-II auction.

19. In general, commenters opposing the use of a reverse auction to distribute MF-II support offer arguments similar to those made in MF-I, and against the overall market-based approach adopted for the Universal Service Fund. For example, a handful of carriers argue that reverse auctions can lead to cost and quality short-cuts that would harm consumers and be difficult to police.[7] Others raise concerns

[1] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17779, para. 316.

[2] *See* Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285, *amended by* GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011).

[3] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18070, para. 1122.

[4] *See id.*

[5] *See id*. at 18082-85, paras. 1174-88.

[6] Details regarding the specific auction rules are discussed *infra*.

[7] *See, e.g.*, Blooston Rural Carriers (Blooston) Comments at 6 (expressing its concern "that construction and equipment quality short-cuts and other gaming strategies can result in deceptively low 'winning bids' and are likely to require larger disbursements of high-cost support in the long term to replace inferior facilities"); Cellular South,

that an auction mechanism might favor large carriers,[8] or jeopardize the continuation and expansion of service to rural areas.[9] The Commission fully addressed those arguments in the *USF/ICC Transformation Order*.[10] Moreover, our experience in conducting a reverse auction to distribute MF-I support demonstrates the feasibility, despite these generalized objections, of using an auction for MF-II. Such objections reflect a general disagreement with some of the Commission's fundamental universal service reform principles, including disbursing a finite budget in a fiscally responsible manner and therefore limiting the award of support to one provider per area and providing incentives to those providers to submit competitive, cost-effective bids for support. Those issues are addressed fully below.

20. Likewise, commenters favoring the adoption of a model-based approach essentially challenge other aspects of the MF-II framework we adopt today, such as our decision that support should be provided to a single provider in a given area, which we address below in Section IV.F.[11] Accordingly, we

Inc. d/b/a C Spire (C Spire) Comments at 23 (claiming that "reverse auctions can lead to construction and equipment quality short-cuts due to funding recipients' cost-cutting measures" and that the use of standard-setting and enforcement endeavors to police the quality short-cuts would not be as effective as market-place incentives); United States Cellular Corporation (U.S. Cellular) Comments at 17-18 (arguing that reverse auctions "would create a significant risk that [rural] consumers would be short-changed with regard to rates, service quality, and the extent of deployment"); Universal Service for America Coalition (USA Coalition) Comments at 9 (suggesting that single winner reverse auctions "would essentially preclude competition in supported areas, resulting in lower standards of service and higher prices"); *see also* Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 4 (filed Oct. 21, 2016) (RWA Oct. 21, 2016 *Ex Parte*) (labeling a reverse auction a "race to the bottom" that funds networks in less expensive places first, and leaves prospective networks serving more difficult terrain without support").

[8] *See* Blooston Comments at 6 (stating that reverse auctions are "susceptible to anti-competitive bidding practices by large carriers that do not need the funds to expand service").

[9] *See, e.g.*, *id.*; C Spire Comments at 22 (arguing that single winner reverse auctions would, among other things, "fail to promote the availability of reasonably comparable services at reasonably comparable rates in rural areas" and "would close down mobile broadband providers' access to capital investment for deployment in rural areas"); Rural Telecommunications Group (RTG) Comments at 2-3 (noting that if reverse auctions are used, "many rural areas will lose service unless safeguards are in place to ensure that existing services are not lost"); RCA–The Competitive Carriers Association (RCA) Comments at 12 ("In rural areas in particular, where the unsubsidized costs of offering service exceed available revenues, single-winner [reverse] auctions likely would preclude the development of competition for the foreseeable future."); Letter from Caressa D. Bennet, General Counsel, RWA, to Tom Wheeler, Chairman, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 6 (filed Oct. 27, 2016) (RWA Oct. 27, 2016 *Ex Parte*) ("A reverse auction is a 'race to the bottom' that funds networks in less expensive places first, and leaves prospective networks serving more difficult terrain (in areas like West Virginia or Montana) with less of a chance of receiving support.").

[10] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17781-83, paras. 323-28.

[11] *See* CCA *Further Inquiry Public Notice* Comments at 6-7 (advocating for a model that would provide support to multiple competitive carriers); *see also* U.S. Cellular Comments at 13-17 (opposing limiting Mobility Fund support to a single provider and adding that a cost model should be used regardless of whether the Commission decides to provide support only to a single provider or multiple providers); T-Mobile USA, Inc. (T-Mobile) Comments at 3-4 ("Whether Phase II support is allocated to one recipient or to multiple recipients in the same service area, however, the distribution of support should be structured so as to satisfy the statutory competitive neutrality and portability requirements without threatening the viability of the Mobility Fund."); C Spire Comments at 7-15 (explaining that

find that those parties advocating for use of a model do not acknowledge or resolve the myriad policy goals that are addressed by the Commission's reverse auction proposal, and therefore do not offer a realistic alternative – consistent with our decisions – to the proposed auction mechanism. This determination is substantiated by the fact that we have not received a fully developed cost model for ongoing support since we first sought comment on the issue in 2011.[12] In the absence of a workable, nationwide model to award ongoing support that addresses all our core policy objectives, we adopt our decision to use a reverse auction mechanism to distribute MF-II support. Moreover, as Verizon's comments recognize and support, our decision to utilize a reverse auction to award support to only one provider per area is the best approach to target support to where it is truly needed, eliminates inefficiencies, and helps limit the cost to consumers and businesses.[13]

21. Similarly, we decline to adopt a federal-state broadband mobile grant program in lieu of an auction as proposed earlier this year by U.S. Cellular.[14] U.S. Cellular proposes that the Commission set up a grant program for mobile carriers to apply for infrastructure funds anywhere in rural areas that require investment, allowing carriers to identify areas of poor coverage to state regulators and receive federal funds to build or upgrade facilities or fund ongoing operations.[15] This proposal would impose significant responsibilities on the states that choose to participate, including an obligation to contribute funds (that we would match), review service providers' applications and subsequently award grants, and verify providers' compliance with our performance requirements.[16] It would require significant Commission coordination and oversight to implement such a proposal, which is inconsistent with our desire to act quickly so that providers can expand to those areas lacking 4G LTE coverage and we can

the use of a forward-looking economic cost model would be a better vehicle for advancing the Commission's mobile broadband policies instead of a single-winner reverse auction mechanism); Letter from Steven K. Berry, President & CEO, and Rebecca Murphy Thompson, General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, at 2 (filed Nov. 16, 2015) (CCA Nov. 2015 *Ex Parte*) (suggesting that the Commission focus on providing ongoing funding to maintain existing infrastructure and service where needed through a testing mechanism conducted on a site-by-site basis using a standardized set of costs compared to revenues).

[12] We received a developed model regarding Alaska, but the Commission recently adopted a different approach for mobile carriers there. The Alaska Mobile Plan is a consensus plan among the mobile providers in remote areas of Alaska that provides predictable, stable high-cost support to those providers, frozen at 2014 levels for a term of ten years. *See Connect America Fund; Universal Service Reform – Mobility Fund; Connect America Fund – Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10164, para. 75 (2016) (*Alaska Plan Report and Order*). This will result in approximately $74 million being disbursed annually to CETCs. *Id.* In addition, $22 million in annual support will be available to CETCs to extend service to areas without commercial mobile radio service. *Id.* at 10163, para. 73. Because the Commission adopted the Alaska Plan for mobile carriers as an Alaska-specific comprehensive substitute mechanism for mobile high-cost support, the Commission decided that no support provided under MF-II or Tribal Mobility Fund Phase II will be provided for mobile service within Alaska. *Id*. at 10171, para. 98.

[13] *See* Verizon and Verizon Wireless (Verizon) *Further Inquiry Public Notice* Reply Comments at 5.

[14] *See* Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Attach. at 23-28 (filed Mar. 3, 2016) (U.S. Cellular *Ex Parte*).

[15] *See id*.

[16] *See id.* at Attach. § 2 at 1-2.

take fiscally responsible measures to redistribute current support from those areas with unsubsidized 4G LTE. Based on the record before us, as well as our experience in MF-I, we are not convinced that this approach would be a more efficient or effective means of awarding MF-II support than using a reverse auction.[17]

B. Mobility Fund Phase II Budget

22. *Background.* In the *USF/ICC Transformation Order*, the Commission established an annual budget for MF-II of up to $500 million for ongoing support for mobile services, with up to $100 million reserved for support to Tribal lands, including Alaska.[18] The Commission concluded that $500 million annually would be sufficient to sustain and expand the availability of mobile broadband.[19] The Commission added that up to $100 million reserved for Tribal lands would help ensure that these communities are not left behind.[20] In the *2014 CAF Further Notice*, the Commission proposed adjusting downward the budget for a retargeted MF-II.[21] The Commission also found that the current distribution of these funds was not well-targeted, as some support funded multiple networks with coverage that overlapped with unsubsidized national wireless providers.[22]

23. *Discussion*. We adopt a budget of $4.53 billion for MF-II over ten years – the amount of legacy support mobile carriers outside Alaska would receive over the next decade less the funding needed to phase-down support in census blocks fully built with private capital. Current legacy high-cost support received by wireless providers is approximately $483 million per year, excluding Alaska, and around $300 million of that amount is being provided to census blocks fully covered with unsubsidized 4G LTE. In this Order, we are phasing down the support we pay for those areas over two years, with these phase-down payments totaling one year's support, i.e., approximately $300 million. In keeping with our obligation to be fiscally responsible, we arrive at an annual MF-II budget by taking $483 million (representing current CETC support), minus $30 million (representing the estimated $300 million phase-down payments for those areas, evenly apportioned over the ten-year term), for a total each year of $453 million. Given the need to preserve and advance 4G LTE service revealed by our staff analysis, we conclude that retargeting existing funds is appropriate.

24. In reaching this conclusion, we agree with Verizon that increasing the size of the MF-II budget beyond the current legacy support to mobile CETCs could over-burden those paying for the fund, which was among the chief concerns the Commission sought to address through universal service reform.[23] The cost of universal service programs is ultimately borne by the consumers and businesses that

[17] Indeed, the proposal envisions the Commission distributing support through a reverse auction for those states that choose not to participate in the grant program. *See id.* at Attach. § 2 at 2. As such, to the extent the Commission would still have to administer a reverse auction, it would be far more efficient to run a single auction that awards all MF-II support.

[18] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17778, 17824-25, paras. 314, 493-97.

[19] *See id.* at 17824-25, para. 495.

[20] *See id.* at 17825, para. 497.

[21] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7129, para. 243 n.449.

[22] *See id*.

[23] *See* Verizon *Further Inquiry Public Notice* Comments at 1.

pay to fund these programs, and we have a corresponding obligation to exercise fiscal responsibility by avoiding excessive subsidization and overburdening communications consumers.[24] With this in mind, we adopt an MF-II budget to balance the various competing objectives in Section 254 of the Act, including the objective of providing support that is sufficient, but not so excessive so as to impose an undue burden on consumers and businesses.[25] We further note that MF-II is only one component of our broader reform efforts, and the MF-II annual budget also reflects a careful analysis of the respective needs and objectives of all aspects of the universal service program.

25. In this regard, we are not persuaded by commenters' assertions that our MF-II budget is insufficient for its intended purpose.[26] The amount we dedicate reflects our priorities in allocating a finite budget to areas of greatest need to maintain and expand critical mobile voice and broadband services. As described above, our MF-II budget is based on the current high-cost support received by wireless providers of approximately $483 million per year, excluding Alaska, minus $30 million per year, representing the amount (spread over ten years) we estimate is needed to fund a two-year phase-down in

[24] The courts have recognized that over-subsidizing universal service programs can actually undermine the statutory principles set forth in Section 254(b). *See, e.g.*, *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) ("[E]xcessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1).") (citing *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001)); *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1102 (D.C. Cir. 2009) (agreeing that the concept of sufficiency can reasonably encompass "not just affordability for those benefited, but fairness for those burdened" and that the Commission "must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service"); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) ("[E]xcessive funding may itself violate the sufficiency requirements of the Act" and "[t]he [Commission]'s broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service").

[25] Our approach is consistent with judicial interpretation of these objectives, as well as our own. *See supra* note 53; *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, Order on Remand and Memorandum Opinion and Order, 25 FCC Rcd 4072, 4088, para. 30 (2010) (*Qwest II Remand Order*) (defining "sufficient" as "an affordable and sustainable amount of support that is adequate, but no greater than necessary, to achieve the goals of the universal service program"). Moreover, the courts have held that the Commission enjoys broad discretion when conducting exactly this type of balancing. *See, e.g.*, *Rural Cellular Ass'n*, 588 F.3d at 1103; *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C. Cir. 1999); *see also Qwest II Remand Order*, 25 FCC Rcd at 4088, para. 29 ("[A] proper balancing inquiry must take into account [the Commission's] generally applicable responsibility to be a prudent guardian of the public's resources.").

[26] *See, e.g.*, C Spire Comments at 21 (suggesting that the Commission's decisions in the *USF/ICC Transformation Order* "have shortchanged funding for the deployment of mobile broadband networks"); RTG Reply Comments at 13-14 (arguing that a "much larger" Mobility Fund will ensure that the Commission reaches its goal of bringing mobile voice and broadband services to areas where Americans live, work, and travel); RCA Comments at 5 ("The record compiled previously demonstrates that the $400 million in annual non-tribal support budgeted for the Phase II Mobility Fund will be grossly inadequate."); U.S. Cellular Reply Comments at 8-9 (stating that the Commission's budget exposes a disconnect between the Commission and President Obama regarding the importance of mobile wireless broadband and the need for effective government initiatives to promote mobile broadband deployment); USA Coalition Comments at 5 ("[T]he Commission's decision to limit the available pool of Mobility Fund support to $300 million annually for Phase I and $500 million annually for Phase II is underwhelming, a mere fig leaf used by the Commission to claim consumer needs are being addressed."); RWA Oct. 27, 2016 *Ex Parte* at 5-6 (opposing any downward adjustment of the originally proposed $500 million annual budget for MF-II).

census blocks where private capital has fully deployed 4G LTE. We find that this level of support over the next ten years will allow MF-II to achieve its objectives in a fiscally responsible manner. We recognize that the currently unserved areas are likely the most expensive areas in the country to serve; however, our budget—when distributed cost-effectively—should make meaningful progress in eliminating the lingering coverage gaps. The Commission also remains free, after the auction has concluded, to assess its results and determine whether additional funding is needed to advance the deployment of advanced mobile services throughout rural America.

26. We further note that many commenters complain that the overall allocation of universal service funding between fixed and mobile services disproportionately favors support to fixed providers.[27] CCA, for example, argues that despite skyrocketing growth in the demand for wireless services, the *USF/ICC Transformation Order* called for substantial reductions in the amount of high-cost support flowing to wireless providers while increasing the funding available to incumbent local exchange carriers.[28] However, significantly more Americans have access to 4G LTE mobile coverage than have access to fixed residential high-speed broadband.[29]

27. For these same reasons, we decline to adopt the proposal in the *2014 CAF Further Notice* to significantly reduce the budget for MF-II.[30] Commenters are uniformly opposed to this proposal.[31] For instance, CTIA notes that there is no basis to suggest that a smaller Mobility Fund budget would be sufficient.[32] NTELOS asserts that because mobile broadband acts, in many instances, as the principal means by which certain consumers are able to access the Internet, the Commission must refrain from taking any action that would reduce or reallocate support that otherwise would have been available via the Mobility Fund.[33] We agree with those commenters that stress the importance of mobile broadband to consumers and describe the unique benefits of mobile broadband in critical fields, including public safety,

[27] *See, e.g.*, CCA Comments at 2-3; MTPCS, LLC d/b/a Cellular One (Cellular One) Reply Comments at 8-9; U.S. Cellular Reply Comments at 6-8.

[28] *See* CCA Comments at 2-3.

[29] *Compare Working Toward Mobility Fund II* (finding that 99.5 percent of the U.S. population is covered by at least one mobile provider using 4G LTE technology) *with 2016 Broadband Progress Report*, 31 FCC Rcd at 731, para. 79 (finding that 6 percent of Americans lack access to fixed terrestrial service at 10/1 Mbps and 5 percent lack access to such services at 4/1 Mbps). *Cf. USF/ICC Transformation Order*, 26 FCC Rcd at 17824, para. 494 (comparing access to 3G with fixed residential broadband and predicting that "this disparity will persist").

[30] In light of our decision not to significantly reduce the annual budget for MF-II, we need not address the Commission's proposal in the *2014 CAF Further Notice* to allocate some of those funds to the Remote Areas Fund or Connect America Phase II or use a portion of the budget to provide one-time support to those providers willing to extend mobile LTE. In any event, this proposal was overwhelmingly opposed by commenters. *See, e.g.*, C Spire *2014 CAF Further Notice* Comments at 10-12; Rural Wireless Carriers (RWC) *2014 CAF Further Notice* Comments at 20-25.

[31] *See, e.g.*, CTIA *2014 CAF Further Notice* Comments at 5-6; RWA *2014 CAF Further Notice* Comments at 4-6; RWC *2014 CAF Further Notice* Comments at 4-19; NTELOS Holdings Corp. (NTELOS) *2014 CAF Further Notice* Reply Comments at 3-5; *see also* RWA Oct. 21, 2016 *Ex Parte* at 3.

[32] CTIA *2014 CAF Further Notice* Comments at 6.

[33] NTELOS *2014 CAF Further Notice* Reply Comments at 3.

health care, and education.[34] We also acknowledge, as CTIA points out, that our proposal to reduce the budget in the *2014 CAF Further Notice* was made in the context of awarding support for service based on uncovered population, rather than land areas where mobile broadband is absent.[35] Because, as we explain below, we have decided to award support to cover square miles, our projected funding requirements in 2014 are inapplicable.

28. In addition, we decline to adopt two separate budgets – one to fund operating expenses for preservation of service and one to fund capital expenses for expansion of service – as proposed by Atlantic Tele-Network (ATN).[36] This proposal would require two separate auctions to award support from two funds, which would be administratively less efficient and risk duplicative funding to eligible areas. Moreover, two funds would require us to decide in advance the levels of support for each, and would require the Commission to monitor and enforce restrictions on the purposes for which these two types of support can be used. By contrast, a single fund allows reverse auction bidders to make their own efficiency tradeoffs between operating and capital expenses.

29. Accordingly, in establishing the MF-II annual budget today, we affirm our commitment to fiscal responsibility,[37] and take steps herein to ensure that the support awarded is not excessive. Toward that end, we make clear there is discretion to set reserve prices as part of the procedures for the reverse auction, which will provide a backstop in the event there is insufficient competition to act as a restraint on the price of the support to be provided in particular cases.[38] Additionally, to safeguard the monies dedicated to this budget, and as discussed fully below, we adopt requirements to ensure that MF-II support recipients are meeting the service obligations and conditions associated with the ongoing award

[34] *See* RWC *2014 CAF Further Notice* Comments at 7-9 (discussing the benefits of mobile broadband to rural consumers and the U.S. economy); C Spire *2014 CAF Further Notice* Comments at 7-8 (noting that mobile wireless technology provides an essential platform for telemedicine and telehealth applications around the country); *see also* Association of Equipment Manufacturers (AEM) *2014 CAF Further Notice* Reply Comments at 4-5 (explaining the importance of Mobility Fund support to serve agricultural operations); Deere & Company (Deere) *2014 CAF Further Notice* Reply Comments at 8-9 (indicating that it agrees that the Commission should maintain or even increase Mobility Fund Phase II to ensure that mobile services can be supported and expanded in areas where wireless broadband services would not otherwise be available); Letter from Senator Roger F. Wicker et al., to Ajit Pai, Chairman, FCC, at 1 (Feb. 2, 2017) ("Reliable high-speed mobile broadband is critical to advancing telehealth services, precision agriculture, economic opportunities, education, public safety, and an ever growing list of new innovations and applications. It is necessary for our constituents, living in some of the most remote and rural areas, to participate in today's digital economy."); Letter from Angie Kronenberg, Chief Advocate & General Counsel, INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1 (filed Nov. 3, 2016) ("From supporting mobile rural healthcare services, ensuring public safety, and supporting robust rural economies, mobile broadband networks contribute greatly to serving rural America and allowing all Americans to benefit from a better connected broadband nation."); Letter from Scott K. Bergmann, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 et al., at 1 (filed Nov. 11, 2016) (highlighting the role of mobile broadband in serving consumers in rural and high-cost areas).

[35] *See* CTIA *2014 CAF Further Notice* Comments at 5-6.

[36] *See* Letter from L. Charles Keller, Wilkinson, Barker, Knauer, LLP, Counsel to ATN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Attach. at 4-8 (filed Apr. 8, 2016) (ATN *Ex Parte*).

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

[38] *See infra* Section VII.B.1.

of such annual support.[39]

30. Finally, we take this opportunity to address a Petition for Declaratory Ruling filed by U.S. Cellular requesting that the Commission award to "next-in-line" bidders in Auction 901 more than $68 million of undisbursed MF-I support on which the winning bidders in that auction defaulted.[40] We deny U.S. Cellular's petition and will not award the unclaimed MF-I support to the next-in-line bidders in Auction 901. As U.S. Cellular recognizes, the Commission addressed undisbursed support payments in the *USF/ICC Transformation Order*.[41] Specifically, the Commission stated, "We anticipate that when a winning bidder defaults on its bid or is disqualified for any reason after the close of the auction, the funds that would have been provided to such an applicant will be used in a manner consistent with the purposes of the Universal Service program."[42] Among the goals and purposes of the Universal Service program is the goal to award support in a fiscally responsible manner, thereby minimizing the universal service contribution burden on consumers and businesses.[43] In our decision today, we adopt ongoing support with an annual budget of $453 million for MF-II and target support to areas where it is most needed, i.e., areas that lack 4G LTE service and areas where service only exists due to a subsidy. We find this is a better use of universal service funds than allocating funds to the next-in-line bidders in Auction 901, based on the outdated standards for eligible areas used in 2012 for MF-I.

C. Tribal Mobility Fund Phase II

31. *Background.* In the *USF/ICC Transformation Order*, the Commission set aside up to $100 million annually to qualifying Tribal lands, including those Tribal areas in Alaska, through the creation of a separate Tribal Mobility Fund Phase II.[44] The Commission noted that given the relatively low level of telecommunications deployment, and distinct connectivity challenges on Tribal lands, it was committed to addressing Tribal needs through a separate budget to provide ongoing USF support for mobility in such areas.[45] In the Commission's decision on the Alaska Mobile Plan, it separately made available $96 million annually in high-cost support for mobile service in Tribal lands in Alaska, recognizing that Alaska

[39] *See infra* Section V, Appendix A. We note that the Commission retains the discretion to distribute less than the total amount authorized in a given year if support recipients fail to meet performance or other program obligations.

[40] *See* Petition for Declaratory Ruling of United States Cellular Corporation, WC Docket No. 10-90 et al., at 1 (filed Mar. 21, 2014) (U.S. Cellular Petition) (requesting that the Bureaus also take this action on an expedited basis). U.S. Cellular also informally requested this relief prior to filing its Petition. *See* Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 12-25 et al., at 1 (filed Dec. 18, 2012); Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Ruth Milkman, Chief, WTB, and Julie Veach, Chief, WCB, AU Docket No. 12-25 et al., at 1 (filed Sept. 23, 2013); Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Jan. 10, 2014).

[41] *See* U.S. Cellular Petition at 3.

[42] *USF/ICC Transformation Order*, 26 FCC Rcd at 17815, para. 462.

[43] *See id.* at 17672, para. 17; *see also id.* at 17679-80, 17682-83, paras. 46-48, paras. 57-58.

[44] *Id*. at 17825, para. 497.

[45] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18080, para. 1165.

presents specific circumstances for expanding and improving mobile service.[46]

32. In the *USF/ICC Transformation FNPRM*, the Commission proposed to award MF-II support for Tribal lands[47] on the same terms and conditions as proposed for other areas to the extent practicable.[48] The Commission recognized, however, that the challenges facing Tribal lands may necessitate a more tailored approach.[49] The Commission therefore sought comment on its proposal to apply in MF-II the same provisions adopted for Tribal lands in the context of MF-I, including the eligible geographic area, provider eligibility, public interest obligations, auction and post-auction processes, and program management and oversight measures.[50]

33. *Discussion.* In light of the distinct challenges providers face in deploying mobile services for Tribal lands,[51] we reserve support to Tribal lands (excluding Alaska) as part of the overall MF-II budget.

[46] *See Alaska Plan Report and Order*, 31 FCC Rcd at 10163-64, paras. 73, 75; *supra* note 41.

[47] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18080-82, paras. 1165-72.

[48] *Id*. at 18080, para. 1168.

[49] *Id.*; *see also, e.g.*, *Universal Service Reform; Mobility Fund*, Notice of Proposed Rulemaking, 25 FCC Rcd 14716, 14727, para. 33 (2010) (*Mobility Fund NPRM*); Hopi Telecommunications Inc. (HTI) Comments at 2-4 (describing the unique characteristics facing tribally-owned and operated carriers); Gila River Telecommunications, Inc. (GRTI) *Mobility Fund NPRM* Comments at 3 (explaining that Native American communities historically have had less access to broadband services than other segments of the population due to, among other factors, the high-build out costs of infrastructure); Native Public Media (NPM) and National Congress of American Indians (NCAI) *Mobility Fund NPRM* Comments at 5 (noting that "[h]istorically, many carriers have ended their wireline deployment at the borders of Tribal lands" and "[i]n other instances, wireless carriers have spectrum covering Tribal lands but either have not built out facilities on Tribal lands, or have not actively marketed the service to Native Americans"); Navajo Nation Telecommunications Regulatory Commission (NNTRC) *Mobility Fund NPRM* Reply Comments at 2 (reporting that "[t]elephone access in much of Navajo Country is less than broadband penetration in the rest of the United States, and residential broadband adoption across the Navajo Nation is nearly non-existent outside of a few pockets in some of the larger Navajo communities"); Letter from David A. LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel to Smith Bagley, Inc. (SBI), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1-3 (filed Feb. 13, 2017) (SBI Feb. 2017 *Ex Parte*) (discussing the importance of universal service support for high-cost and remote Tribal lands due to the difficulties associated with serving such areas).

[50] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18080, paras. 1166-68; *see also id*. at 17820, para. 484 n.799.

[51] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17818-20, paras. 479, 482-83; *see also Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, 16 FCC Rcd 4078, 4080-81 (2000) (recognizing the Commission's general trust relationship with, and responsibility to, federally recognized Tribes); FCC, *Connecting America: The National Broadband Plan*, at 152 (rel. Mar. 16, 2010) (National Broadband Plan), https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf ("Many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high buildout costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and planning."); *Federal-State Joint Board on Universal Service*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12226-27, para. 32 (2000) (describing various characteristics of Tribal lands that may increase the cost of entry and reduce the profitability of providing service); GRTI *Mobility Fund NPRM* Comments at 3 (indicating that the limited financial resources of many tribes, combined with the high initial capital expenditures associated with

Specifically, we will calculate this budget by applying the ratio of square miles in eligible Tribal lands to square miles of all eligible areas (adjusting for a terrain factor) to the total budget we have chosen for MF-II. We expect that Tribal lands likely will be more expensive to serve than non-Tribal lands due to their lower population density[52] and income levels,[53] as well as the lack of power or roads in some parts of Indian country and the need for federal approval (such as from the Bureau of Indian Affairs) before broadband can be deployed there.[54] We conclude that reserving this support within MF-II is a fair means and reasonable metric to ensure that Tribal lands are not left behind in the auction. Current estimates are that this ratio would be about 7%, so we expect to reserve at least $340 million from the MF-II budget as support for Tribal Lands. The definitive budget will be set when the final set of eligible areas is determined after the challenge process. The record related to the Tribal Mobility Fund Phase II budget generally concerned comments by providers to Tribal lands in Alaska asking for an increased, or an Alaska-specific, budget, and did not address the Tribal Mobility Fund II budget more generally.[55]

34. We conclude it is appropriate to freshly consider the size of the Tribal MF-II budget rather than seek to simplistically follow earlier Commission decisions pre-dating several important developments. For one, the Commission originally proposed to set aside up to $100 million annually for Tribal lands, but then later dedicated $96 million annually to Tribal lands in remote areas of Alaska. Subtracting the latter from the former would leave a Tribal MF-II budget of only $4 million. For another, if we looked to the Tribal MF-I auction as a way of apportioning the Commission's initial estimate, we would see that the vast majority of those funds (81 percent) were won by Alaskan bidders. Subtracting that proportion for the Commission's initial $100 million proposal would leave mainland Tribal lands with only $19 million. Either way, we believe that premising the Tribal MF-II budget on the Commission's earlier actions is likely insufficient to reflect the need for funding to advance 4G LTE services on Tribal lands in 2017 and beyond. Rather, we find that the methodology described above will better serve the public interest.

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deploying broadband on rural, sparsely populated tribal lands, often makes broadband deployment a financial impossibility); National Tribal Telecommunications Association (NTTA) *Mobility NPRM* Comments at 5-6 (describing connectivity challenges in Native communities).

[52] Staff calculations show that the population density of eligible Tribal blocks is less than that of eligible non-Tribal blocks. *See Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis* at 16, 19, Tables 3-i, 4-i.

[53] The per capita income and median household income in Tribal areas is approximately 80% that of income in non-Tribal areas. *See generally* 2011-2015 American Community Survey 5-Year Estimates US Census Bureau, https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml (last visited Feb. 23, 2017).

[54] *See, e.g.*, Letter from Godfrey Enjady, President, NTTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. at 4 (filed July 13, 2016).

[55] *See, e.g.*, Alliance of Rural CMRS Carriers (ARC) Comments at 27 ("The ARC strongly supports a set aside for tribal funding for small carriers serving rural Alaska to ensure that there is adequate funding to fulfill the unique needs of the state. Therefore, at least $50 million should be set aside to ensure Alaska has the same funding opportunities as the tribal areas in the lower 48.") (internal citation omitted); General Communication, Inc. (GCI) Comments at 7 (urging the Commission to "dedicate separate funding for Remote Alaska, whether as part of the Mobility Fund or otherwise"); *see also* NTTA Comments at 12 (noting that setting aside specific funding to target deployment of mobility broadband to "unserved" Tribal areas is "good").

35. We note that providers of service to eligible areas within Tribal lands will also be able to bid for general support in MF-II—so, with sufficient auction participation, the funds reserved as part of the Tribal Mobility Fund will be a floor, not a ceiling, on support for Tribal lands.

36. Furthermore, except as set forth below, we adopt the proposal to award MF-II support for Tribal lands subject to the same terms and conditions as are applicable to all eligible areas in MF-II. We further decline to adopt the rules proposed in the *USF/ICC Transformation FNPRM* regarding special ETC designation treatment for Tribal Mobility Fund Phase II participants because we are revising the timing of our ETC designation requirement for all MF-II participants.[56] We also decline to adopt separate coverage units for Tribal Mobility Fund Phase II as no commenters addressed this issue in the context of Tribal Mobility Fund Phase II.[57] Commenters that advocated for Tribal specific terms for Phase II of the Mobility Fund were largely focused on issues relevant to Alaska.[58] Insofar as we have adopted a specific plan for Alaska, we need not address those proposals here.[59] We further decline to pursue the suggestion of Smith Bagley, Inc. that carriers serving Tribal lands be allowed to participate in an opt-in funding plan similar to the Alaska Plan.[60] The unique basis for our adoption of the Alaska plan was not the existence of Tribal lands in Alaska, but rather our concerns about the need for support to be flexible enough to accommodate Alaska's unique conditions, including its "remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season."[61] The Alaska Plan is

[56] *See infra* Section VI.A.

[57] *See USF/ICC Transformation Order*, 26 FCC Rcd at 18231, Appendix B, Proposed Rules, Sec. 54.1014(a) and (b).

[58] *See, e.g.*, GCI Comments at 1-2 (appreciating the FCC's commitment to Tribal lands, including Alaska, but primarily expressing its concern that the Commission's proposals may not advance broadband and advanced services to Alaska); Alaska Communications Systems (ACS) Comments at 20-23 (discussing support to sustain mobile services to Tribal lands, particularly in Alaska).

[59] *See generally Alaska Plan Report and Order*.

[60] *See* Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to SBI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1-2 (filed Nov. 3, 2016) (urging the Commission to afford special treatment for certain rural Tribal lands in the Lower 48 and adopt a Tribal lands plan similar to the Commission's Alaska plan); Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to SBI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Oct. 26, 2016) (recommending special treatment for carriers serving remote Tribal lands); Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to SBI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Nov. 7, 2016) (supplementing its Oct. 26, 2016 letter with additional information on broadband characteristics of Tribal lands); SBI Feb. 2017 *Ex Parte* at 5-7 (updating its Tribal lands plan); Letter from David A. LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel to SBI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Feb. 16, 2017). *But see* Letter from Walter W. Haase, P.E., General Manager, Navajo Tribal Utility Authority, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, at 1 (filed Feb. 16, 2017) (suggesting that the Commission reject SBI's proposal to maintain legacy support on Tribal lands for an extended period of time because it would extend such support at the expense of new services and service providers).

[61] *Alaska Plan Report and Order*, 31 FCC Rcd at 10162, para. 72 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17829, para. 507).

limited to addressing these unique challenges. Adopting a similar plan for the remaining Tribal lands in all the other states would be inconsistent with our decision to use a reverse auction as an efficient mechanism for deciding where to allocate Tribal Mobility Fund Phase II support.[62]

37. Additionally, so that providers seeking to serve Tribal lands may access support as expeditiously as possible, we will establish procedures for MF-II in consultation and coordination with our Office of Native Affairs and Policy. This will allow funds reserved for Tribal lands to be included as part of the MF-II auction.[63] We believe this path of conducting Tribal MF-II as a component of MF-II is best for quickly initiating support for mobile networks on tribal areas.

38. Finally, we decline to adopt a formal Tribal engagement obligation[64] or a bidding credit preference for Tribally-owned-and-controlled entities.[65] We agree with commenters that a tribal engagement obligation is not necessary because it could create an excessive administrative burden, without a material countervailing benefit, when many carriers already have established relationships with Tribes.[66] In addition, adopting formal Tribal engagement requirements could deter participation in Tribal lands and would likely divert providers' resources, thus potentially delaying their deployment of service to Tribal lands. We nonetheless welcome and encourage relationships between winning bidders and Tribes, and we expect carriers participating in the Tribal MF-II to work with Tribes to facilitate the deployment of the highest quality service to the people living on Tribal lands. We further find that a bidding credit preference for Tribally-owned-and-controlled entities is unnecessary for the MF-II auction. Setting aside funds specifically to serve Tribal lands is likely to accomplish our goal of ensuring greater

[62] The characteristics cited by SBI could be among the factors to be considered when developing procedures for assigning winning bids in the Tribal Mobility Fund.

[63] Auction procedures are discussed further in Section VII.B. below. Although at least one provider suggests that we hold a Tribal Mobility Fund Phase II auction first, *see* AT&T *Further Inquiry Public Notice* Comments at 13, given the distinct challenges in bringing communications services to Tribal lands, we conclude that the most efficient use of our resources is to hold a single auction, where we reserve an amount within the overall MF-II budget for Tribal lands.

[64] *USF/ICC Transformation Order*, 26 FCC Rcd at 17822-23, para. 489; 47 CFR § 54.1004(d).

[65] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18080, para. 1166; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17823, para. 490 (describing the bidding credit preference adopted for Mobility Fund Phase I).

[66] *See* CTIA *Further Inquiry Public Notice* Comments at 2 (arguing that "overbroad Tribal engagement obligations would be burdensome, unnecessary, and inappropriate in the context of this proceeding"); Tanana Chiefs Conference (TCC) Comments at 4-5 (suggesting that the Commission consider other mechanisms that could serve as proxy for the requirement since many providers have already established sincere and enduring relationships with Tribes, and a consultation requirement could create an unnecessary administrative burden); ARC *Further Inquiry Public Notice* Comments at 20 (indicating that meeting consultation requirements creates a significant process for each carrier given the volume of different entities that might be involved). Commenters in support of a Tribal engagement obligation do not identify any tangible benefits that would outweigh the costs. *See, e.g.*, HTI Comments at 9 ("HTI strongly supports the Tribal engagement obligation and urges the Commission to extend this requirement to the Mobility Fund Phase II and in areas where price cap carriers elect not to accept CAF."); ACS Comments at 22 (believing the Tribal engagement policy will help facilitate expanded services to Tribal lands); NTTA Comments at 39 (arguing that "the FCC should require an engagement with the beneficiary/target Tribal community government—before the auctions begins and the prospective bidding ETC must attain approval from the Tribe to serve and install facilities in the community").

coverage on Tribal lands, and layering an additional bidding credit for Tribal carriers on top of the funding exclusively available for service to Tribal lands could deter other entities from bidding to serve Tribal lands, reducing both the competitiveness of the auction and the potential reach of our finite funds for MF-II.[67]

D. Identifying Geographic Areas Eligible for Support

39. We now explain how we will identify those areas of the country eligible for MF-II. *First*, we establish geographic area as measured by square miles as the metric for assessing mobile coverage. *Second*, we explain that eligible areas will be aggregated into census block groups or census tracts for purposes of the auction. *Third*, we find that all areas lacking unsubsidized, qualifying 4G LTE service will be eligible for the auction. *Fourth*, we explain the data sources we will use. *Fifth*, we explain how we will use that data to establish presumptive eligible areas. *Sixth*, we explain that following further public comment, we will adopt a robust challenge process that we will use to verify and test the presumptive eligible and ineligible areas we establish using existing data.

1. Geographic Area as the Metric for Assessing Mobile Coverage

40. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed to base the number of bidding units and the corresponding coverage requirements on the number of linear road miles in each eligible geographic area, using TIGER data collected by the Census Bureau to determine the number of road miles associated with each eligible geographic area.[68] The Commission sought comment on its proposal and any alternatives – such as population and workplaces – that it should use instead of, or in combination with, road miles.[69] In the *Further Inquiry Public Notice*, following the results of Auction 901, the Bureaus sought additional comment on an appropriate bidding and corresponding coverage unit.[70] The Bureaus also invited additional comment on how they might measure or factor various suggested alternatives, such as terrain or topography, into the Commission's determination of bidding units and sought input on the benefits or drawbacks of any particular approach.[71] Finally, in the *2014 CAF Further Notice*, the Commission proposed to distribute MF-II funds in a manner that maximizes the population that is served by 4G LTE.[72]

[67] *See* GCI *Further Inquiry Public Notice* Reply Comments at 4 ("[I]n the context of a reverse auction for a limited amount of universal service support, [a bidding credit preference for a particular type of provider] serve[s] only to reduce the areas that will be supported, and thus reduce[s] the effectiveness of the Commission's universal service program.").

[68] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18073, paras. 1134-35. The Census Bureau's Topologically Integrated Geographic Encoding and Referencing (TIGER) files contain all the road segments in the United States. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17789, para. 353.

[69] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18073, paras. 1134-35.

[70] *See Further Inquiry Public Notice*, 27 FCC Rcd at 14801-02, para. 13 (seeking further comment on road miles and noting that the Commission concluded that it would base bidding units on population rather than road miles for Phase I of the Tribal Mobility Fund).

[71] *See id*.

[72] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7128, para. 241.

41. *Discussion*. We will use geographic area expressed in square miles as the metric for measuring coverage, comparing bids, and assessing compliance with the corresponding coverage requirement for winning bids in MF-II.[73] We will be making eligible for support only the unserved geographic areas within a census block, rather than the entire area within the block.

42. We decide to establish geographic area as the metric for two reasons. First, requiring coverage of a geographic area most closely reflects our goal to have mobile services available everywhere people live, work, and travel.[74] A geographic area is a broad measure that encompasses all the alternative metrics proposed in the record, such as roads, population, farm land, and areas remote from roads or significant population centers. Targeting support for mobile broadband service based solely on where people may live or where roads of certain sizes may be located is not enough. Those narrower approaches would not direct support everywhere consumers need and use a mobile service. Basing the award of MF-II support on a bid for square miles takes into account many of the other areas where mobile service is important but for which standardized data are less available – such as business locations, recreation areas, work sites, and agricultural spaces. For example, precision agriculture relies on mobile networks for connectivity, so the value of having coverage in farmland is not directly related to the number of people or number of roads there.[75]

43. Second, using geographic areas as the metric for MF-II will be relatively simple to administer. We will examine the areas that do not appear in the coverage shapefiles from providers' Form 477 data. There will be no need to obtain and validate the accuracy of another data source (e.g., road maps or population data) and then overlay those data on the shapefiles. Although we utilized road miles for MF-I, we recognize, and commenters noted, that there were drawbacks to that approach. In particular, we found that roads may not be consistently categorized by states into TIGER categories for which support is provided and that there are different opinions regarding the specific TIGER categories of roads that should be included.[76] With respect to population, standardized data are available regarding total population per census block, but not with respect to where population is located within a census block.[77]

[73] As noted herein, we will only award support for those geographic areas without 4G LTE from an unsubsidized provider.

[74] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17668, para. 5.

[75] *See supra* para. 27 note 63.

[76] *See, e.g.*, Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed July 8, 2016) (AT&T July 2016 *Ex Parte*) (seeking "better publicly-available data on roads than was available in 2012, particularly with respect to the delineation in types of roads"); *see also Mobility Fund Phase I Auction Scheduled for September 27, 2012; Comment Sought on Competitive Bidding Procedures for Auction 901 and Certain Program Requirements*, Public Notice, 27 FCC Rcd 530 (WTB/WCB 2012) (*Auction 901 Comment Public Notice*); RTG *Auction 901 Comment Public Notice* Comments at 3 (arguing that limiting eligible road miles to the three TIGER categories proposed by the FCC for Phase I "would have the effect of eliminating many unserved areas from eligibility for support"); Blooston *Auction 901 Comment Public Notice* Comments at 5 ("Unfortunately, the Phase I Public Notice proposes to use only the first three categories of TIGER designated roads, and does not currently include section roads, vehicular trails and private roads for service vehicles.").

[77] The difficulties in measuring compliance based on population stem from the fact that, while we know how many people are in a given census block, we do not know where in that census block they are located. While this

44. The record reflects support for our use of geographic area for MF-II. For example, the joint proposal for MF-II recently submitted by ATN, AT&T, and Blue Wireless proposes that geographic area be used because it would "provide service to roads, POPs, farm land, and other important areas within a census tract as part of a logical network build."[78] Similarly, RTG suggests that the Commission use geographic area in "remote areas in the western states where roads are nonexistent, but necessary coverage is or should be provided."[79] And Deere & Company, among others, seeks a broader approach than roads miles or population, claiming that "MF-II funds directed solely to cover roads or population centers will not adequately address the need for wireless coverage in cropland areas – where a significant portion of rural populations work."[80] RWA adds that a geographic measurement that "accounts for cropland and other agricultural areas (e.g., pastureland, rangeland, and forestland), along with areas where

challenge could be overcome by a 100 percent coverage requirement, commenters generally oppose such a coverage requirement. *See, e.g.*, RTG Comments at 12 (explaining that a 100 percent coverage requirement is unrealistic particularly for remote areas); RTG Reply Comments at 8 (adding that a 100 percent buildout requirement is unrealistic in most rural areas); USA Coalition *Further Inquiry Public Notice* Comments at 17 ("Requiring supported carriers to achieve 100 percent coverage will dramatically increase costs without a corresponding increase in benefit, since the last percentage of miles is likely to be the least densely populated areas of the census block and/or areas with the most intractable signal propagation issues."); *see also* RCA Comments at 15 (advocating for flexible build-out requirements).

[78] Letter from Douglas J. Minster, Vice President, Government and Regulatory Affairs, ATN et al., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at Attach. at 2 (filed Jan. 30, 2017) (Joint Proposal) (suggesting a framework based on geographic area (unserved square miles), but noting that ATN maintains its position that the program should be based instead on unserved road miles); *see also* Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Jan. 27, 2017) (AT&T Jan. 27, 2017 *Ex Parte*) ("Using geographic area or square miles has the advantage of covering both road miles and POPs while also allowing the coverage of farm land or recreational areas."); Letter from Mark N. Lewellen, Manager, Spectrum Policy, Deere, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 3 (filed Feb. 16, 2017) (Deere Feb. 2017 *Ex Parte*) ("Deere strongly supports the Joint's Proposal's call for MF-II to be designed based on geographic areas, rather than solely on road miles or population centers."); Letter from Cathleen A. Massey, Vice President, Federal Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 3 (filed Feb. 16, 2017) (T-Mobile Feb. 2017 *Ex Parte*) ("T-Mobile agrees with the Joint Proposal that the bidding area in the auction should be geographic areas."); Letter from L. Charles Keller, Wilkinson, Barker, Knauer, LLP, Counsel to ATN, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at Attach. at 4 (filed Feb. 13, 2017) (ATN Feb. 13, 2017 *Ex Parte*) (supporting road miles first, but stating that "[t]he second-best alternative bidding unit would be geography (per the joint proposal)").

[79] *See* RTG *Further Inquiry Public Notice* Comments at 13.

[80] *See* Letter from Catherine Wang, Morgan Lewis, Counsel to Deere, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1-2 (filed Oct. 17, 2016); *see also* Letter from Mark N. Lewellen, Manager, Spectrum Policy, John Deere, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 8-9 (filed Oct. 11, 2016) (proposing that the Commission use a weighted average of population and cropland acreage); Letter from Mark N. Lewellen, Manager, Spectrum Policy, Deere, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Nov. 7, 2016) (Deere Nov. 7, 2016 *Ex Parte*); Deere *2014 CAF Further Notice* Comments at 6-7 (adding that "this step would allow machine-to-machine mobile broadband transmissions by agricultural equipment in the field and associated operators' mobile devices to be counted in the justification for broadband expansion"); Letter from Robert F. West, Senior Vice President, Communications, Banking Group, CoBank, ACB (CoBank), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208 (filed Oct. 28, 2016) (supporting Deere's proposal to include croplands); Letter from Caressa D. Bennet, General Counsel, RWA,

energy production, tourism, and other industrial activities, such as aquaculture, occur" is appropriate as these are areas where the need for mobile broadband is great, but where there are few roads that, if covered, would provide the necessary coverage.[81]

45. We acknowledge that various commenters support the use of a different metric than geographic area. CTIA, for instance, states that road miles are the best proxy for areas where consumers are likely to use their mobile devices.[82] Other commenters cite their familiarity with using road miles in Phase I and observe that there was no basis for our proposal to switch to population in the *2014 CAF Further Notice*.[83] By contrast, AT&T – which now supports geographic area[84] – has previously argued that using population, rather than road miles, would better encourage auction participation because population is a standard metric wireless providers utilize to plan their network deployments.[85] Finally,

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to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 5-6 (filed Aug. 23, 2016) (RWA Aug. 2016 *Ex Parte*) (asserting that "[t]he extension of high-speed mobile and backhaul facilities to agricultural croplands and ranch lands must keep pace with the ongoing deployment of technology in the field" and that a geographic measurement is preferable to a population-based or road mile metric alone); RWA Aug. 2016 *Ex Parte* at 1-2 (reiterating that a population-based metric alone is not appropriate for today's wireless industry); RWA Oct. 21, 2016 *Ex Parte* at 2 (proposing a geographic measurement that accounts for cropland and other agricultural areas along with areas where energy production, tourism, and other industrial activities occur); RWA Oct. 27, 2016 *Ex Parte* at 3-4 (reiterating support for a geographic measurement that accounts for cropland and other agricultural areas); Letter from Senator Roger F. Wicker et al., to Tom Wheeler, Chairman, FCC, at 2 (July 11, 2016); Letter from Jill Canfield, Vice President, Legal & Industry, Assistant General Counsel, NTCA-The Rural Broadband Association (NTCA), to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 2 (filed Oct. 27, 2016) (NTCA Oct. 2016 *Ex Parte*) (suggesting that support should be determined by reference to actual geography rather than road miles or population-based metrics); AEM *2014 CAF Further Notice* Reply Comments at 4; American Farm Bureau *2014 CAF Further Notice* Reply Comments at 2.

[81] RWA Oct. 27, 2016 *Ex Parte* at 4; RWA Oct. 21, 2016 *Ex Parte* at 2.

[82] CTIA *Further Inquiry Public Notice* Comments at 4, 6-7; *see also* U.S. Cellular *Further Inquiry Public Notice* Comments at 24 (describing road miles as an effective means of extending mobile broadband service in rural areas); *see also* Letter from Caressa D. Bennet, General Counsel, and Erin Fitzgerald, Regulatory Counsel, RWA, to Marlene. H. Dortch, Secretary, FCC, WT Docket No. 10-208 et al., at 4 (filed Nov. 10, 2016) (RWA Nov. 10, 2016 *Ex Parte*) (noting that a metric based on road miles is an improvement over one based solely on population).

[83] *See, e.g.*, U.S. Cellular *Further Inquiry Public Notice* Comments at 24 (reporting that its experience as a participant in the Phase I reverse auction has not caused U.S. Cellular to alter its view that the use of road miles is effective); RWC *2014 CAF Further Notice* Comments at 48-49 (noting that carriers are now familiar with the Commission's road miles regime).

[84] *See generally* Joint Proposal.

[85] *See* Joan Marsh, *Making Mobility Fund II Work* (Nov. 7, 2016), https://www.attpublicpolicy.com/universal-service/making-mobility-fund-ii-work/ ("POPs coverage is business as usual for wireless network builds and good data on POPs is readily available."); Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Nov. 9, 2016) (AT&T Nov. 9, 2016 *Ex Parte*); Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Nov. 7, 2016) (AT&T Nov. 7, 2016 *Ex Parte*); AT&T July 2016 *Ex Parte* at 1-2; *see also* Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed July 3, 2013). Along the same lines, the Massachusetts Department of Telecommunications and Cable (MDTC) contends that the Commission should adopt a "cost per person" metric. MDTC Comments at 18. *But see* AT&T Jan. 27, 2017 *Ex*

some commenters support our adopting a hybrid road miles-population approach.[86] We are not persuaded to adopt any of these proposals.

46. Even though providers that sought MF-I support may be familiar with using road miles from Auction 901, that is not a sufficient reason to continue using that metric. The added complexity inherent in the use of road miles outweighs any benefits to providers from familiarity with the metric. In any event, we awarded one-time support in MF-I, while in MF-II, we will award substantially more support for ten years. The longer time span for support and the greater amount of that support will likely attract additional providers that chose not to participate in MF-I (and thus are not already familiar with road miles) and will enable providers that win MF-II support to better fill in all gaps in coverage – including those where mobile service is needed, but that may not be located near roads. Moreover, AT&T's original suggestion that we use population because that is the factor that providers use in the ordinary course to decide on network deployment overlooks the central objective of the Mobility Fund – i.e., to disburse support to fill in those gaps in coverage that result from mobile providers' commercial network planning decisions. Finally, a hybrid approach that measures population, road miles, and/or other factors, would be even more complex and difficult to administer than using either population or road miles in isolation, and is unnecessary insofar as employing the metric of geographic area broadly encompasses all the alternative metrics proposed in the record, such as roads, population, farm land, and areas remote from roads or significant population centers.

2. Minimum Geographic Area for Bidding and Support

47. *Background*. In the *USF/ICC Transformation FNPRM*, the Commission proposed that, as with MF-I, the census block should be the minimum geographic area for which support is provided under MF-II.[87] The Commission contemplated that because of the number and small size of census blocks, it would be helpful to provide for the aggregation of census blocks for bidding purposes, and proposed multiple aggregation options.[88] The Commission, for example, proposed setting out by rule a minimum area for bidding comprised of an aggregation of eligible census blocks.[89] The Commission also suggested that the auction procedures could provide for bidders to make "all-or-nothing" package bids on combinations of bidding areas.[90]

48. *Discussion*. We conclude that the minimum geographic area for bidding should be census block groups or census tracts containing one or more census blocks with eligible areas for bidding and support for MF-II. The Commission expressed its intent to employ this same approach in the *Connect*

Parte at 1 (recognizing that using geographic area or square miles is "a methodology familiar to carriers and the Commission since it has been utilized in the spectrum license protect context").

[86] *See* AT&T July 2016 *Ex Parte* at 2 (suggesting the Commission require winning bidders to serve a population and a defined percentage of or type of roads in the tract); USA Coalition Comments at 17 (recommending that the Commission factor in population data along with road miles to create a hybrid approach that potentially weighs population equally with road miles to avoid inadvertently discounting some rural areas); National Association of State Utility Consumer Advocates (NASUCA) et al. Comments at 83 (urging the Commission to adopt a population-weighed road mile basis rather than road miles alone).

[87] *USF/ICC Transformation Order*, 26 FCC Rcd at 18071, para. 1126.

[88] *Id*.

[89] *Id.*

[90] *Id.*

America Phase II Auction Order.[91] The full Commission will make the final decision on minimum geographic area in the pre-auction process.[92]

49. With few exceptions, commenters endorsed our prior proposal to use census blocks.[93] For example, the USA Coalition expresses support for the use of census blocks as they "provide a reasonable, competitively neutral basis for performing an analysis of whether an area requires support."[94] Although we continue to recognize that using census blocks allows us to target support to specific areas thereby providing bidders the ability to tailor their bids to their business plans,[95] our experience with the MF-I auction demonstrates the need to limit the number of discrete biddable units. In addition, we conclude it is best to set performance requirements based on an area larger than a census block. As such, we adopt a broader, more manageable approach that will combine one or more census blocks containing eligible areas into census block groups or census tracts.

3. Identifying Areas that Need Mobility Fund Phase II Support

50. *Background*. In the *2014 CAF Further Notice*, the Commission proposed to target MF-II funds to preserve and extend wireless service in those areas that would not be served without governmental support.[96] The Commission reaffirmed its commitment to preserve and advance the universal availability of voice service, including ensuring the universal availability of modern networks capable of providing advanced mobile voice and broadband services.[97] The Commission proposed to target MF-II funding to promote these goals and, consistent with current market developments, to extend

[91] *See Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5979, para. 89 (2016) (*Connect America Phase II Auction Order*).

[92] We refer generally to the "pre-auction process" in this Order, which is the process through which final auction procedures will be implemented and the final list of eligible areas will be determined. We may seek comment on, and/or resolve, certain final auction procedures in separate public notices if doing so better conduces to the proper dispatch of business. *See* 47 U.S.C. § 154(j). Any such public notices will be released during the pre-auction process and well in advance of the auction.

[93] *See, e.g.*, CTIA Comments at 13 (agreeing that "census blocks should be used as the relevant supported areas . . . with respect to Phase II of the Mobility Fund"); USA Coalition Comments at 16; Blooston *Further Inquiry Public Notice* Comments at 9 (contending that the use of census blocks "helps target funds in hard-to-serve areas by allowing providers to narrowly tailor their service areas . . ."); USA Coalition *Further Inquiry Public Notice* Comments at 8. *But see* U.S. Cellular Comments at 25 (noting that under Section 214(e)(5), in the case of areas served by rural telephone companies, the area to be used for purposes of providing universal service support must be the rural telephone company's study area, unless the Commission and the states agree differently); Letter from Caressa D. Bennet, General Counsel, and Erin P. Fitzgerald, Regulatory Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 3 (filed Feb. 16, 2017) (RWA Feb. 16, 2017 *Ex Parte*) (agreeing with the use of census blocks because census tracts are much bigger and very difficult to cover). *See infra* Section VI.B for a discussion regarding forbearance from Section 214(e). Moreover, as the Commission explained in the *USF/ICC Transformation Order*, it is not feasible to identify unserved areas with reference to more granular widely-available data since census blocks are the smallest unit for which the Census Bureau provides data. *USF/ICC Transformation Order*, 26 FCC Rcd at 17783, para. 332.

[94] USA Coalition Comments at 16; USA Coalition *Further Inquiry Public Notice* Comments at 8 (reiterating that support should be provided on a census block basis).

[95] *USF/ICC Transformation Order*, 26 FCC Rcd at 17787, para. 346.

[96] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7127, para. 239.

4G LTE service to areas where neither Verizon nor AT&T Services, Inc. (AT&T) provide 4G LTE.[98]

51. *Discussion*. We reaffirm these goals and now seek to promote the deployment of 4G LTE in all areas where it would not be offered by the private sector in the absence of universal service support. The Communications Act directs us to fund "reasonably comparable" services in rural areas to those commonly available in urban areas.[99] Looking to the mobile speeds generally reported by nationwide carriers on their Form 477 submissions, we find that such carriers are generally reporting the deployment of 4G LTE reported at minimum advertised download speeds of at least 5 Mbps. We accordingly will use this speed benchmark to identify areas eligible for MF-II.[100]

52. We conclude that any census block that is not fully covered by unsubsidized 4G LTE will contain areas that are eligible for support in the MF-II auction. This sub-census block approach to eligibility addresses long-standing concerns that current methods used to estimate network coverage may classify whole census blocks as served notwithstanding that they contain significant areas that remain unserved.[101] The record gathered through the course of this proceeding leads us to conclude that directing our finite universal service funds in this manner will best serve the public interest and help ensure that our actions today focus support on closing the gap in mobile voice and broadband coverage for consumers.

53. We decline to use only Verizon's and AT&T's coverage areas to determine eligible and ineligible areas. We conclude that any given area with any provider of unsubsidized qualified 4G LTE is unlikely to be at risk of losing coverage. Directing support to any areas covered by qualified unsubsidized 4G LTE would not further our objective of ensuring that MF-II funding goes only to those areas where it is needed. Thus, by adopting the above definition of eligible areas, we free up funds from our budget to expand the overall 4G LTE coverage footprint.

54. Some commenters suggest that the eligibility definition should allow an area to be eligible for

[97] *See id.* at 7128, para. 240.

[98] *See id*. at 7128, paras. 240-41.

[99] *See* 47 U.S.C. § 254(b)(3).

[100] We reject requests to use the same 10/1 Mbps thresholds for determining area eligibility that we require of MF-II support recipients for determining compliance with performance requirements. *See* Letter from Caressa D. Bennet, General Counsel, and Erin P. Fitzgerald, Regulatory Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1-2 (filed Feb. 14, 2017) (RWA Feb. 14, 2017 *Ex Parte*) (arguing that "[a] 5/1 eligibility threshold, based on unreliable (and often inflated) coverage data, will render a large portion of rural America ineligible for MFII funding"); Letter from Christopher J. Wright et al., Harris, Wiltshire & Grannis LLP, Counsel to CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 5-6 (filed Feb. 16, 2017) (CCA Feb. 2017 *Ex Parte*) ("[T]he record is clear that a 5 Mbps/1 Mbps threshold for determining whether an unsubsidized incumbent provides qualifying LTE service would be arbitrary and contradict the Commission's statutory mandate."); RWA Feb. 16, 2017 *Ex Parte* at 1 ("The area eligibility standard and buildout requirement should be the same – 10 Mbps/1 Mbps."); Deere Feb. 2017 *Ex Parte* at 5 (urging the Commission to adopt a minimum upload speed, in addition to download speed, for the initial classification and data improvement process). Given our objective of ensuring that we target our finite budget to where it is most needed, we find that it furthers the public interest to exclude from eligibility for MF-II support those areas that are already served on an unsubsidized basis by one or more carriers at 5 Mbps.

[101] *See, e.g.*, CCA *2014 CAF Further Notice* Comments at 6; RWA April 2016 *Ex Parte*; U.S. Cellular *Ex Parte*.

MF-II support if it currently is not covered by networks that support 4G LTE, CDMA, and GSM devices, in particular coverage by both AT&T and Verizon.[102] RWA, for instance, contends that the absence of both GSM and CDMA network technologies in an area may preclude rural customers from making emergency calls.[103] As has been the case since carriers deployed such networks, when customers of one provider leave that provider's service area, they may or may not be able to place or receive calls, including emergency calls, depending on the network deployments in their destination. However, we are unable to support three different network technologies in every area of the country in light of our finite budget and our overall objectives to provide support for the ten years of MF-II to address as many of the remaining 4G LTE coverage gaps as possible. If any provider serves an area with unsubsidized 4G LTE, then that area is not at risk of losing service and, hence, should be ineligible to receive support, regardless of whether the area has networks that are compatible with GSM and/or CDMA. Additionally, we find that MF-II funds should not be targeted to ensure that newly deployed 4G LTE networks are backwards compatible with the mutually incompatible GSM and CDMA network technologies that are in the process of being phased out by the marketplace. Disbursing our finite funds to promote backwards compatibility with technologies that are being phased out would not be fiscally responsible and would diminish our ability to promote the expansion of 4G LTE coverage to as many areas as possible.

4. Source of Coverage and Subsidy Data

55. *Background.* To distinguish areas eligible for support, the Commission must have reliable data. In the *USF/ICC Transformation FNPRM*, the Commission proposed to follow its approach in MF-I

[102] *See, e.g.*, Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Apr. 13, 2016) (RWA April 2016 *Ex Parte*); U.S. Cellular *Ex Parte*; RWA Oct. 21, 2016 *Ex Parte* at 3; *see also* Letter from Robert A. Silverman, Bennet & Bennet, PLLC, Counsel to Panhandle Telephone Cooperative, Inc. (PTCI), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3 (filed Dec. 5, 2014) (suggesting that a more appropriate criterion for ineligibility would be the presence of both Verizon's and AT&T's 4G LTE networks in an area); Letter from Robert A. Silverman, Bennet & Bennet, PLLC, Counsel to PTCI and Pine Belt Cellular, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90 (filed Feb. 15, 2017) (PTCI *Ex Parte*) (discussing the incompatibility of GSM and CDMA networks and how allowing areas impacted by this incompatibility to remain eligible for MF-II funding is a crucial public safety matter); RWA Oct. 27, 2016 *Ex Parte* at 4 (expressing concern that the terms "4G LTE" and "LTE" are undefined for the purposes of MF-II); CCA Feb. 2017 *Ex Parte* at 16 ("In developing final eligibility criteria for MFII, the Commission should adopt funding rules to ensure that at least one CDMA carrier and one GSM carrier operate in all areas.").

[103] RWA April 2016 *Ex Parte* at 4-5; RWA Oct. 27, 2016 *Ex Parte* at 4-5 (stressing that the Commission's coverage data and definition must consider the GSM/CDMA incompatibility issue); RWA Feb. 14, 2017 *Ex Parte* at 2-3 (reiterating that the Commission should "determine areas eligible for support where an unsubsidized GSM or CDMA carrier provides service and VoLTE (and VoLTE devices) is not available"); *see also* Letter from Jill Canfield, Vice President, Legal & Industry, Assistant General Counsel, NTCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 3 (filed Feb. 15, 2017) (NTCA Feb. 2017 *Ex Parte*) (emphasizing the importance of recognizing that the GSM and CDMA networks are incompatible); Letter from Jill Canfield, Vice President, Legal & Industry, Assistant General Counsel, NTCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 3 (filed Feb. 14, 2017).

and use Mosaik[104] data to identify eligible areas for inclusion in an MF-II auction.[105] The Bureaus sought additional comment regarding the use of Mosaik data and any alternatives in the *Further Inquiry Public Notice*.[106] Subsequently, in the *2014 CAF Further Notice*, the Commission proposed using certified carrier data submitted through the Form 477[107] instead of Mosaik data to guide our identification of eligible areas in MF-II.[108] The Commission noted that its Form 477 data collection was revised in June 2013 in the *477 Report and Order* and that it expected to collect more granular data regarding mobile broadband service and new data regarding mobile voice service availability in September 2014.[109]

56. *Discussion.* We conclude that Form 477 data is the most reliable data currently available for the purpose of determining the coverage levels of existing mobile services, including unserved areas, and areas served by the various technologies that provide 2G, 3G, 4G, and 4G LTE services. We will therefore use Form 477 mobile wireless coverage data[110] and high-cost disbursement data available from the Universal Service Administrative Company (USAC)[111] to determine coverage levels in individual census blocks and whether high-cost support is being awarded. Specifically, prior to an MF-II auction, we will compile the list of potentially eligible areas from the data submissions that are most recently available for this purpose.

57. In the *477 Report and Order*, the Commission made clear that the enhanced deployment data collection requirements it adopted were "needed to fulfill [its] universal service mandate."[112] The *477 Report and Order* significantly enhanced the reliability of the data we collect by requiring the submission of deployment shapefiles that depict "the coverage boundaries where, according to providers, users should expect the minimum advertised upload and download data speeds associated with [a] network technology," such as LTE.[113] Specifically, for each mobile broadband network technology (e.g., EV-DO, WCDMA, HSPA+, LTE, WiMAX) deployed in each frequency band (e.g., 700 MHz, Cellular, AWS,

[104] Mosaik Solutions, which was formerly known as American Roamer, is an independent consulting firm that provides data on the coverage footprints of mobile voice and mobile data networks to the Commission under contract. The company creates coverage boundary maps based on the coverage boundaries voluntarily submitted to Mosaik by mobile wireless network operators. *See generally* Mosaik, About Us, www.mosaik.com (last visited Aug. 24, 2016).

[105] *See USF/ICC Transformation FNRPM*, 26 FCC Rcd at 18070, para. 1124. When the Commission adopted the *USF/ICC Transformation FNPRM*, Mosaik Solutions was called American Roamer. *See Further Inquiry Public Notice*, 27 FCC Rcd at 14799, para. 7 n.7.

[106] *See Further Inquiry Public Notice*, 27 FCC Rcd at 14799-800, paras. 7-8.

[107] *See Modernizing the FCC Form 477 Data Program*, Report and Order, 28 FCC Rcd 9887 (2013) (*477 Report and Order*).

[108] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7128, para. 241.

[109] *See id.*

[110] Mobile deployment Form 477 data is available at https://www.fcc.gov/mobile-deployment-form-477-data.

[111] USAC reports the amounts of ongoing legacy support on a CETC-specific basis on its website. *See* USAC, Tools, http://www.usac.org/hc/tools/default.aspx (last visited Feb. 23, 2017).

[112] *477 Report and Order*, 28 FCC Rcd at 9895, para. 16.

[113] *See id.* at 9908-09, para. 42.

PCS, BRS/EBS), every facilities-based mobile broadband provider must submit polygons representing its nationwide coverage area (including U.S. territories) of that technology.[114] By requiring a single, uniform filing format for the shapefiles, we reduce the potential for distortion or misleading comparisons of the data. We require all facilities-based broadband providers to file Form 477 twice a year, and we require that the providers certify as to the accuracy of the data submitted.[115] As Wireless Telecommunications Bureau staff has demonstrated, Form 477 data along with USAC CETC support data can provide sufficiently granular information to identify those areas of the country that lack 4G LTE service or where such service is only provided by a subsidized provider.[116]

58. Some commenters have questioned the accuracy of the Form 477 coverage data.[117] Blooston asserts that information included in Form 477 by definition contains "room for bias" since there is no

[114] *See id*. Note that while these coverage data provide the most accurate depiction the Commission has on the deployment of mobile networks, they do not indicate the extent to which providers affirmatively offer service to residents in the covered areas.

[115] *See id.* at 9897-98, paras. 23-24 (noting that the certification obligation will help promote complete and accurate data).

[116] *See Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis*. In particular, Wireless Telecommunications Bureau staff used sub-census-block level coverage data from December 2015 reported by service providers on Form 477 to determine the extent of 4G LTE coverage throughout the U.S. and compared that coverage to the particular areas where high-cost universal service support was provided to mobile providers. The Wireless Telecommunications Bureau determined the extent of 4G LTE coverage by using mobile providers' Form 477 data on a sub-census-block level to determine "the exact area of the [census] block covered by each service provider by technology." *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Nineteenth Report, 31 FCC Rcd 10534, 10561, para. 35 (WTB 2016) (*19th Mobile Competition Report*).

[117] *See, e.g.*, Blooston *2014 CAF Further Notice* Comments at 4-5; RWC *2014 CAF Further Notice* Reply Comments at 31-34 (suggesting steps to help ensure the accuracy of Form 477 data, including providing interested parties with an opportunity to submit comments on whether the new Form 477 reporting requirements are producing more accurate data and making available either unredacted Form 477 data for AT&T and Verizon or publishing a composite map depicting the LTE coverage areas of AT&T and Verizon together); *see also* RWA Oct. 21, 2016 *Ex Parte* at 2 (proposing a field strength measurement and propagation maps); Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to C Spire, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1-2 (filed Oct. 22, 2016); Letter from Trey Hanbury, Hogan Lovells, Counsel to CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1-2 (filed Oct. 25, 2016) (describing the variation in provider Form 477 data with respect to propagation model used and resolution); RWA Oct. 27, 2016 *Ex Parte* at 2-3 (expressing concern with the absence of a common coverage standard for reporting Form 477 data); NTCA Feb. 2017 *Ex Parte* at 1 (reiterating the existence of known flaws in the Form 477 data that are likely to overstate actual coverage area); Letter from David LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, at 1 (filed Jan. 31, 2017) (pointing out that "infirmities in FCC Form 477 data released in September of 2016 make difficult the task of accurately identifying areas to be declared eligible for a reverse auction, and the increasing importance of accurate data if the FCC decides to award support for a longer term"); Letter from David LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 2 (filed Feb. 14, 2017) (U.S. Cellular Feb. 14, 2017 *Ex Parte*) ("[F]ix the Form 477 data, which is significantly flawed . . . ."); Letter from David LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel

objective definition of what constitutes "reliable service."[118] By contrast, other commenters support our decision to use Form 477 data. For example, Blue Wireless and ATN contend that the Form 477 data are the best data available.[119] Furthermore, the Commission has recently concluded that "data from the Form 477 . . . help [it] better analyze mobile broadband deployment than in years past."[120] The Wireless Telecommunications Bureau determined that the Form 477 coverage data "provide the most accurate depiction the Commission has on the deployment of mobile networks,"[121] and none of the commenters criticizing the Form 477 data has identified a better data source for moving forward expeditiously to implement MF-II. Recognizing that no data source – including Form 477 – will be perfectly accurate, we

to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 2 (filed Feb. 17, 2017) (U.S. Cellular Feb. 17, 2017 *Ex Parte*) (submitting a map of Kansas drawn from FCC Form 477 data and a map of U.S. Cellular's ETC service area, demonstrating the problems with FCC Form 477 data); Letter from W. Allen Gillum, CEO & General Manager, East Kentucky Network d/b/a/ Appalachian Wireless et al., to Ajit Pai, Chairman, FCC, at 2 (filed Feb. 14, 2017) (Appalachian Wireless *Ex Parte*) (highlighting the deficiencies in the current Form 477 data); RWA Feb. 2017 *Ex Parte* at 2 (continuing to express concern about the lack of a common coverage standard governing Form 477 data); CCA Feb. 2017 *Ex Parte* at 8 ("Because of the poor information quality and imprecision of Form 477 data, including the shapefiles submitted by carriers as part of the Form 477 process, determinations about which areas are eligible for MFII funding that rely on Form 477 data necessarily will be inaccurate and overbroad."); Letter from Kirby J. Underberg, General Manager, Chariton Valley Wireless Services et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 2 (filed Feb. 16, 2017) (Chariton *Ex Parte*) ("[T]he Form 477 data cannot be confidently applied to achieve the Commission's goals."); Letter from Caressa D. Bennet, General Counsel, and Erin P. Fitzgerald, Regulatory Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 2 (filed Feb. 16, 2017) ("RWA continues to have serious concerns about the lack of a common coverage standard governing Form 477 data, and the negative impact this could have on area eligibility determinations and the challenge process."); Letter from David LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel to C Spire et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 2 (filed Feb. 16, 2017) (LLGS *Ex Parte*) ("Until the Commission mandates a uniform methodology for determining and reporting mobile broadband coverage that is based on sound RF engineering principles and is subject to reasonable verification, wireless carriers will continue to report Form 477 data that effectively overstates the extent of their broadband coverage."); Letter from Trey Hanbury, Hogan Lovells, Counsel to Mosaik Solutions, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, at 1 (filed Feb. 17, 2017) (Mosaik *Ex Parte*) ("The Form 477 data is also less accurate than the data produced by the private sector.").

[118] *See* Blooston *2014 CAF Further Notice* Comments at 4; *see also* Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Oct. 27, 2016) ("[T]he recently released Form 477 data appears to be inconsistent because the Commission did not require a standardized reporting methodology.").

[119] *See* Letter from L. Charles Keller, Wilkinson, Barker, Knauer, LLP, Counsel to Buffalo-Lake Erie Wireless (Blue Wireless), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Attach. at 8 (filed Oct. 7, 2016) ("The Form 477 shapefile data is the best coverage data available."); ATN Nov. 4, 2016 *Ex Parte* at Attach. at 4 ("The Form 477 data are the best data available regarding wireless coverage."); *see also* Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Feb. 15, 2017) ("AT&T Services, Inc., on behalf of its affiliates, supports the Commission's plan to use data collected from the Form 477 as the starting point for determining areas that should be

will utilize a challenge process to improve the accuracy of the coverage analysis underlying eligibility determinations reached in reliance on Form 477 data.[122]

59. As an alternative to using Form 477, we did consider using the Mosaik data the Commission relied upon for MF-I but determined its limitations made it an inferior choice. For example, Mosaik data are not collected using a consistent methodology across geographic areas and service providers.[123] In addition, Mosaik data are commercially provided subject to intellectual property protections, somewhat limiting their utility in the public policy sphere.[124] Furthermore, the Commission has long expressed concern that Mosaik data likely overstate the extent of mobile broadband coverage. For instance, in 2010, the Commission's National Broadband Plan relied on the data with respect to mobile broadband availability, but pointed out that the coverage was likely overstated.[125] For these reasons, following the initial submissions of the new Form 477 data, we have relied on that data, rather than data from Mosaik, in assessing mobile broadband coverage outside the universal service context.[126]

60. Commenters, too, have expressed concerns regarding the accuracy of Mosaik data.[127] RTG,

eligible for Mobility Fund Phase II support.").

[120] *2016 Broadband Progress Report*, 31 FCC Rcd at 708-09, para. 22.

[121] *Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis* at 5, para. 8; *see id.* at 5, para. 7.

[122] *See infra* Section IV.D.6.

[123] *See 477 Report and Order*, 28 FCC Rcd at 9900, para. 27; *see also Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis* at para. 6.

[124] *See id.* This is also true for other third-party coverage data. *See* Letter from Julie A. Veach, Counsel to Nielsen Holdings plc, to Marlene H. Dortch, Secretary, FCC, WT Docket No 10-208, at 1 (filed Feb. 7, 2017) (Nielsen *Ex Parte*) (promoting the use of Nielsen data).

[125] *See* National Broadband Plan at 3.3, 22. More recently, in the *18th Mobile Wireless Competition Report*, which was released at the end of 2015, the Wireless Telecommunications Bureau similarly concluded that limitations in the Mosaik data likely overstated the coverage experienced by consumers. This is because Mosaik reports advertised coverage as reported to it by service providers, each of which uses a different definition or determination of coverage. The data do not expressly account for factors such as signal strength, bit rate, or in-building coverage, and may convey a false sense of consistency across geographic areas and service providers. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Eighteenth Report, 30 FCC Rcd 14515, 14538, para. 34 (WTB 2015) (*18th Mobile Wireless Competition Report*); *see also Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Seventeenth Report, 29 FCC Rcd 15311, at 15332-33, para. 45 (WTB 2014) (*17th Mobile Wireless Competition Report*); *USF/ICC Transformation Order*, 26 FCC Rcd at 17785, para. 336 (referring to comments observing that Mosaik data may over report the extent of coverage).

[126] *See 2016 Broadband Progress Report*, 31 FCC Rcd at 708-09, para. 22; *Working Toward Mobility Fund II* at 4, paras. 7-8.

[127] *See, e.g.*, Blooston *2014 CAF Further Notice* Comments at 4-6; RTG *Further Inquiry Public Notice* Comments at 3-5; U.S. Cellular *Further Inquiry Public Notice* Comments at 18-19. USA Coalition maintains that since American Roamer data is self-reported information, entities reporting such data may have incentives to over-report coverage.

for example, notes that "[c]arriers' coverage areas as shown on Mosaik maps are often overestimated, sometimes underestimated, and in some instances not even available."[128] Notably, no commenter to the *2014 CAF Further Notice* advocates that we utilize Mosaik data rather than Form 477 data.

61. Finally, the Mississippi Public Service Commission (MPSC) urges us to seek input from states that have instituted programs to identify areas lacking coverage.[129] We recognize that some state commissions have acquired detailed information about coverage within their states, and encourage states to submit information that is probative for determining eligibility during the challenge process. However, because individual state and territory information may not be uniform throughout the nation, we decline to rely on such data to the exclusion of other sources and will continue to rely primarily on Form 477 data certified by providers. Nonetheless, we will consider coverage data from states and other sources in our challenge process.

5. Applying Coverage and Subsidy Data to Census Blocks

62. *Background.* In the *USF/ICC Transformation FNPRM*, consistent with the rules established for MF-I, the Commission proposed to use the centroid method to establish whether service is available to a particular census block for purposes of determining eligibility of areas for MF-II support.[130] The Commission also sought comment on alternatives, including whether there are other proxies for determining where private investment will deploy mobile broadband, other data sources, other technologies, or other methods that should be considered.[131] The centroid method, as initially contemplated by the Commission in the *Mobility Fund NPRM*,[132] considers a census block as having service coverage if the center point of the census block, as published by the Census Bureau, lies within the coverage polygon. If a centroid is covered, then all the land area, population, and road miles in the corresponding census block are also coded as covered. Recognizing that the centroid methodology could overstate coverage in certain census blocks, the Bureaus sought additional comment on this issue in the *Further Inquiry Public Notice*.[133]

63. *Discussion*. We conclude that we will apply an actual coverage analysis to determine presumptive eligible areas for MF-II support, in lieu of the centroid method employed in MF-I. In the time that has passed since the Commission first proposed using the centroid method in MF-II, we have been able to gather much more robust information about service coverage areas from the certified Form

See USA Coalition *Further Inquiry Public Notice* Comments at 11-12. Blooston also claims that carrier coverage maps submitted to Mosaik Solutions may "significantly overstate coverage." Blooston *2014 CAF Further Notice* Comments at 4.

[128] RTG *Further Inquiry Public Notice* Comments at 4.

[129] *See* MPSC *Further Inquiry Public Notice* Comments at 1-2 (discussing Mississippi's "Zap the Gap" multistate initiative).

[130] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18070-71, para. 1124; *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17786, para. 343 n.576 (noting that the term "centroid" refers to the internal point latitude/longitude of a census block polygon).

[131] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18070-71, para. 1124.

[132] *Mobility Fund NPRM*, 25 FCC Rcd at 14724, para. 22.

[133] *Further Inquiry Public Notice*, 27 FCC Rcd at 14800, para. 9.

477 data that providers are required to submit twice a year. We can now more reliably identify those areas within census blocks that do not today have unsubsidized 4G LTE coverage; use high-cost support data to determine where 4G LTE is provided without subsidy; and by overlaying the coverage and the support data, identify the areas presumptively lacking unsubsidized 4G LTE. The resulting analysis, presents the most accurate data currently available on which areas should be eligible for MF-II. The Wireless Telecommunications Bureau staff released its analysis using providers' Form 477 data last fall[134] and will publish a preliminary list of eligible areas as part of the pre-auction process. The data released on eligible square miles will be grouped by census blocks, which in turn will be grouped by census block group or census tract[135] as the minimum geographic area for bidding, and include the total eligible square miles in each census block and the location of each eligible area. The location of each presumptively eligible area will be necessary to define the service areas being auctioned and to define coverage obligations.

64. In response to the *USF/ICC Transformation FNPRM* and *Further Inquiry Public Notice*, some carriers express concern that the centroid method may not accurately reflect coverage.[136] Some rural commenters note, for example, that in some cases the centroid of a block may be covered, but large areas outside the centroid are not and that such blocks may be unfairly excluded from support.[137] Many of those commenters support the proportional method, which determines eligibility for support based on whether each census block's coverage percentage is below a certain threshold, as an alternative.[138] Like the proportional method, the approach we adopt today examines coverage at the sub-census block level, thereby remedying the chief concern with the centroid method. Because it can identify specific areas *within* each census block where 4G LTE coverage is absent, the actual area coverage approach is a significant improvement over the centroid method in reaching our universal service goals. It is a far more precise way to target our MF-II budget.[139]

[134] *See generally Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis*.

[135] As stated above, these groupings will be announced by public notice as part of the pre-auction process.

[136] *See, e.g.*, U.S. Cellular Comments at 26 (asserting that the centroid method "is not a useful or effective tool for promoting the deployment of 4G mobile broadband services in rural areas" as it has a "propensity to incorrectly treat large census blocks in low-density rural areas as 'served' even though large portions of the blocks are not receiving a level of mobile broadband service that is reasonably comparable to that which is available in urban areas"); *see also* RTG Comments at 8 (noting, as an example, that in rural areas where an unsubsidized carrier may be providing service, but where the service is spotty at the outer edges, the centroid could be covered, but 50 percent or more of the census block would be uncovered); RWA Oct. 21, 2016 *Ex Parte* at 2.

[137] *See id.*

[138] *See, e.g.*, RTG Comments at 8-9 (suggesting that where 50 percent or more of the census block is uncovered, the FCC should consider the census block unserved and allow bidding to occur); CTIA *Further Inquiry Public Notice* Comments at 5 (stating that it "has heard anecdotally about some instances of anomalous results from the use of the centroid method (e.g., where the centroid fell in an area with neither population nor roads, while coverage was good elsewhere in the census block and vice versa)" and encouraging the Commission to evaluate carefully the centroid method); RTG *Further Inquiry Public Notice* Comments at 6 (advocating proportional exceptions to the centroid method); U.S. Cellular *Further Inquiry Public Notice* Comments at 19 (agreeing with RTG that a census block should be treated as unserved if at least 50 percent is unserved (even if the centroid has coverage)).

[139] *See Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis* at 10-11, para. 21.

6. Challenge Process

65. *Background.* In MF-I, the Commission provided a limited timeframe for challenges to its initial coverage and geographic area eligibility determinations during the pre-auction process.[140] Prior to Auction 901, the Wireless Telecommunications and Wireline Competition Bureaus released an initial list of eligible areas and asked commenters to indicate which blocks they believed should or should not be included, "and provide supporting evidence."[141] In submitting challenges regarding coverage based on demonstrations of current coverage at the centroid, or the lack thereof, some commenters provided maps, results of drive tests, and/or explanations of methodologies used for determining coverage, as well as certifications as to the veracity of the materials provided.[142] The Bureaus found demonstrations of coverage to be more credible and convincing where they were supported by such evidence.[143] The Bureaus did not find convincing those submissions making assertions of coverage without any supporting evidence or with largely anecdotal evidence.[144] In those cases, the commenters argued that certain census blocks should be removed from the potentially eligible list based on bare assertions that their own coverage maps showed that they served those census blocks.[145] In the *2014 CAF Further Notice*, the Commission sought comment on the challenge process to be used in MF-II, stating that it expected to use a similar challenge process to that used in MF-I.[146] Similar to the challenge process in MF-I, the Commission expected to identify publicly the presumptively eligible areas prior to the commencement of bidding for MF-II support and subject them to a challenge process to add or subtract certain areas.[147]

66. *Discussion.* Consistent with the general approach adopted for MF-I and more recently, for CAF-II,[148] we conclude that we will provide a robust process for interested parties to challenge our list of presumptively eligible areas for MF-II support.[149] To provide interested parties the opportunity to review the coverage analysis on which eligible areas are identified, we direct, as we have in the past, the Bureaus

[140] *USF/ICC Transformation Order*, 26 FCC Rcd at 17785, para. 337 ("Specifically, we will make public a list of unserved areas as part of the pre-auction process and afford parties a reasonable opportunity to respond by demonstrating that specific areas identified as unserved are actually served and/or that additional unserved areas should be included.").

[141] *Auction 901 Comment Public Notice*, 27 FCC Rcd at 536, para. 19.

[142] *Mobility Fund Phase I Auction Scheduled for September 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, Public Notice, 27 FCC Rcd 4725, 4734-35, para. 20 (WTB/WCB 2012) (*Auction 901 Procedures Public Notice*) (citing generally comments from Bluegrass, Carolina West Wireless, Inc. (Carolina West), Cellular Network, Commnet, and Cross Valliant, among others).

[143] *See id.* at 4734-35, para. 20.

[144] *See id.* at 4735, para. 21.

[145] *See id.*

[146] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7128-29, para. 242.

[147] *See id.* at 7129, para. 242.

[148] *See Connect America Fund*, Report and Order, 28 FCC Rcd 7211 (WCB 2013) (*CAF II Challenge Process Order*).

[149] The process will address challenges to coverage determinations only and will not address challenges to the allocation of legacy CETC support within study area geographies.

to make an initial determination of eligible areas by census block as part of the pre-auction process.[150] Subsequently, the Bureaus shall implement a process consistent with the decisions we will make after review of the record received in response to the Further Notice of Proposed Rulemaking below. We defer making further decisions regarding the challenge process in this Order because, while commenters generally support a challenge process,[151] they have different views with respect to how such a process should work,[152] and we find that seeking further comment will be helpful in reaching decisions.

67. We expect that the challenge process will conclude by the end of January 2018. At the conclusion of the challenge process, we direct the Bureaus to make a final determination of areas eligible for MF-II support.[153]

[150] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17783, 17785, paras. 332, 337 (discussing similar requirements in MF-I); *Connect America Phase II Auction Order*, 31 FCC Rcd at 5968, para. 51 ("We direct the Bureau to release a preliminary list of eligible census blocks based on the most recent FCC Form 477 data and to conduct a streamlined challenge process to identify the final list of eligible census blocks for the Phase II competitive bidding process.").

[151] *See, e.g.*, Blooston Comments at 18 (arguing that the Commission "must implement a mechanism to allow rural carriers and others to challenge claims of coverage where there are reliable indicia that the claims are overstated"); RTG Comments at 8 (indicating that "there must be a way for a carrier to challenge the information used to determine whether a certain area is declared eligible or ineligible due to the presence of an existing carrier's service"); USA Coalition Comments at 20-21 (supporting "the Commission's proposal to challenge that specific areas identified as unserved are actually served and/or that additional unserved areas should be included"); RWA Oct. 27, 2016 *Ex Parte* at 5 (stressing that the Commission should adopt a thorough challenge process and seek comment on this process so that all stakeholders have an opportunity to have their concerns addressed); NTCA Oct. 2016 *Ex Parte* at 1 ("To ensure that support is not at risk in areas where still needed to serve consumers, it is essential that the Commission adopt a robust and accessible 477 data challenge process to confirm purported coverage."); ATN Nov. 4, 2016 *Ex Parte* at Attach. at 4 (noting that alleged shortcomings in Form 477 data can be resolved through a challenge process); Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, at 2 (filed Nov. 3, 2016) (CCA Nov. 3, 2016 *Ex Parte*) (supporting generally a challenge process and urging the Commission to implement a more robust challenge process to provide stakeholders an opportunity to address specific coverage inaccuracies before funds are disbursed).

[152] *See, e.g.*, U.S. Cellular Feb. 14, 2017 *Ex Parte* at 2 (requesting that the Commission take three steps to fix the challenge process: (1) fix the Form 477 data; (2) develop the challenge process through a notice and comment proceeding; and (3) take the new Form 477 data, release it soon thereafter, and begin the challenge and auction process); RWA Feb. 14, 2017 *Ex Parte* at 2 (urging the Commission "to consider challenge process specifics via a public notice that seeks comment from interested parties, rather than delegate this task to Bureau staff"); CCA Feb. 2017 *Ex Parte* at 11 (stating that "given the poor quality and overbreadth concerns of Form 477 data described above, the Commission's 'challenge' process will become the rule and not the exception, and will create enormous burdens for Commission staff and challengers alike" and requesting that the Commission publish notice and seek comment "on the evidence of service availability that would inform the challenge process, among other critical details"); NTCA Feb. 2017 *Ex Parte* at 2-3; Appalachian Wireless *Ex Parte* at 2-3 (asserting that a challenge process that places the burden on challengers to disprove coverage claimed by multiple national providers across millions of square miles in a thirty to sixty-day window will fail and leave huge coverage gaps in rural America); Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 3 (filed Feb. 15, 2017).

[153] *See id*.

E. Transition of CETC Support to MF-II Support and Preservation of Service

68. *Background*. The *USF/ICC Transformation Order* provided for a phase down of legacy support provided under the identical support rule to all CETCs of 20 percent per year beginning July 1, 2012, with a pause at the 60 percent level as of July 1, 2014 if MF-II were not implemented by that date.[154] In the *2014 CAF Further Notice*, the Commission sought comment on how to amend its rules for phase down of identical support.[155] The Commission sought comment on how long to maintain legacy existing support levels (i.e., frozen identical support) and the schedule of the phase-down.[156] The Commission asked whether there should be a different phase-down schedule for mobile providers that it presumed are not relying on legacy CETC support to maintain existing service (i.e., those providers for which such funding represents one percent or less of their wireless revenues) as opposed to mobile providers that become winning bidders in the MF-II auction.[157] The Commission also sought comment on whether there should be a different phase-down schedule for eligible areas that do not have winning bidders.[158]

69. *Discussion.* We amend our rules for the phase-down of identical support in order to smoothly transition to our provision of MF-II support, as well as to provide continuing support to those eligible areas that do not receive MF-II support.[159] We adopt differing phase-down schedules for CETC support in ineligible and eligible areas.[160]

70. *First*, as part of the pre-auction process, we direct the Bureaus to disaggregate each CETC's legacy support among the census blocks it serves using that support. Currently, legacy support is provided to a CETC's entire study area (SAC), with no attribution to particular sub-areas within the SAC.

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[154] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17832, para. 519.

[155] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7131, para. 250.

[156] *See id.* at 7132, para. 252.

[157] *See id.* at 7131, para. 250.

[158] *See id.* at 7131-32, paras. 250, 252.

[159] Our phase-down rules have been designed so as not to be inconsistent with the provisions in 47 CFR § 54.307(e)(5)-(6) (2015), unless and until the restrictions in Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Div. E, Title VI, § 631, 129 Stat. 2242, 2470 (2015), are no longer in effect.

[160] In the *USF/ICC Transformation Order*, the Commission phased down the identical support received by CETCs providing fixed services, including competitive wireline service providers, on the same schedule as mobile CETCs. *USF/ICC Transformation Order*, 26 FCC Rcd at 17830, para. 509. The Commission subsequently excluded areas served by wireline CETCs providing 3 Mbps/768 kbps or greater service from the offer of model-based support to price cap carriers. *See Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15672, paras. 74-75 (2014) (*December 2014 Connect America Order*). In addition, it concluded that CETCs awarded support through the Connect America Phase II auction will cease to receive legacy phase-down support for those specific areas. *2014 CAF Order*, 29 FCC Rcd at 7068, para. 53. In light of the decisions made for mobile CETCs, the phase-down schedule for CETCs providing fixed services will differ depending on whether the area served by such a CETC is ineligible in the Connect America Phase II auction; or if eligible, whether the area receives a winning bid in the CAF Phase II auction. Therefore, the specific timing of the phase-down will be determined when the Wireline Competition Bureau either announces the final list of eligible areas for the Connect America Phase II auction, or winning bidders are announced and begin receiving support.

That creates a problem for comparing support among CETCs to serve a given area and for determining how much support is being used to compete with private capital. The Commission faced a similar problem when it decided to disaggregate support for legacy rate-of-return carriers last year and retarget that support to areas unserved by unsubsidized competitors.[161]

71. In choosing a disaggregation method, we are persuaded that we should account for the relative costs of deploying a coverage-based network given the differing terrain throughout the United States. Specifically, we decline to adopt a disaggregation method that assumes that support is allocated uniformly throughout a provider's SAC—doing so would specifically ignore the additional costs that wireless providers incur to deploy service in more difficult terrain. Instead, the Bureaus shall apply a more-refined methodology that uses a terrain factor as a proxy for determining higher cost areas.[162] For example, more mountainous terrains with greater variations in slope are areas that tend to be more costly to serve than level plains.[163] The terrain factor would be used to weight the area of a block such that eligible areas in more mountainous areas would be allocated a greater amount of a CETC's total legacy support to reflect the higher costs of serving such areas.

72. *Second*, we establish the following schedule for the phase-down of legacy support and commencement of auction payments.[164] In census blocks determined (after the completion of the challenge process) not to be eligible for MF-II support, legacy support will be phased down starting the

[161] *Connect America Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3140-42, paras. 140-44 (2016) (*Rate-of-Return Reform Order*).

[162] The Commission's OBI Working Paper #1 categorizes each county's terrain. FCC, The Broadband Availability Gap, OBI Technical Paper No. 1, at Ex. 4-K (2010), https://transition.fcc.gov/national-broadband-plan/broadband-availability-gap-paper.pdf. Commenters have consistently described the costs to provide service in difficult terrains. *See, e.g.*, Letter from Caressa D. Bennet, General Counsel, and Erin P. Fitzgerald, Regulatory Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 2 (filed Aug. 23, 2016) ("[R]ural areas are often far from population centers, surrounded by mountainous or otherwise difficult-to-serve terrain, and experience extreme weather conditions – all of which make equipment and material transport costly from both a construction and operational perspective."); Letter from Grant B. Spellmeyer, Vice President – Federal Affairs & Public Policy, U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 et al., at 1-2 (filed Apr. 18, 2016) (arguing that it would be difficult to accurately project the costs of deploying facilities in mountainous terrain in advance of submitting bids thereby putting such areas at a distinct disadvantage over flat terrain in a reverse auction); Blooston Comments at 16 ("In keeping with the objective to award funding to areas that need mobile coverage but cannot support a private sector business case, applicants should be able to rely on low population density and difficult terrain as factors justifying a Phase II award."); Letter from Grant B. Spellmeyer, Vice President – Federal Affairs & Public Policy, U.S. Cellular, Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, at 1-2 (filed Jun. 15, 2016) (explaining, in the context of Auction 901, that equipment and installation costs were higher in certain areas due to terrain and the RF requirements for difficult terrain); Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to James Schlichting, Senior Deputy Bureau Chief, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1 (filed May 31, 2016) (discussing the high cost of constructing towers using MF-I support in more mountainous regions of the nation).

[163] *See id.*

[164] This schedule will apply only to the recipients of legacy support. As discussed below, a different schedule will apply to winning bidders that do not receive legacy support in the areas of their winning bids.

first day of the month following release of a public notice announcing the close of the MF-II auction.[165] On that same date, legacy support for current recipients in eligible census blocks shall either be converted to MF-II support (for the winning bidder), maintained (for one CETC in areas without a winning bidder), or subject to phase down (for all other CETCs). We conclude that this schedule is fully consonant with our rules, which require that CETCs continue to receive support at current levels until MF-II and Tribal MF-II are implemented.[166] MF-II and Tribal MF-II will be implemented when the MF-II auction has closed, and particular bidders have won support through the auction.

73. More specifically, in census blocks determined (after the completion of the challenge process) not to be eligible for MF-II, legacy support will be phased down starting the first day of the month following the close of the MF-II auction. For the first 12 months thereafter, phase-down support shall be 2/3 of the legacy support for each CETC associated with that area. For the next 12 months, phase-down support shall be 1/3 of the legacy support for each CETC associated with that area. All legacy support shall end thereafter.

74. As stated above, for a winning bidder that is a CETC receiving legacy support in the area of its bid, MF-II support shall commence on the first day of the month after the auction concludes. To ensure a smooth transition to MF-II support, and to the extent the Commission authorizes a winning bidder to receive MF-II support after that date, a winning bidder will receive support payments at the current legacy support level until such Commission action.[167] In light of our experience with the MF-I auctions, we also adopt a contingency plan to address the possibility that such a winning bidder might default on its bid prior to the authorization of support or be denied such authorization.[168] We conclude that this schedule is fully consonant with our rules, which mandate that a winning bidder "cease to be eligible

[165] In general, when we refer to the conclusion or close of the auction, we are referring to the release of a public notice announcing the close of the auction and identifying winning bidders.

[166] 47 CFR § 54.307(e)(5).

[167] A winning bidder that is also entitled to legacy support for an area subject to its winning bid will not be entitled to receive MF-II support until the Commission issues a public notice authorizing support to that bidder. In the public notice, we will direct and authorize USAC to disburse monthly MF-II payments to the winning bidder and to cease paying it at the legacy support level. Furthermore, to ensure that the winning bidder receives the appropriate amount of MF-II support, we will direct USAC to adjust, on a going-forward basis, the amount of the monthly MF-II payments for a limited period of time to account for the difference between the payments at the legacy support level and the MF-II payments in the amounts to which the winning bidder has committed at auction, for the period between the close of the auction and the issuance of the public notice. If the Commission does not authorize the bidder to receive MF-II support, we will direct USAC to adjust the amount of the bidder's preservation-of-service or phase-down support under our MF-II rules, on a going-forward basis, to account for the difference between the payments at the legacy support level and the preservation-of-service or phase-down payments for the period between the close of the auction and the Commission's denial of authorization. In order to prevent perverse incentives, however, we find that, in applying these rules, a winning bidder committing an auction default will be considered as having received support in the amount of its winning MF-II bid if that bid is less than its level of CETC support for this area.

[168] *See, e.g.*, *Mobility Fund Phase I Support Authorized for 222 Winning Bids; Default on 94 Auction Winning Bids Determined*, Public Notice, 28 FCC Rcd 17062, 17062 (WTB/WCB 2013). Under this contingency plan, no MF-II support will be awarded for the area. In that event, we will, however, to the extent applicable, provide legacy support to CETCs under the preservation-of-service rule and the phase-down rule.

for phase-down support in the first month for which it receives Mobility Fund Phase II support."[169]

75. We adopt a different schedule for winning bidders that are not CETCs in the areas of their winning bids.[170] Unlike other winning bidders, a non-CETC winning bidder will not receive MF-II support for the area of its winning bid on the first day of the month after the auction concludes because it would not necessarily be designated as an ETC in that area. A non-CETC winning bidder instead will receive MF-II support once the Commission issues a public notice authorizing MF-II support to the bidder. Based on this schedule, there is no need to adjust payments to account for the continued payments at the legacy support level. The remainder of the discussion in this section concerns the phase down of legacy support for mobile CETCs.

76. In eligible areas where there is no winning bidder in MF-II, the CETC receiving the minimum level of sustainable support will continue to receive such support until further Commission action, but for no more than five years from the first day of the month following the close of the MF-II auction. We define the minimum level of sustainable support to be the lowest amount of legacy support among CETCs that have deployed the highest technology for that area.[171] We conclude maintaining such support is necessary to preserve service for consumers in such areas pending further Commission action.

77. For CETCs receiving support in areas eligible for MF-II that do not either win MF-II support or receive the minimum level of sustainable support as described in paragraph 76, the phase-down of support shall commence on the first day of the month after the auction concludes. For the first 12 months, phase-down support shall be 2/3 of the legacy support for each CETC associated with that area. For the next 12 months thereafter, phase-down support shall be 1/3 of the legacy support for each CETC associated with that area. All legacy support shall end thereafter. We conclude that this two-year phase-down schedule will ensure that the affected CETCs will have a smooth transition in areas that are too costly to serve absent universal service subsidies.

78. We adopt this phase-down schedule to fund new service obligations undertaken by new MF-II auction winners, protect customers of current support recipients from a potential loss of service, and minimize the disruption to legacy support providers from a loss of funding.[172] We balance the concerns

[169] 47 CFR § 54.307(e)(6).

[170] Because non-CETC winning bidders must meet the same construction deadlines as CETC winning bidders, *see infra* Section V.C, we will provide an initial balloon payment of MF-II support to non-CETC winning bidders to place non-CETC winning bidders on approximately the same footing as other winning bidders. The balloon payment will consist of the non-CETC winning bidder's monthly MF-II payment amount multiplied by the number of whole months between the first day of the month after the close of the auction and the issuance of the public notice authorizing support. So, for example, if the auction closed on April 5, 2018 and a non-CETC did not become eligible for support until July 12, the balloon payment would equal 2 months' (May and June) worth of support.

[171] In other words, if carrier A offers 4G LTE with a $100 legacy subsidy, carrier B offers 4G LTE with a $75 legacy subsidy, and carrier C offers 3G with a $50 subsidy, carrier B would be chosen to preserve its 4G LTE service with a $75 subsidy going forward.

[172] *See* Letter from Senator Roger F. Wicker et al., to Ajit Pai, Chairman, FCC, at 1 (Feb. 2, 2017) (noting the importance of certainty to wireless carriers and that certainty should "come in the form of sufficient and predictable USF support in both the implementation of MFII and the transition away from legacy support mechanisms over the next several years").

recipients of legacy support express regarding a rapid termination of legacy support[173] with our need to preserve our finite universal service funds and begin funding service under the terms and amounts established by winning bids in our MF-II reverse auction. Accordingly, in our implementation of MF-II support, we now establish a certain path toward no longer paying such legacy support, except to preserve service where it exists on a subsidized basis in eligible areas where there is no winning bidder in the MF-II auction.

79. Finally, in light of the phase down schedules we are adopting, we see no need to treat differently the phase down of support going to any mobile CETC for which high-cost support represents one percent or less of its wireless revenues.[174] As a result, legacy CETC support to these providers will proceed on the same phase-down schedule as for other providers.

[173] *See, e.g.*, RWA Oct. 21, 2016 *Ex Parte* 4 (urging an "appropriate" transition from legacy support to MF-II support "to allow for carrier strategic planning and to prevent loss of service in high cost rural areas"); RWA Oct. 27, 2016 *Ex Parte* at 7-8 (proposing a phase-down transition to prevent flash cuts to rural carriers); RWA Feb. 14, 2017 *Ex Parte* at 3-4 (adding that "the planned legacy support flash cut in areas determined to be ineligible for the reverse auction will eliminate competition, harm economic development, and endanger public safety"); Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208, at 2 (filed Oct. 13, 2016) (expressing "the need for an equitable transition from legacy support"); CCA Nov. 3, 2016 *Ex Parte* at 2 (reiterating the importance of providing for an equitable phase-down period for legacy support recipients); CCA Feb. 2017 *Ex Parte* at 17-18 (emphasizing the need to avoid flash cuts); Letter from David A. LaFuria and Marc A. Paul, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to Union Wireless, MTPCS, LLC, and Carolina West, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Attach. at 2 (filed June 25, 2013) (advocating for a "smooth[]" transition that avoids a flash cut); NTCA Oct. 2016 *Ex Parte* at 1-2 (requesting a "reasonable transition"); AT&T Nov. 9, 2016 *Ex Parte* at 1 (opposing an immediate flash cut of legacy support for nationwide carriers); Letter from Cathleen Massey, Vice President, Federal Regulatory Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Nov. 10, 2016) (discussing T-Mobile's opposition to "the proposed immediate flash cut of legacy high-cost Universal Service support for nationwide carriers for whom support is one percent or less of their annual wireless service revenues" and urging the Commission "not to eliminate support for existing CETCs until it begins disbursing MF II support"); Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Nov. 11, 2016) (requesting a "rational phase down of legacy high-cost support"); Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 2 (filed Feb. 9, 2017) ("[A]ny flash-cut of support is not acceptable."); Letter from Clare Liedquist, Herman & Whiteaker, LLC, Counsel to Chariton Valley Wireless Services et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Feb. 10, 2017) (stressing the need for a "graceful transition" that provides carriers receiving frozen support sufficient time to plan for and adjust to a reduction of support); Appalachian Wireless *Ex Parte* at 3-4 (finding a flash-cut of support to be fiscally irresponsible and suggesting that legacy support should be provided for at least three years); U.S. Cellular Feb. 14, 2017 *Ex Parte* at 1 (urging the Commission to avoid flash cuts in legacy support reductions); PTCI *Ex Parte* at 1 (stating that a flash cut to high-cost support amounts in areas where there are technical compatibility issues between GSM and CDMA may amount to a complete loss of service for some customers); SBI Feb. 2017 *Ex Parte* at 3-4 (opposing a flash cut of support without a stable replacement for Tribal lands); Letter from Meredith Attwell Baker, President and CEO, CTIA, to Ajit Pai, Chairman et al., FCC, WT Docket No. 10-208 et al., at 1 (filed Feb. 16, 2017) ("CTIA encourages the Commission to provide a measured and phased transition from legacy Universal Service support . . . ."); T-Mobile Feb. 2017 *Ex Parte* at 6 (suggesting that the Commission avoid flash cuts); Union *Ex Parte* at 2 (requesting "a rational phase down of legacy support"); U.S. Cellular Feb. 17, 2017 *Ex Parte* at 2 ("U.S. Cellular

F. One Provider Per Eligible Area

80. *Background.* In the *USF/ICC Transformation Order*, the Commission stated that a main goal of the Mobility Fund is to advance mobile service to areas where it would not exist absent universal service support, and concluded that there were better ways to achieve that goal than to continue with a program that awards support to a network in an area that is also served by an unsubsidized provider, or to multiple networks in some areas, while other areas remain unserved.[175] The Commission generally proposed to support a single provider for a given geographic area for MF-II.[176] The Commission proposed that it would support more than one provider in an area only if doing so would maximize coverage.[177]

81. *Discussion.* We limit support to a single provider for a given geographic area going forward. As we have previously stated, and as the courts have affirmed, the purpose of universal service is to benefit consumers, not carriers.[178] We have a statutory obligation to ensure access to advanced telecommunications and information service in all regions of the country at reasonably comparable rates,[179] and a related obligation to ensure that public funding is used effectively and efficiently in furtherance of our statutory mandate. It is therefore incumbent upon us to adopt a structure for awarding universal service support that ensures the finite public funds available are directed in a way that sustains and expands the availability of mobile services to maximize consumer benefits.

82. We agree with Verizon and ADTRAN, Inc. (ADTRAN) that supporting multiple providers in areas that are challenging for even one to serve (at least, absent a subsidy) is not an effective way to maximize consumer benefits or otherwise achieve our universal service goals, and would drain program resources with limited corresponding benefit to consumers.[180]

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urged the Commission to avoid flash cuts in legacy support reductions . . . .”). *But see* RWA Nov. 10, 2016 *Ex Parte* at 2 (expressing support for “an immediate elimination of legacy support for nationwide carriers for which such support is less than 1% of revenues” but suggesting that the phase-down should not otherwise be tied to specific dates).

[174] *See 2014 CAF FNPRM*, 29 FCC Rcd at 7133, para. 253 (proposing to accelerate the phase down of support going to any mobile CETC for which high-cost support represents one percent or less of its wireless revenues by eliminating such support no later than the effective date of the revised phase-down rule).

[175] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17772, 17779, paras. 296-97, 316.

[176] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18073-74, para. 1136.

[177] *See id.*

[178] *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000)).

[179] *See* 47 U.S.C. § 254(b)(3).

[180] *See* Verizon Comments at Attach. B at 15; Verizon *Further Inquiry Public Notice* Reply Comments at 5 (adding that a one-provider-per-area approach targets support where it is actually needed, eliminates inefficiencies, and helps limit the cost to consumers and businesses); ADTRAN Reply Comments at 3-4 (subsidizing multiple providers in an area is inconsistent with the fundamental goal of universal service). ADTRAN submits that such synthetic competition would not provide sustainable or long-term benefits to consumers. *See* ADTRAN Reply Comments at 3-4. Verizon notes that the very purpose of Phase II would be undermined if the finite fund was used to subsidize multiple carriers to build duplicative networks in certain areas while leaving other areas totally unserved. *See* Verizon *Further Inquiry Public Notice* Reply Comments at 6.

83. Further, we remain unpersuaded by commenters that oppose awarding support to a single provider per area on grounds that it would have anticompetitive consequences that are inconsistent with the 1996 Act.[181] These commenters generally reiterate the same arguments that were raised and rejected in the *USF/ICC Transformation Order*.[182] As the Commission concluded in 2011, providing universal service support to multiple providers in a given area leads to duplicative investment by multiple CETCs in certain areas at the expense of investment that could be directed elsewhere, including areas that are not currently served.[183] Furthermore, besides being more cost-effective, we conclude that the risk of anti-competitive consequences is less here, where we require a single recipient of support to provide service at reasonably comparable rates to those in urban areas than in the prior approach of providing government support to duplicative networks without any guarantee of competition between them. Moreover, we also reject as inconsistent with our overall approach to universal service reform MTPCS's recommendation that we allocate a set amount of MF-II support for a given area that could be evenly divided among the CETCs serving that area,[184] and USA Coalition's request that a minimum of two service packages be auctioned in each area if a reverse auction is used.[185] In light of the network efficiencies characterizing the provision of mobile services, we conclude that our support dollars in these challenging areas are not spent most effectively if divided among multiple providers and networks. Thus, we will generally provide MF-II support to a single provider for a given geographic area.[186]

[181] Commenters' arguments vary with respect to the potential consequences of the one provider-per-area approach, but they all essentially relate to competitive issues and related consequences at their core. *See, e.g.*, U.S. Cellular Comments at 22-23 (arguing that the portability of universal service funding, as opposed to providing support to a single winner, would ensure that Mobility Fund support would go to the most efficient competitive entrant, addresses the concerns of the Commission's limited budget, and is mandated by statute); RCA Comments at 12-13 (asserting that a single-winner approach would entrench the auction winner for as long as the support is provided and preclude the development of competition, particularly in rural areas); T-Mobile Comments at 4 (suggesting that a single subsidized provider could drive out unsupported competitors); C Spire Comments at 16-17 (contending that a single winner would risk isolating rural markets from competition and reinforcing the market strength of the most dominant carriers); USA Coalition Comments at 8-9 (positing that limiting subsidies to a single provider would only increase market entry barriers and insulate the subsidized provider from the threat of competitive entry); USA Coalition Reply Comments at 3 (urging the FCC to reject any support mechanism that would provide support only to a single provider in a supported area due to competitive concerns); USA Coalition *Further Inquiry Public Notice* Comments at 4-5 (reiterating that a single provider approach increases market entry barriers and that such barriers will persist even if market conditions change to otherwise attract additional entrants); CCA *Further Inquiry Public Notice* Comments at 7 (arguing that a single winner auction would entrench the winning bidder for the term of support).

[182] *USF/ICC Transformation Order*, 26 FCC Rcd at 17779, paras. 316-20.

[183] *Id.* at 17779, para. 316.

[184] Cellular One *Mobility Fund NPRM* Comments at 8; *see also* Cellular One Reply Comments at 8-9 (suggesting that support be divided up in areas with network overlap).

[185] USA Coalition Comments at 13.

[186] We separately adopt in this Order certain terms and conditions for MF-II similar to those adopted for MF-I that are designed to protect consumer interests and minimize potential anticompetitive behavior. *See infra* Sections V.D. and V.E.

V. PUBLIC INTEREST OBLIGATIONS

84. Having established the framework of MF-II, we now address the public interest obligations that must be met by recipients of MF-II support, including performance metrics for minimum data speeds, maximum latency measurements, and minimum usage allowances, consistent with the provision of 4G LTE service. As we explain below, these performance requirements will be used to measure compliance with established benchmarks during the ten-year term of support.

A. Performance Metrics

85. *Background.* In the *USF/ICC Transformation Order*, the Commission established a goal of universal availability of mobile networks "to help ensure that all Americans in all parts of the nation, including those in rural, insular, and high-cost areas, have access to affordable technologies that will empower them to learn, work, create, and innovate."[1] The *2014 CAF Further Notice* proposed that recipients of MF-II support deploy 4G LTE in the areas for which they receive funding,[2] while it also sought comment on which network and performance standards could best help achieve our goals for preservation of service.[3]

86. *Discussion.* We will require recipients of MF-II support to deploy 4G LTE. As we have stated above, around 84 percent of the nation's square miles (excluding Alaska) are covered by 4G LTE networks, as of December 2015. As the transition to 4G LTE service and the transition of voice to voice over LTE technology become widespread, we anticipate that older devices will be retired and future devices will be LTE capable. With the nearly universal deployment of 4G LTE comes a broad record consensus that the network technology for any new deployment we fund in MF-II should be 4G LTE.[4] Targeting MF-II support to 4G LTE will ensure that we do not relegate rural areas to substandard service that is not comparable to urban LTE service, and that the supported service is technologically capable of supporting roaming on the industry LTE standard, including the networks of the four nationwide mobile wireless service providers. Our standards for supported service should ensure that our finite universal service funds are used efficiently to provide consumers access to robust mobile broadband service that is comparable to the 4G LTE service being offered today in urban areas. By requiring the deployment of 4G LTE with on-going MF-II support, we can better utilize universal service support to reach the approximately 575,000 square miles that either lack 4G LTE coverage or only have coverage because of

[1] *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 53.

[2] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7128, para. 242.

[3] *See id.*

[4] Most comments in response to the *2014 CAF Further Notice* either did not object to the requirement of 4G LTE service or expressed support for it. *See, e.g.*, Blooston *2014 CAF Further Notice* Comments at 2-3 (advocating for the reservation of Phase II funding for 4G LTE service); RWA *2014 CAF Further Notice* Comments at 10-11 (supporting the Commission's performance requirements provided that the Commission provide added flexibility for carriers to demonstrate performance). CCA proposed a technology neutral performance requirement. CCA *2014 CAF Further Notice* Comments at 15-16 (adding that "there is no reason for the Commission to insist on [4G LTE] technology if alternatives (such as HSPA+) would fulfill the Commission's performance expectations."). A few commenters proposed to also exceptionally allow funding for the preservation of 3G service, where needed. *See, e.g.*, RWA *2014 CAF Further Notice* Reply Comments at 3 (stating that critical universal service funds are needed to support added deployments and maintenance of 4G LTE and 3G networks in remote, sparsely populated areas).

subsidized service.

87. We require recipients of MF-II support to offer voice service, and we adopt minimum requirements for network performance and an offered service plan that, together with the 4G LTE requirement, will define the baseline 4G LTE performance standard for MF-II recipients. Recipients of MF-II funding will be required to meet minimum baseline performance requirements for data speeds, data latency, and data allowances in areas that receive support for at least one plan that they offer.[5] The median data speed of the network for the supported area must be 10 Mbps download speed or greater and 1 Mbps upload speed or greater, with at least 90 percent of the required download speed measurements being not less than a certain threshold speed. For latency, at least 90 percent of the required measurements must have a data latency of 100 milliseconds or less round trip. Support recipients' required reports of speed and latency measurements are discussed further in Section IX.A. Support recipients must offer at least one service plan that includes a data allowance comparable to mid-level service plans offered by nationwide providers. Currently, mid-level plans offer a data allowance of at

[5] Commenters generally did not discuss the technical requirements of 4G LTE service. U.S. Cellular proposed to harmonize performance requirements for MF-II with 706 program goals by requiring 10/1 Mbps. *See* Letter from David LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at Attach. at 22 (filed Mar. 3, 2016); *see also* T-Mobile Feb. 2017 *Ex Parte* at 3 (agreeing generally that winning bidders should be required to meet minimum performance requirements and suggesting, for example, that "a carrier that could provide a median consumer experience of 10 Mbps downlink, with a speed variation throughout the bid area of an observed low of 1 Mbps and high of 20 Mbps, should be found compliant"). Verizon asserts that the Commission should provide a clear definition of the 10/1 speed requirement and should explain how funding recipients will be expected to demonstrate compliance. *See* Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1 (filed Nov. 4, 2016) (Verizon Nov. 4, 2016 *Ex Parte*); Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1 (filed Nov. 7, 2016). *But see* Joint Proposal at Attach. at 2 (arguing that a minimum average outdoor download speed of at least 5 Mbps in the deployed eligible area of the census tract should be required); Updated Joint Proposal at Attach. at 2; Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1-2 (filed Feb. 16, 2017) (AT&T Feb. 2017 *Ex Parte*) (contending that the 10/1 Mbps requirement is "aggressively high" and finding that a 5/1 Mbps speed is a much better MF-II goal); *see also* Letter from Alan Buzacott, Executive Director, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 3 (filed Feb. 15, 2017) (Verizon Feb. 2017 *Ex Parte*) (claiming that a requirement that bidders deliver speeds of 10 megabits per second downstream and 1 megabit per second upstream could discourage bids or increase bid amounts and urging the Commission to "adopt a lower downstream speed target, such as the 5 megabit per second target proposed by AT&T and smaller providers"); Deere Feb. 2017 *Ex Parte* at 6 (requesting that the Commission adopt "deployment rules that explicitly include cropland in construction milestones and coverage area requirements"). CCA proposes that if the Commission adopts a minimal speed requirement for carriers that receive MF-II support in eligible areas, it must also adopt a reasonable minimum speed threshold for ineligible areas that meet the statutory requirement of reasonably comparable wireless service – i.e., 10/1 Mbps. *See* CCA Feb. 2017 *Ex Parte* at 4-5. We reject this proposal because we expect that any given area with one or more providers of unsubsidized qualified 4G LTE will already meet the 10/1 Mbps threshold or will do well before the end of the MF-II support term. And, as noted above, we anticipate that any older devices will be retired and future devices will be LTE capable.

least 2 GB of data per month.[6] Because industry and consumer practices may evolve over time, we will consider, after an opportunity for comment, whether to require a larger data allowance, initially or during the term of support, based on then-available mid-level plans and/or the average per subscriber data usage.[7] A support recipient's service plan with the required data allowance must be offered to consumers at a rate that is within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.[8] These conditions will be defined more precisely in the pre-auction process. We will retain our authority to look behind recipients' performance certifications and take action to address any violations that develop.

B. Term of Support

88. *Background.* In the *USF/ICC Transformation FNPRM* and the *Further Inquiry Public Notice*, the Commission sought comment on several issues related to the term of MF-II support, including how long the support should be awarded,[9] whether any renewal expectancy should be established,[10] and whether the performance requirements should be fixed during the term of support or should evolve to reflect technological changes.[11] In the *USF/ICC Transformation FNPRM*, the Commission proposed a fixed term of support of ten years for MF-II, but sought comment on establishing a shorter term.[12] The Commission separately sought comment on whether and in what ways its proposed performance metrics should be modified during the term of support to reflect anticipated advancements in technology.[13]

89. *Discussion.* We adopt a ten-year term for MF-II support, which will begin on the first day of the month after the MF-II auction concludes.[14] As we approach the end of the ten-year term, we can reassess the marketplace and determine whether a mechanism to provide future support for mobile services is needed. In addition, we decline to adopt a renewal expectancy for winning bidders.

90. A ten-year term of support is consistent with the term adopted by the Commission for Connect America Phase II support.[15] As the Commission recognized in the *2014 CAF Order*, providing support for a period of ten years is appropriate as it may stimulate greater interest in the competitive bidding process.[16] Consequently, that "[i]ncreased participation in the competitive bidding process will

[6] *See 19th Mobile Competition Report*, 31 FCC Rcd at 10597-98, para. 92.

[7] *See generally id.* The Commission will conduct the initial consideration of these issues, with subsequent consideration occurring by the Bureaus on delegated authority.

[8] *USF/ICC Transformation Order*, 26 FCC Rcd at 17708-09, paras. 113-14.

[9] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1138 (proposing a fixed term of support for ten years); *Further Inquiry Public Notice*, 27 FCC Rcd at 14802-03, para. 15 (requesting comment on the tradeoffs between using a ten-year term versus one or more shorter terms).

[10] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1139.

[11] *See id*. at 18074, para. 1138; *Further Inquiry Public Notice*, 27 FCC Rcd at 14802, para. 14.

[12] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1138.

[13] *See id*. at 18075, paras. 1142, 1144.

[14] *See supra* para. 74.

[15] *See 2014 CAF Order*, 29 FCC Rcd at 7061, para. 35.

[16] *Id.* at 7061-62, para. 35.

help ensure that funding is targeted efficiently to expand broadband-capable infrastructure throughout the country."[17] We are mindful of using the lessons learned from CAF in our implementation of MF-II.[18]

91. We further agree with commenters that a ten-year term of support is appropriate in light of the significant capital and effort needed to deploy and upgrade broadband networks and is consistent with the timeframe used by rural carriers to plan and schedule network upgrades.[19] As RTG notes, setting the term of support at not less than ten years "will place Phase II disbursements in line with the way rural networks are planned and operated."[20] The certainty provided by a term of this length will help encourage more bidders – particularly smaller wireless carriers – to participate in the auction.[21]

92. Although we do expect the marketplace to evolve over the next ten years, we will not adopt performance metrics that increase over the term of support. We note that commenters oppose having performance metrics change without advance notice, or without increases in support payments.[22] For

[17] *Id.*

[18] *See, e.g.*, Joint Proposal at Attach. at 1; Updated Joint Proposal at Attach. at 1; Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Jan. 18, 2017) (suggesting that "MF II should be designed using the lessons learned from successfully implementing other Connect America Fund programs since 2011" and that the CAF II term length, for example, "could be easily incorporated directly into MF II").

[19] *See, e.g.*, U.S. Cellular Comments at 35 (contending that "fixed terms shorter than 10 years would make it extremely difficult for smaller wireless carriers and regional carriers serving rural areas to attract sufficient capital to assist in meeting network deployment obligations mandated by the Commission"); U.S. Cellular *Further Inquiry Public Notice* Comments at 25 (continuing to support a 10-year term "because such a term would provide a level of regulatory certainty necessary to ensure efficient planning for the construction, upgrading, and extension of mobile broadband networks"); Cellular One *Further Inquiry Public Notice* Reply Comments at 5 (agreeing with a 10-year term "[i]n light of commercially ordinary timeframes in this industry for private financing and investment, and repayment of lenders"); RTG Comments at 19 (noting that anything shorter than a 10-year period "would not provide sufficient certainty for establishing long-term business plans and forecasting for long-term development and improvement of networks"); RTG *Further Inquiry Public Notice* Comments at 7-9 (suggesting a 10-year term to allow time for recovery of the investment and expected useful life of the network); ADTRAN Comments at 19 ("ADTRAN believes that in light of the significant capital and effort that will be necessary to deploy broadband in both cases, the Commission should adopt a ten year term of support for recipients under both the Mobility Fund and CAF Phase II."); *see also* Letter from Senator Roger F. Wicker et al., to Ajit Pai, Chairman, FCC, at 1 (Feb. 2, 2017) ("Competing in a capital-intensive environment, wireless carriers need long-term certainty of ongoing support to invest, deploy, maintain, and update their networks that provide vital mobile broadband services in rural areas."); T-Mobile Feb. 2017 *Ex Parte* at 3 (supporting a 10-year term of support "from the date the cell site becomes operational and carries wireless traffic").

[20] RTG *Further Inquiry Public Notice* Comments at 9 (explaining that "[t]he estimated useful life of rural wireless networks is generally longer than for urban networks because the return on investment for rural networks is much longer than for urban networks").

[21] In light of the capital requirements and other concerns raised by smaller providers, *see supra* note 234, we are not persuaded by AT&T that all bidders could simply factor their costs for deploying and operating facilities into their bids for a five-year term of support. *See* AT&T *Further Inquiry Public Notice* Comments at 11.

[22] *See, e.g.*, AT&T *Further Inquiry Public Notice* Comments at 11-12 ("[T]he Commission should not modify *any* support recipient's service obligations after that provider has elected to receive support."); CTIA *Further Inquiry*

example, Blooston Rural Carriers argues that changing requirements without any change in support would be unfair and create unacceptable risk and unpredictability that would deter the provision of financing by outside lenders and investors.[23] U.S. Cellular stresses the need for regulatory certainty,[24] and RTG adds that it would be unfair to subject bidders to requirements that did not exist at the time they formulated their bids.[25] We conclude that the disincentives to auction participation potentially created by evolving performance standards and the administrative complexity of establishing such standards outweigh the performance benefits to consumers during the latter portion of the support period. We note, however, that winning bidders are required under Section 254(e) of the Act to use their support throughout their term for "the provision, maintenance, and upgrading of facilities and services,"[26] and we expect winning bidders, to the extent possible, to upgrade their networks to increase capacity and offer better services over time.

93. We also decline to adopt any renewal expectancy or similar preference for winning bidders after their ten-year term of support expires. Although a few parties support a renewal that is based on whether a carrier has met its deployment and service obligations,[27] a renewal expectancy might undermine the Commission's ability to satisfy fiscal management principles, such as the Anti-Deficiency Act. We agree with commenters that emphasize that, given the highly-dynamic nature of the wireless market, it is

Public Notice Comments at 7-8 (explaining that clear obligations will allow bidders to formulate meaningful bids and help ensure that the Commission gets the best price for the services provided); Verizon *Further Inquiry Public Notice* Comments at 4 (urging the Commission to ensure that public interest obligations of Phase II are clear and consistent). Others contend that if the Commission were to alter performance metrics during the term of support, it should do so only after negotiation, or further rulemaking. *See* Blooston *Further Inquiry Public Notice* Comments at 11 ("The only equitable way to preserve flexibility to respond to technological and market changes during the 10-year term of the arrangement is to establish a process for bilateral negotiation by the Commission and Phase II auction winners of changes to performance characteristics and support."); RTG *Further Inquiry Public Notice* Comments at 10 ("[A]ny modification of performance requirements must be made through a Commission rulemaking to ensure that the FCC is complying with the Administrative Procedure Act and statutory requirements that universal service mechanisms be specific, predictable, and sufficient."); Information Technology Industry Council Comments (ITI) at 4 (suggesting that performance requirements be reviewed on an annual basis); U.S. Cellular Comments at 37 (arguing that any modification of performance metrics should be accomplished through a rulemaking proceeding). Although a few commenters argue that the Commission should change the required performance metrics, they make such arguments in the context of the proposed 10-year term. *See, e.g.*, ITI Comments at 3-4 (suggesting two separate metrics for Phase II support – one for networks that provide at least 1 megabit per second (Mbps) in at least one direction today, transitioning to at least 2.5 Mbps in at least one direction after two years, and the other for wireless networks that meet an *initial* target of 4 Mbps downstream, and 1 Mbps upstream).

[23] Blooston *Further Inquiry Public Notice* Comments at 10-11.

[24] U.S. Cellular *Further Inquiry Public Notice* Comments at 20-23.

[25] RTG *Further Inquiry Public Notice* Comments at 10-11.

[26] 47 U.S.C. § 254(e).

[27] *See, e.g.*, U.S. Cellular Comments at 35-36 (favoring a renewal mechanism, as long as the renewal is not automatic, because it would help stabilize the availability of private investment capital for smaller wireless carriers and regional carriers serving rural areas); RTG Comments at 20 ("The FCC should also adopt a renewal process for support that embraces a renewal expectancy similar to the one in place for FCC licenses if buildout and service obligations have been met.").

unclear whether additional support will be needed at the end of ten years for areas that are awarded MF-II support.[28] We therefore decline to adopt a renewal expectancy, because to do so may undermine our ability to target future universal service support where it is most needed.

C. Construction Requirements/Benchmarks

94. *Background.* The Commission has been mindful that to achieve its goals for the universal service program and to gain ubiquitous mobile coverage it must monitor those receiving support, particularly where that support will be on-going. For instance, to ensure timely availability of services for consumers, the Commission proposed that support recipients would be required to meet certain deployment milestones in order to remain eligible for the award of MF-II funds.[29] Specifically, the Commission proposed to require that support recipients construct or upgrade their networks to offer service in the supported area within three years and sought comment on the feasibility of its proposed deployment deadline.[30] The Commission also sought comment on a reasonable percentage of road miles that must be covered, ranging from 75 to 100 percent, based on how eligible areas are aggregated for bidding in the auction.[31] The Commission proposed that recipients be required to demonstrate that they have met the relevant performance and coverage obligations by submitting drive test data.[32]

95. In the *Connect America Phase II Auction Order*, the Commission required CAF-II support recipients to complete construction within six years of funding authorization and required such recipients to construct and commercially offer service to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization, an additional 20 percent in the subsequent years, with 100 percent by the end of the sixth year.[33] The Commission concluded that it should adopt flexible deployment obligations and determined that requiring deployment to at least 95 percent of funded locations at the end of the support term would provide an appropriate, flexible minimum for recipients of CAF Phase II support.[34]

96. *Discussion.* Consistent with the approach the Commission adopted in the *Connect America Phase II Auction Order*, we adopt interim benchmarks as well as a final benchmark for deployment of service that meets the performance metrics detailed above. Specifically, we define the starting point for the interim benchmarks as six months from the first day of the month that follows the month in which the

[28] AT&T in advocating for a five-year term of support notes ". . . it is very easy to imagine that a geographic area that is unserved and 'uneconomic to serve' in 2013 could become a vibrant and economically attractive suburban area in a time frame shorter than ten years." AT&T *Further Inquiry Public Notice* Comments at 11. American Cable Association (ACA), in commenting on a renewal expectancy for CAF Phase II support, strongly opposed a renewal expectancy as a general matter, noting that because the broadband market is so dynamic, it cannot be known whether additional support will be needed after the initial term or whether there will be unsupported competition in additional areas by the expiration of the initial support term. *See* ACA Comments at 13-14.

[29] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18075, para. 1145.

[30] *See id.*

[31] *See id.* at 18075-76, para. 1146.

[32] *See id.* at 18076, para. 1147.

[33] *See Connect America Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

[34] *See id*. at 5965-66, paras. 44-45.

MF-II auction closes. We require a winning bidder to demonstrate coverage of at least 40 percent by three years after the starting point, 60 percent by four years after the starting point, 80 percent by five years after the starting point, and 85 percent by six years after the starting point across all areas for which they receive MF-II support in a state.[35]

97. We conclude the benchmarks serve as an appropriate construction schedule for MF-II recipients. Several commenters object to the three-year deadline for completing network construction/upgrade proposed in the *USF/ICC Transformation FNPRM*[36] and, in some cases, suggest alternatives with interim deadlines or benchmarks.[37] C Spire, for instance, suggests that "[a] more reasonable approach would be to require attainment of the Commission's 75 percent build-out requirement within five years, perhaps with an interim three-year deadline for achieving deployment of 50 percent of road miles in unserved areas."[38] RTG proposes six years as the minimum period for deployment of a 4G network in a carrier's entire service area.[39] Some commenters also oppose the proposed 100 percent coverage requirement, deeming it unfeasible, and advocate for a lesser coverage standard.[40] We agree with the commenters that assert that the proposed three-year construction deadline

[35] As explained fully below, the annual deadline for a recipient to meet its interim benchmarks for deployment and to file its corresponding reports and supportive materials will occur the first of the month six full months following the close of the auction. In the event that a recipient does not meet this deadline for filing or for deployment, the compliance structures established *infra* in paras. 200-01 and paras. 216-18 will apply.

[36] *See, e.g.*, C Spire Comments at 27 (expressing concern that three years may not be sufficient time for carriers to deploy 4G broadband networks covering 75 percent of the road miles in unserved areas); C Spire Reply Comments at 20-22 (reiterating its concern with a three-year deadline); RCA Comments at 15-16 (cautioning that the proposed three-year construction deadline may not be feasible unless the Commission addresses the roadblocks currently facing Lower A Block licensees and carriers have access to necessary funding); RTG Comments at 12, 19 (explaining that because construction schedules are easily hampered by unforeseen circumstances, making the jump to 4G throughout an entire large service area in only a few years would be unrealistic).

[37] *See, e.g.*, RTG *Further Inquiry Public Notice* Comments at 9 ("The FCC should adopt a phased 4G deployment schedule that contains yearly benchmarks, while retaining the flexibility to adjust benchmarks if there are circumstances beyond a carrier's control."); RTG Reply Comments at 8-9 (requesting that the Commission "consider extending the time-frame for meeting coverage requirements, especially in green field areas where existing infrastructure cannot be leveraged"); *see also* Verizon Comments at 23-24 (asserting that "the Commission should have realistic expectations about how many unserved (or underserved) locations can be reached and how quickly networks"); AT&T Nov. 7, 2016 *Ex Parte* at Attach. at 1 (proposing 40 percent build requirements in year two and 20 percent increments thereafter).

[38] C Spire Comments at 27; *see also* RTG Reply Comments at 8-9 (adding that C Spire's proposal "would account for difficulties that often prevent carriers from meeting buildout requirements, especially in green field areas").

[39] RTG Comments at 12, 19; *see also* RTG Reply Comments at 8 ("RTG suggested a six to eight year period to allow bidders to adjust to future unknown or unplanned situations without the risk of losing support.").

[40] *See, e.g.*, Cellular One Reply Comments at 11 ("Any broadband buildout requirements should not exceed 75% of road miles."); RTG Comments at 12 (suggesting that allowing carriers to meet a "95% coverage standard for bidder defined coverage areas and adjust[] support levels downward if the 95% is not met within a six to eight year period"); RTG Reply Comments at 8 (pointing out that a 100 percent buildout requirement is unrealistic in remote areas as well as most rural areas); Verizon Comments at 23-24 (noting that approximately 95 percent of Americans already have access to broadband and reaching the last five percent will be expensive and take time); USA Coalition

for achieving 100 percent coverage may not provide sufficient time for carriers to complete necessary build out throughout their entire service area, particularly in areas that are currently unserved. At the same time, we concur with commenters that support interim milestones to ensure that sufficient progress is being made with the finite funds we have available.[41] Aligning the MF-II deployment requirements with the CAF-II requirements not only strikes an appropriate balance among carriers' competing concerns, but also increases efficiency and eases administration by leveraging the knowledge and experience we gained during the CAF-II process.[42] We find that by setting these benchmarks, we will ensure that support recipients make consistent progress towards providing 4G LTE service to unserved areas of our nation, while still allowing winning bidders flexibility to address unforeseen problems or delays in reaching their overall coverage obligations.[43] We observe that while several commenters sought only a 75 percent coverage requirement with the expectation of providing 4G LTE mobile broadband within three years, we conclude that our 85 percent coverage requirement is more consistent with our policy objective of ubiquitous mobile coverage.[44]

Further Inquiry Public Notice Comments at 17 ("USA Coalition believes that this 100% coverage metric is unrealistic."); *see also* RCA Comments at 15-16 (stating that "benchmarks should be flexible enough to take account of carriers' limited access to spectrum, equipment, and devices").

[41] In addition to suggesting interim benchmarks, RTG suggests instituting a formalized waiver process to address unforeseen delays or other circumstances beyond a carrier's control. *See* RTG Comments at 19-20.

[42] *See, e.g.*, Joint Proposal at Attach. at 8 (proposing milestones consistent with CAF-II milestones); Letter from Mary L. Henze, Assistant Vice President, Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed Jan. 18, 2017) (suggesting that "MF II should be designed using the lessons learned from successfully implementing other Connect America Fund programs since 2011" and that the CAF II deployment milestones, for example, "could be easily incorporated directly into MF II"); AT&T Nov. 7, 2016 *Ex Parte* at 1 (urging the Commission "not to reinvent the wheel with Mobility Fund II but instead to strive for consistency among all CAF programs").

[43] *See* Letter from Matthew B. Gerst, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1 (filed Feb. 13, 2017) (emphasizing the importance to wireless providers of clear and consistent expectations about deployment and service obligations); Letter from Matthew B. Gerst, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1 (filed Feb. 14, 2017); Letter from Matthew B. Gerst, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1 (filed Feb. 15, 2017); Letter from Matthew B. Gerst, Assistant Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1 (filed Feb. 16, 2017).

[44] *See, e.g.*, C Spire Comments at 27 (discussing the 75 percent coverage requirement in the context of the three-year and its proposed five-year deadline); Cellular One Reply Comments at 11 ("We believe that 75% provides reasonable acknowledgement of terrain, site location and weather realities, which vary from state to state but generally impede additional coverage."); *see also, e.g.*, C Spire Reply Comments at 22 (restating its argument for a 75 percent coverage requirement and five-year deadline); RTG Reply Comments at 8-9 (suggesting it supports a 75 percent coverage requirement as proposed by C Spire). *But see* Verizon Nov. 4, 2016 *Ex Parte* at 1 (asserting that a requirement that Mobility Fund recipients cover 90 percent of road miles, rather than the 75 percent of road miles standard adopted for MF-I, could discourage bids); Verizon Feb. 2017 *Ex Parte* at 3 (reiterating that "a requirement that Mobility Fund recipients cover 90 percent of the bid area could discourage bids"); AT&T Feb. 2017 *Ex Parte* at 2 (stating that "a 90% deployment requirement does not take into account the unique challenges of the eligible

98. Recipients that fail to meet and maintain these performance obligations within the time provided to submit their representative data and to certify to coverage requirements will be subject to defined measures, and must cure these failures to meet the deployment requirements or they will be in performance default.[45]

99. Consistent with our CAF-II framework, support recipients must meet their required benchmarks across all areas for which they receive MF-II in a state. We make clear, however, that for the final benchmark, every census block group or census tract in a state (depending on minimum bidding unit) must also be at least 75 percent covered. This requirement will help ensure that our coverage requirements are meaningful for all consumers in supported areas.

100. In accordance with the data we will ultimately require for a successful challenge of the eligibility of an area,[46] we will require parties awarded MF-II support to submit data sufficient to demonstrate compliance with our coverage requirements. Parties' demonstrations shall be consistent with the evidence we will determine to be necessary to be submitted in the challenge process. Concurrent with their submissions of data, recipients of support will have to certify that they have met our deployment benchmarks as set forth above. We direct the Bureaus to precisely define these requirements in the pre-auction process.[47] We are entrusted with distributing significant amounts of universal service contributions from consumers and businesses, and we must ensure that there is actual coverage for consumers in areas where we are paying support recipients.

D. Collocation and Voice and Data Roaming

101. *Background.* To ensure that support recipients do not use public funds to achieve unfair competitive advantage, the Commission proposed to adopt the same collocation and voice and data roaming obligations that it adopted for MF-I.[48] Those MF-I obligations required recipients to allow for reasonable collocation on newly constructed towers they owned or managed, where the collocater would be providing services that met the Mobility Fund technological requirements and where the tower/s were located in the Mobility Fund winning bid area. Towers were required to be built to reasonably accommodate collocations, recipients had to negotiate reasonably with any party seeking to collocate as defined above, and Mobility Fund recipients were prohibited from entering arrangements with third parties to access the third party's towers or facilities wherein the Mobility Fund recipients placed restrictions on the third party regarding other collocations by other parties.[49]

102. *Discussion.* We adopt the same collocation and voice and data roaming obligations for MF-II winning bidders as we adopted for MF-I with certain minor, non-substantive changes.[50] Commenters largely support our proposal to require MF-II recipients to comply with those collocation

areas" and suggesting instead that "an 85% overall requirement would provide a better balance").

[45] *See* Section IX.B.2.

[46] *See* Section IV.D.6. and Further Notice of Proposed Rulemaking accompanying this Order.

[47] This is consistent with the *USF/ICC Transformation Order* in which the Commission directed the Bureaus and the Office of Engineering and Technology to refine the methodology for broadband performance testing. *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 112.

[48] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18076, para. 1148.

[49] *USF/ICC Transformation Order*, 26 FCC Rcd at 17794-95, para. 376.

and voice and data roaming obligations.[51] For example, T-Mobile suggests that support recipients be required to allow the collocation of additional equipment and to comply with voice and data roaming requirements, as required for Phase I recipients.[52] Although supportive of the general proposal, some commenters caution that we should not increase the obligations further for Phase II.[53] We agree with USA Coalition that the obligations imposed in Mobility Fund I should be adopted here and would serve an important purpose in protecting and promoting competitive interests, particularly given our decision to support only one provider per area.[54]

103. Accordingly, with respect to collocation obligations, we require that recipients of MF-II support allow for reasonable collocation by other providers on all towers that they own or manage in the areas for which they receive support.[55] We also require that support recipients comply with our voice and data roaming requirements on networks that receive MF-II support. Specifically, consistent with the approach adopted for Mobility Fund Phase I, we require that recipients of MF-II support provide roaming pursuant to Section 20.12 of our rules and comply with any modifications of the roaming rules that we make during the period MF-II support is provided throughout networks that receive MF-II support.[56]

104. Some commenters seek the imposition of rules and safeguards for roaming beyond those

[50] *Id.* at 18235, Appendix B, Proposed Rules, Sec. 54.1016 (Public Interest Obligations), (c) (Collocation Obligations), and (d) (Voice and Data Roaming Obligations). *See infra* Appendix A, Sec. 54.1015.

[51] *See, e.g.*, Blooston Comments at 13 ("As the Commission decided to go beyond its existing roaming rules to ensure Mobility Fund Phase I recipients would offer roaming, so should it go beyond the existing roaming rules to ensure they are able to receive it elsewhere, as well, whether Phase I or Phase II funding is involved."); PCIA-The Wireless Infrastructure Association (PCIA) Comments at 2-4 (urging the Commission to adopt the same collocation requirements for Phase II as it did for Phase I); RCA Comments at 15 (endorsing the proposal "to extend to Phase II of the Mobility Fund the collocation and voice and data roaming obligations adopted for Phase I"); RTG Comments at 3-5 (supporting "data roaming regulations that actually compel low rates across the board while at the same time incentivizing small and rural carriers' network build-out"); USA Coalition Comments at 26 (stressing that the Commission "must be prepared to vigilantly enforce the public interest obligations associated with the Mobility Fund auctions, particularly the collocation and data roaming requirements, as an antidote to the anti-competitive structure inherent in both Phase I and Phase II of the Mobility Fund"); T-Mobile Feb. 2017 *Ex Parte* at 5 ("[T]he Commission should establish rules for winning bidders requiring reasonable collocation and voice and data roaming practices . . . ."); *see also* U.S. Cellular Comments at 32 (suggesting that the proposed collocation and roaming requirements alone would not be sufficient to rein in anti-competitive results and that the Commission should also consider the imposition of reciprocal requirements on carriers that elect to roam on mobile broadband networks deployed and operated by Phase II support recipients); C Spire Reply Comments at 17-20 (agreeing that any data roaming obligations on Phase II support recipients should be made to apply on a reciprocal basis); RWA Oct. 27, 2016 *Ex Parte* at 8 (supporting the re-examination of data roaming issues for MF-II in light of the *Open Internet Order*). *But see* AT&T Feb. 2017 *Ex Parte* at 3 ("The proposal to include Mobility Fund I collocation and roaming requirements in MF II is an example of unnecessary obligations that would nonetheless impose costs on providers.").

[52] T-Mobile Comments at 6.

[53] *See, e.g.*, PCIA Comments at 2 ("[T]he Commission should not impose additional, specific collocation practices, including a set number of collocation spaces.").

[54] USA Coalition Comments at 26-27.

[55] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17794-95, paras. 376-77.

established for Phase I.[57] We decline, however, to expand the data roaming obligations as these parties suggest, as our experience in MF-I indicates that the rules we adopted there provide sufficient safeguards. We note, however, that violations of these obligations by support recipients could result in the withholding of monthly universal service support, a finding of performance default, and losing eligibility for future Mobility Fund or USF participation. The Commission's general enforcement tools are also available to redress any violation of our rules.

E. Reasonably Comparable Rates

105. *Background.* In the *USF/ICC Transformation Order*, the Commission held that, as a "condition of receiving federal high-cost universal service support," all recipients of such support must offer broadband service in their supported area that meets certain basic performance requirements at rates in rural areas that are reasonably comparable to rates offered in urban areas.[58] The Commission proposed that MF-II winning bidders certify in their long-form applications that they will offer service in supported areas at reasonably comparable rates,[59] and will annually certify that they continue to offer service at reasonably comparable rates.[60] For both voice and broadband services, the Commission considers rural rates to be "reasonably comparable" to urban rates under Section 254(b)(3) if rural rates fall within a reasonable range of urban rates for reasonably comparable broadband service.[61] In the *USF/ICC Transformation Order*, the Commission delegated to the Bureaus authority to develop a specific methodology for defining that reasonable range.[62] In the *USF/ICC Transformation FNPRM*, the Commission sought comment on whether it should "adopt a presumption that if a given provider is offering the same rates, terms and conditions (including capacity limits if any) to both urban and rural customers that is sufficient to meet the statutory requirement that services [and rates] be reasonably

[56] 47 CFR § 20.12; *see generally Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, Second Report and Order, 26 FCC Rcd 5411 (2011).

[57] *See, e.g.*, Blooston Comments at 12-13 (seeking to ensure that Phase II support recipients will be able to obtain roaming rights on other networks in order to compete just as it did in MF-I); RTG Comments at 3-5 (arguing that without "reasonable" roaming charges, small and rural carriers will be harmed by the high rates that large carriers charge); U.S. Cellular Comments at 32 (proposing that, if roaming requirements are imposed, the Commission should utilize a "shot clock" to ensure roaming negotiations are not manipulated by the largest national wireless carriers); C Spire Reply Comments at 17-20 (arguing that any data roaming obligations should be reciprocal); National Exchange Carrier Association, Inc. (NECA) Reply Comments at 56-57 (seeking stronger roaming requirements, including reciprocal roaming); RTG Reply Comments at 10-11 (seeking roaming access requirement); Blooston *Further Inquiry Public Notice* Comments at 14 (noting that "something more is needed" in roaming requirements to protect smaller carriers and ensure that Mobility Fund Phase II support does not go to waste).

[58] *See* 47 U.S.C. § 254(b)(3); *USF/ICC Transformation Order*, 26 FCC Rcd at 17695, para. 86. The Commission noted that federal high-cost universal service support included all existing high-cost universal service mechanisms and the Connect America Fund. *Id.* at 17695, para. 86 n.126; *see also id.* at 17696-709, paras. 90-114 (describing broadband performance metrics, reasonably comparable pricing, and broadband measuring obligations).

[59] *USF/ICC Transformation Order*, 26 FCC Rcd at 18234, Appendix B, Proposed Rules, Sec. 54.1015(b)(2)(viii) (Application Process).

[60] *Id.* at 18237, Appendix B, Proposed Rules, Sec. 54.1019(a)(4) (Annual Reports).

[61] *Id*. at 17708, para. 113; *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18076, para. 1150.

[62] *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 114.

comparable."[63] Also, the Commission sought comment in particular on how to evaluate reasonably comparable voice and broadband services for purposes of MF-II specifically.[64]

106. *Discussion.* To implement the statutory principle for MF-II, we adopt the proposed rules and will require recipients to certify in their long-form applications and annually that in areas where they receive support they offer service at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas. Recipients' service offerings will be subject to this requirement until the end of the term of support.

107. Commenters offer suggestions as to how to determine whether rates are reasonably comparable. For instance, CTIA stresses the importance of considering the differences in the way mobile and fixed services are typically sold or marketed, advising us to rely on nationwide rates, since the vast majority of mobile services are offered on nationwide terms serving both urban and rural areas, and to find that, "at a minimum," carriers offering uniform nationwide rates meet the reasonable comparability requirement.[65] Commenters also contend that as long as rates in rural areas do not exceed urban rates by a fixed percentage, the presumption should apply.[66] Other carriers echo the argument that if a service provider is offering the same rates, terms, and conditions to both urban and rural customers, we should presume that a provider's offer is reasonably comparable.[67] As C Spire notes, "[c]onsumers in rural areas would be served by the presumption because it would ensure that . . . services they obtain from a carrier receiving CAF or Mobility Fund support are effectively the same as services provided by the carrier to its customers in urban areas."[68] We agree with these commenters and adopt a presumption that if a given provider is offering the same rates, terms and conditions (including usage allowances, if any, for

[63] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18047, para. 1027.

[64] *Id.* at 18076, paras. 1150-51.

[65] CTIA Comments at 8, 10.

[66] *See, e.g.*, AT&T Comments at 25-26 (arguing that this presumption should apply "since the statute does not demand identical rates but, rather, provides for a 'reasonable' comparability of rates."); C Spire Reply Comments at 39-40 (agreeing with AT&T that "the presumption should also apply if rates in rural areas do not exceed urban rates by some percentage"). We note that in the *Auction 901 Procedures Public Notice*, the Bureaus determined that for purposes of MF-I, any rate equal to or less than the highest rate for a matching service charged in an urban area would be treated as reasonably comparable. *See Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4772-75, paras. 174-80.

[67] *See, e.g.*, AT&T Comments at 25-26 ("[T]he Commission should adopt its proposal to establish a presumption that if a provider is offering the same rates, terms, and conditions for a supported service to both urban and rural customers, the services (along with the rates for those services) that it offers in rural areas are 'reasonably comparable' to the services and rates that it offers in urban areas."); CenturyLink Comments at 7 ("There should be a presumption that a given provider offering the same rate, terms and conditions (including any capacity limits) to both urban and rural customers satisfies the statutory requirement that rural and urban prices are reasonably comparable."); U.S. Cellular Comments at 45-46 (pointing out that "[i]f rate, terms, and conditions are identical, then it should follow—in virtually irrebuttable fashion—that they are 'reasonably comparable'").

[68] C Spire Comments at 36; *see also* C Spire Reply Comments at 39-40 ("[T]he Commission should adopt a presumption that, if a service provider is offering the same rates, terms, and conditions to both urban and rural customers, then the provider's offering will be treated as sufficient to meet the statutory requirement that services should be reasonably comparable.").

a specified rate) to both urban and rural customers, then that is sufficient to meet the statutory requirement that services be reasonably comparable.

108. We further conclude that a recipient can demonstrate compliance with the required certification if its stand-alone voice plan and one service plan that offers data services is substantially similar to a service plan offered by that provider, if the provider has urban service areas, or by at least one mobile wireless provider in an urban area and is offered for the same or lower rate than the matching urban service plan. During the pre-auction process, we may define more precisely the circumstances under which a provider can demonstrate compliance with this certification. The Bureaus will conduct any subsequent consideration of possible revisions regarding compliance with this requirement. We retain our authority to look behind recipients' certifications and take action to address any violations that develop.[69]

VI. PROVIDER ELIGIBILITY REQUIREMENTS

109. We now turn to the eligibility requirements that applicants seeking to participate in an MF-II auction must meet. As explained fully below, the requirements we adopt today are essentially the same as those adopted for MF-I,[1] with the limited exception that for MF-II, an applicant seeking to participate in the auction will be permitted to be designated as an ETC after it is announced as a winning bidder for a particular area in accordance with procedures we implement herein. Consistent with the eligibility requirements for Mobility Fund Phase I, a qualified MF-II applicant must demonstrate access to spectrum capable of the appropriate level of service in the geographic areas to be served, and certify as to its financial and technical capability to provide service within the specified timeframe.[2] As detailed further below, we conclude that we will not impose any additional eligibility requirements to participate in MF-II.

A. Designation as an ETC

110. *Background.* In proposing that parties seeking MF-II support satisfy the same eligibility requirements as adopted in MF-I, the Commission proposed to require that applicants be designated as CETCs covering the entire relevant geographic area prior to participating in an auction.[3] In the *2014 CAF Order and Further Notice*, however, the Commission determined to permit CAF Phase II participants to obtain ETC designations after becoming winning bidders in the CAF Phase II auction, and sought comment on whether to do the same for the MF-II auction.[4]

111. *Discussion.* We will permit a winning bidder in the MF-II auction to obtain its ETC designation after the close of the auction, provided it submits proof of its ETC designation within 180

[69] *See December 2014 Connect America Order*, 29 FCC Rcd at 15700-01, paras. 155-57.

[1] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1140. The Commission sought comment on its proposal and whether any changes might be appropriate in light of the ongoing nature of Phase II support.

[2] *Id.*; *USF/ICC Transformation Order*, 26 FCC Rcd at 17798, paras. 388-89.

[3] *Id.*

[4] *2014 CAF Further Notice*, 29 FCC Rcd at 7130-31, para. 249; *see also* 47 CFR §§ 54.1003(a), 54.1004(a) (eligibility rules for Phase I of the Mobility Fund). In MF-I and Tribal Mobility Fund Phase I, parties could participate with designations conditioned on winning support. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17798-99, para. 391 n.665. Moreover, specified Tribal entities could participate prior to designation so long as their petitions were pending prior to applying to participate in the competitive bidding. *See id.* at 17823, para. 491.

days of the public notice identifying winning bidders. Before MF-II support is disbursed to a winning bidder, it must demonstrate that it has been designated an ETC covering each of the geographic areas for which it seeks to be authorized for support and that its ETC designation allows it to fully comply with our coverage requirements. We decline to disturb the current system of state jurisdiction over ETC designations, even as we permit winning bidders to obtain ETC status after being announced as winners in the MF-II auction.[5]

112. Although the Commission initially proposed to follow the approach it adopted for MF-I and require all applicants to demonstrate ETC designations prior to the auction, our experience after Auction 901 and Auction 902, and our most recent conclusions regarding ETC designations in the Connect America Fund II context, weigh in favor of a more flexible approach for MF-II.[6] As we explained in the *Connect America Phase II Auction Order*, the benefits of encouraging greater participation in the competitive bidding process outweigh the possible risk that a winning bidder will not meet the necessary requirements to be designated an ETC.[7]

113. The early record on this issue was split as some commenters supported preserving the condition of requiring ETC designation prior to Phase II eligibility,[8] while others sought relaxation of the

[5] Several state public utility commissions objected to any effort to eliminate or diminish existing state jurisdiction over ETCs. *See, e.g.*, MDTC Reply Comments at 8-9 (asserting that states have and should retain express oversight authority over ETCs given their unique qualifications and ease of identifying public benefits and harms within the areas that fall in their territories); Nebraska Public Service Commission (NPSC) Comments at 6 (urging the Commission to preserve the state commissions' role in determining ETC obligations); South Dakota Public Utilities Commission (SDPUC) Reply Comments at 7-8 (agreeing with the NPSC that ETC designations should continue to be performed at the state level). Other commenters sought to have the Commission expand its role in ETC designation. *See, e.g.*, NTCH, Inc. (NTCH) Comments at 7-9 (suggesting that the Commission make Lifeline-only ETCs eligible for Phase II support and grant ETC designation at the same time that it grants the auction application). Consistent with Section 214(e) of the Communications Act, applicants may be designated either by a state public utilities commission or by the Commission. *See* 47 U.S.C. § 214(e); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17798, para. 390.

[6] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1140; *2014 CAF Further Notice*, 29 FCC Rcd at 7130-31, para. 249; *Connect America Phase II Auction Order*, 31 FCC Rcd at 6002, para. 149; *see also Alvin Lou Media, Inc. v. FCC*, 571 F.3d 1, 8-11 (D.C. Cir. 2009) (emphasizing in the context of spectrum auctions that the Commission has discretion to determine qualifications of an applicant and the order in which it should address those qualifications).

[7] *Connect America Phase II Auction Order*, 31 FCC Rcd at 6001, para. 147 (citing *2014 CAF Order*, 29 FCC Rcd at 7064, paras. 42-43 (offering multiple reasons for permitting post-auction ETC designations)).

[8] *See, e.g.*, RTG Comments at 18 (adding that "[a]llowing carriers that have not been designated as an ETC to participate in, or receive support from, the Mobility Fund would violate universal service provisions outlined in the Act"); USA Coalition Comments at 23-24 (supporting the Commission's proposal to require that applicants for Mobility Fund support be designated as ETCs prior to participating in an auction as it will help ensure that the bidders are serious about meeting their obligations); NECA Reply Comments at 61 (determining that "[a]llowing carriers that have not been designated as an ETC to participate in, or receive support from, the Mobility Fund would violate universal service provisions outlined in the Act"); RTG Reply Comments at 18 (rejecting the proposal from Clearwire Corporation (Clearwire) that unclassified mobile broadband providers should be allowed to participate); USA Coalition *Further Inquiry Public Notice* Comments at 14-15 (urging the Commission "to ensure that only carriers with a proven track record of delivering services to the supported area are eligible to participate in Mobility

ETC designation requirement to allow those with pending petitions or declared intentions to seek ETC designation to participate.[9] Following the *2014 CAF Further Notice*, comments remained divided, with some comments stating that MF-II should align with CAF Phase II in allowing post-auction ETC designations, and other comments advocating to maintain the requirement to obtain ETC status prior to bidding in a MF-II auction.[10]

114. As we concluded in the CAF Phase II context, permitting post-auction ETC designations for MF-II may improve applicant participation in the auction. It will also conserve participants' resources by avoiding obligations for auction participants who do not win any coverage areas in the auction, as well as safeguarding potential bidding strategies of applicants seeking ETC designation before an auction.[11] Insofar as we will not provide any support until a winning bidder has obtained and demonstrated ETC designation for its entire winning bid area, we are not persuaded by the concerns raised by RWA, which argues that allowing applicants to seek ETC designation after winning would encourage speculation by carriers seeking to obtain federal funding to serve areas that are unfamiliar to them.[12]

115. Similar to the process adopted for CAF II support, we require winning bidders of MF-II support to submit proof of their ETC designations within 180 days of the public notice announcing them as winning bidders.[13] Failure to obtain ETC status and submit the required documentation by the deadline

Fund Phase II"); U.S. Cellular *Further Inquiry Public Notice* Reply Comments at 37 ("Requiring reverse auction applicants to hold current ETC designations for the relevant eligible service areas, as a prerequisite for participating in a Mobility Fund Phase II auction, is one means of ensuring that auction winners will be fully qualified and capable of utilizing Phase II support for its intended purposes.").

[9] *See, e.g.*, ACA Comments at 18-21 (noting that limiting participation to carriers that are designated as ETCs could inhibit qualified bidders from participating in the auction); Clearwire Comments at 8-9 ("[I]n order to qualify to participate in an auction, a provider should have to demonstrate that it intends to seek ETC designation if awarded support in an area."); NTCH Comments at 3-4 (contending that requiring a bidder to be designated as an ETC prior to auction would "place[] the cart before the horse"); Blooston *Further Inquiry Public Notice* Comments at 12 ("Pending petitions for ETC designation with the relevant state commission should be sufficient to allow a carrier to participate in Phase II Mobility Fund auctions."); *see also* Letter from John A. Prendergast, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, Counsel to Blooston, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Attach. at 1 (filed Apr. 4, 2013) (proposing that adequate time be provided between the issuance of rules and an eligible areas map and the short-form filing deadline to allow state regulatory commissions to conduct an ETC hearing and issue a conditional designation); ATN Feb. 16, 2017 *Ex Parte* at 2 (requesting flexibility for winning bidders in obtaining their ETC designations). CTIA commented that Mobility Fund Phase II should align with CAF Phase II in allowing post-auction ETC designations. *See* CTIA *2014 CAF Further Notice* Comments at 7.

[10] *Compare* CTIA *2014 CAF Further Notice* Comments at 7 (supporting aligning with CAF II) *with* RWA *2014 CAF Further Notice* Comments at 6-7 (supporting requiring ETC designation prior to Mobility Fund Phase II participation).

[11] *2014 CAF Order*, 29 FCC Rcd at 7064, paras. 42-43.

[12] RWA *2014 CAF Further Notice* Comments at 6-7.

[13] In the rural broadband experiments, we learned that while states have diligently pursued resolution of the ETC designation applications filed by rural broadband experiment provisionally selected bidders, a number of states were unable to make a final decision on an ETC designation within a 90-day timeframe, often due to state-specific procedural requirements or because the application was contested. *See, e.g., Wireline Competition Bureau Announces Rural Broadband Experiment Support for 13 Provisionally Selected Bids Is Ready To Be Authorized*,

will be considered an auction default, though we will consider applications for waiver of the 180-day deadline from entities who are diligently pursuing ETC designation, as we determined in the *Connect America Phase II Auction Order*.[14]

116. Based on what we observed in the rural broadband experiments, when considering waivers of the 180-day timeframe for obtaining ETC designation, we will presume that an entity will have acted in good faith if the entity files its ETC application within 30 days of the release of the public notice announcing that it is a winning bidder.[15]

117. And we note that any circumstances where a state will need more time due to procedural requirements or resource issues can be dealt with through the waiver process. Accordingly, to preserve the primary role that Congress gave the states in designating ETCs, we reaffirm that we will act on an ETC designation petition pursuant to Section 214(e)(6) "only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction."[16]

B. Forbearance from Service Area Redefinition Process

118. *Background.* As the Commission did in Mobility Fund I, we also clarify the issue of service areas for the purposes of ETC designation.[17] The Act and our current rules define the term "service area" and how it is established for each ETC. An ETC's "service area" is a geographic area within which an ETC has universal service obligations and may receive universal service support.[18] A carrier seeking to become an ETC typically requests designation in a specific service area, but it is the agency designating that carrier—either the FCC or the appropriate state commission—that establishes the ETC's service area.[19] Section 214(e)(5) of the Act requires that the CETC's service area must conform to

Public Notice, 30 FCC Rcd 9978, 9980-81 (WCB 2015) (finding good cause to grant Skybeam's petition for waiver of the ETC designation deadline). We therefore conclude that it would not be appropriate to adopt a rebuttable presumption that a state commission lacks jurisdiction over a potential recipient of support merely because the state has failed to complete an ETC proceeding within 90 days of initiating such a proceeding.

[14] *Connect America Phase II Auction Order*, 31 FCC Rcd at 6002, para. 152.

[15] Consistent with the rural broadband experiments, where the Commission delegated authority to the Wireline Competition Bureau to act on waivers, here, we direct the Wireless Telecommunications Bureau to act on any such waivers. *Connect America Fund; ETC Annual Reports and Certification*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8788, para. 54 n.95 (2014) (*Rural Broadband Experiments Order*).

[16] *See* 47 U.S.C. § 214(e)(2), (e)(6); *Federal-State Joint Board on Universal Service et al.*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12214, para. 7 (2000) (*2000 Tribal Order*).

[17] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1140 (proposing generally to require that parties seeking MF-II support satisfy the same eligibility requirements that were adopted for Phase I).

[18] *See* 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a).

[19] 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Prior to the *USF/ICC Transformation Order*, the identical support rule provided CETCs the same per-line amount of high-cost universal service support as the incumbent local exchange carrier serving the same area. *USF/ICC Transformation Order*, 26 FCC Rcd at 17825, para. 498. In reviewing a potential redefinition of a rural service area in evaluating a request for ETC designation, the Commission and the states traditionally took into account three factors recommended by the Federal-State Joint

the rural telephone company's service area "unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company."[20] Accordingly, if a commission wishes to designate a CETC for an area that differs from a rural telephone company's existing service area, that rural service area must first be redefined under the process set forth under the Act.[21]

119. For the MF-I auction, the Commission forbore from requiring that the service areas of an ETC conform to the service area of any rural telephone company serving the same area, pursuant to Section 214(e)(5) of the Act and Section 54.207(b) of our rules.[22] As in Mobility Fund Phase I, some of the price cap carrier study areas that may become eligible for the CAF Phase II competitive bidding process meet the statutory definition so that the carrier serving those study areas would be classified as a rural telephone company. Thus, the *Connect America Phase II Auction Order* approved forbearance in that matter on the same terms.[23]

120. *Discussion.* We now conclude that forbearance from the Section 214(e)(5) service area conformance requirement for recipients of the MF-II competitive bidding process serves the public interest. As discussed above, we have decided that providing MF-II support to only one provider in a given geographic area in exchange for its commitment to offer service that meets our requirements throughout the funded area achieves our objectives for fiscal responsibility.

121. Accordingly, for those entities that obtain ETC designations as a result of being selected as winning bidders for the MF-II auction, we forbear from applying Section 214(e)(5) of the Act and Section 54.207(b) of our rules. We note that forbearing from the service area conformance requirement eliminates the need for redefinition of any rural telephone company service areas in the context of the MF-II auction.[24] However, if an existing ETC seeks support through the MF-II auction for areas within its existing service area, this forbearance will not have any impact on the ETC's pre-existing obligations with respect to other support mechanisms and the existing service area.

122. We conclude that forbearance is warranted in these limited circumstances. As we noted above, our objective is to distribute support to winning bidders as soon as possible so that they can begin the process of deploying mobile service to consumers in those areas. Case-by-case forbearance would likely delay our post-auction review of entities once they are announced as winning bidders. The Act

Board on Universal Service: cream skimming, the Act's special treatment of rural telephone companies, and the administrative burdens of redefinition. *Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*Federal-State Joint Board 1996 Recommended Decision*). A carrier "cream-skims" when it serves only those consumers that are least expensive to serve. *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8881-82, para. 189 (1997) (*Universal Service First Report and Order*).

[20] 47 U.S.C. § 214(e)(5); *see also* 47 CFR § 54.207(b).

[21] 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(c), (d).

[22] 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(b); *Connect America Fund et al.*, Second Report and Order, 27 FCC Rcd 7856 (2012).

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

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

requires us to forbear from applying any requirement of the Act or our regulations to a telecommunications carrier if we determine that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest.[25] Our experience in MF-I has shown that service area conformance forbearance was just and reasonable in accomplishing the goals of the Mobility Fund, did not harm consumer protections, and was in the public interest in the Mobility Fund context. We conclude that each of these statutory criteria is met for winning bidders of the MF-II competitive bidding process, and we incorporate by reference here the analysis of these forbearance factors that we considered and found warranted forbearance in MF-I and CAF II.[26]

C. Spectrum Access

123. *Background*. In order to be eligible for the award of MF-I support, the Commission adopted a requirement that an applicant had to hold or lease a Commission spectrum license capable of supporting the required services and had to certify that it would maintain that access through the term of support.[27] The spectrum access could be contingent on an applicant becoming a winning bidder in Mobility Fund Phase I, but no other contingencies were permitted.[28] For MF-II, the Commission proposed that an applicant be able to satisfy the same spectrum access eligibility requirements adopted in Phase I.[29] The Commission further proposed that an applicant could, like in Mobility Fund I, demonstrate its access to spectrum contingent on winning support in an MF-II auction.[30] In the *April 2014 Connect American Order and FNPRM*, the Commission proposed a rule stating that the applicant must certify that it will retain such spectrum access for 10 years after it is authorized to receive support.[31]

124. *Discussion*. We require that an applicant for an MF-II auction have access to spectrum necessary to fulfill any obligations related to support. An MF-II applicant must describe its required spectrum access and certify that the description is accurate and that the applicant will retain such access

[25] 47 U.S.C. § 160(a); *see also id*. § 160(b) (directing the Commission, in "making the determination under subsection (a)(3) of this section, [to] consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services").

[26] *Connect America Fund et al.*, Second Report and Order, 27 FCC Rcd 7856 (2012); *Connect America Phase II Auction Order*, 31 FCC Rcd at 6005-06, paras. 157-68.

[27] *USF/ICC Transformation Order*, 26 FCC Rcd at 17799-801, paras. 393-99.

[28] *Id*.

[29] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1140. The initial proposed rule regarding spectrum access in Mobility Fund Phase II is 47 CFR § 54.1013(b). *See USF/ICC Transformation Order*, 26 FCC Rcd at 18231, Appendix B, Proposed Rules.

[30] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1140. As stated with regard to Mobility Fund Phase I, the only contingency permitted for spectrum access agreements is that the access may be contingent on winning funds in the Mobility Fund Phase II auction for the areas for which the spectrum access has been arranged. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17799, para. 395.

[31] *2014 CAF Order*, 29 FCC Rcd at 7181, Appendix B, Proposed Rules, Sec. 54.1013(b) (Provider Eligibility).

for at least ten years from the date on which it is authorized to receive support. Specifically, an applicant will be required to disclose whether it currently holds or leases the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent on obtaining support in a MF-II auction. We specify that any other contingency will render the relevant spectrum access insufficient for the party to meet our requirements for participation. For the described spectrum access to be sufficient, we further conclude that the applicant must obtain any necessary approvals from the Commission prior to filing its short-form application.

125. Commenters generally support a requirement that MF-II applicants have access to the needed spectrum prior to participation in the auction.[32] Furthermore, because it would be inconsistent with the level of commitment we think a serious applicant should demonstrate, we decline to adopt the suggestion of some commenters to allow for a substantially more relaxed standard that would permit entities to seek to acquire access to spectrum on a "fill-in" basis after the short-form filing deadline.[33]

126. Consistent with the Commission's decision in Mobility Fund I, we conclude that an applicant seeking MF-II support must have access to spectrum necessary to fulfill any MF-II obligations prior to participating in the MF-II auction because allowing otherwise would be inconsistent with the serious undertakings implicit in bidding for ongoing support.[34] We therefore require applicants to ensure that if they become winning bidders, they will have the spectrum to meet their obligations as quickly and successfully as possible, and adopt the spectrum access rule proposed in the *April 2014 Connect American Order and FNPRM*.[35]

127. As explained below in connection with our discussion of application requirements, we will require that applicants identify the particular frequency bands and the nature of the access on which they assert their spectrum access necessary to demonstrate eligibility for support. We will assess the reasonableness of those eligibility certifications based on information we will require to be submitted in short- and long-form applications. We caution applicants that if they make this certification and do not have or maintain access to the appropriate level of spectrum, they will be subject to the auction or performance default rules described below.

D. Financial and Technical Capability

128. *Background*. In Mobility Fund I, the Commission concluded that it would require a party to be financially and technically capable of satisfying the performance requirements of providing service

[32] *See, e.g.*, USA Coalition Comments at 24 (supporting the Commission's proposal to require that applicants for Mobility Fund support have access to spectrum); *see also* Letter from Harold Mordkofsky and Benjamin H. Dickens, Jr., Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, Counsel to Townes Telecommunications, Inc. (TTI), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Mar. 13, 2012) (suggesting that access to spectrum should include unlicensed spectrum).

[33] *See* RTG Reply Comments at 9-10 ("Under the 800 MHz fill-in process, carriers first identify areas that are unserved and then apply for 800 MHz spectrum licenses to provide coverage."); Montana Independent Telecommunications Systems (MITS) Reply Comments at 16-17 (noting that the because the processes to obtain a fill-in license typically take a minimum of 4-6 months, fill-in carriers should be allowed to participate in MF-I and MF-II auctions).

[34] *USF/ICC Transformation Order*, 26 FCC Rcd at 17799-800, paras. 394-96.

[35] *2014 CAF Order*, 29 FCC Rcd at 7181, Appendix B, Proposed Rules, Sec. 54.1013(b) (Provider Eligibility).

within the specified timeframe in the geographic areas for which it sought support.[36] In proposing that parties seeking MF-II support satisfy this same eligibility requirement, the Commission proposed to require an entity to certify, in the pre-auction short-form application and in the post-auction long-form application, that it is financially and technically capable of providing service within the specified timeframe in the geographic areas for which it seeks support. The Commission proposed a rule stating this requirement in the *USF/ICC Transformation Order*, and the Commission reiterated that proposed rule in the *2014 CAF Order and Further Notice*.[37]

129. *Discussion.* We received few comments on this proposal with regard to MF-II.[38] Our experience with MF-I indicates that requiring these certifications is a reasonable protection for the auction process and to safeguard the award of universal service funds. We therefore adopt our proposed requirement and the proposed rule, with the clarification that the applicant must certify that it is financially and technically qualified to provide the services supported by MF-II within the specified timeframe in the geographic areas for which it sought support.

E. Encouraging Participation

130. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission sought comment on how to encourage participation in an MF-II auction by the widest possible range of qualified parties.[39]

131. *Discussion.* We will permit all qualified eligible applicants to participate in the MF-II auction. In so doing, we seek to encourage participation by the widest possible range of applicants possible, regardless of their size.[40] Our commitment to fiscal responsibility requires that we distribute our finite budget to the provider that submits the superior, most cost-effective bid in the MF-II auction. We will not limit eligibility for MF-II to smaller providers thereby potentially limiting our ability to further close the 4G LTE coverage gap. We therefore decline to adopt the proposals of some small, rural providers that suggest that we should restrict the participation of certain classes of carriers in order to facilitate participation.[41] Furthermore, as the Commission concluded in MF-I, we will not bar any party

[36] *See id.* at 17801, para. 401.

[37] *See id.* at 18231, Appendix B, Proposed Rules, Sec. 54.1013(c); *2014 CAF Order*, 29 FCC Rcd at 7181, Appendix B, Proposed Rules, Sec. 54.1013(c) (Provider Eligibility).

[38] *See, e.g.*, USA Coalition Comments at 24 (supporting generally the Commission's proposal that an applicant be able to certify that it is financially and technically capable of providing service within a specified timeframe).

[39] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1140.

[40] *See USF/ICC Transformation* Order, 26 FCC Rcd at 17802, para. 409; *see also Connect America Fund et al.*, Fourth Order on Reconsideration, 27 FCC Rcd 8814, 8819, para. 13 (2012) ("By permitting all qualified providers to participate in this reverse auction [MF-I], we expect that our limited USF dollars will be used more efficiently and effectively to construct mobile broadband networks to cover more unserved areas."); AT&T Reply Comments (observing that the Commission can maximize the efficiency of universal service auctions by not adopting rules that would restrict participation in them).

[41] *See, e.g.*, RWA *2014 CAF Further Notice* Comments at 5-6 (arguing that the Commission should restrict MF-II and Tribal Mobility Fund Phase II eligibility to non-Tier I smaller and regional wireless providers); Blooston Comments at 3-4 (requesting that the Commission restrict the participation of "Tier One" carriers – *i.e.*, AT&T, Sprint, T-Mobile and Verizon); USA Coalition Comments at 21-23 (proposing that the Commission limit eligibility to carriers with less than 50 million subscribers unless those carriers are unable or unwilling to serve specific areas);

from seeking MF-II support based solely on the party's past decision to relinquish Universal Service Funds provided on another basis.[42] Consistent with our approach in spectrum auctions, we expect that our general auction rules and procedures will provide the basis for an auction process that will promote our objectives for MF-II and provide a fair opportunity for all serious, interested parties to participate.[43]

F. Inter-Relationship with Other Universal Service Mechanisms and Obligations

132. *Background.* In the *Further Inquiry Public Notice*, the Bureaus sought comment on the inter-relationship between eligibility for MF-II support and other universal service support mechanisms. Citing the *USF/ICC Transformation Order*, the Bureaus noted that a party may be eligible to participate in both Connect America Phase II and MF-II, but also noted that carriers would not be allowed to "receive redundant support for the same service in the same areas."[44] The Bureaus sought comment on how to implement this principle so as to provide advance information to potential participants in an MF-II auction.[45] The Bureaus also invited commenters to discuss how, if at all, the availability of Remote Areas Fund (RAF) support should affect areas targeted for MF-II support.[46] In the *USF/ICC Transformation FNPRM*, the Commission proposed that an area that was funded in MF-I would not be considered "unsubsidized" for purposes of determining eligibility for MF-II.[47]

133. *Discussion.* Consistent with the record, we will allow recipients of MF-I support to participate in an MF-II auction.[48] While we do not anticipate that we will prohibit MF-II winning bidders from seeking support through other universal service mechanisms merely because they have received MF-II support, we note that the goals of Phase II of the Mobility Fund are to help ensure the availability of *mobile* voice and broadband services across the country. We emphasize that in establishing rules for

RTG Reply Comments at 7 ("The FCC should go one step further and bar the Big Two carriers who have established a wireless duopoly from receiving any Mobility Fund support."); USA Coalition Reply Comments at 7-8 (suggesting that the Commission exclude the nation's two largest carriers from participation in the Mobility Fund altogether); *see also* Blooston Comments at 4-5 (adding that the Commission should preclude Verizon and Sprint from seeking Mobility Fund support and substantially restrict the receipt of funding by AT&T).

[42] *USF/ICC Transformation Order*, 26 FCC Rcd at 17802, para. 408.

[43] *See id.* at 17802, para. 409.

[44] *Further Inquiry Public Notice*, 27 FCC Rcd at 14803, para. 17 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17674-75, para. 28).

[45] *Further Inquiry Public Notice*, 27 FCC Rcd at 14803, para. 17.

[46] *Id*. at 14801, para. 11.

[47] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18070, para. 1124 n.2247.

[48] *See, e.g.*, NECA Reply Comments at 57-58 ("Areas that receive Mobility Fund Phase I support must be eligible to receive ongoing Phase II support to ensure that the investment made as part of Phase I continues to be supported from an operations perspective."); Blooston *Further Inquiry Public Notice* Comments at 2-3 ("The Blooston Rural Carriers support the Commission's proposal to allow areas in which a carrier received Phase I support to remain eligible for Phase II support for other carriers."); CTIA *Further Inquiry Public Notice* Comments at 5 ("CTIA supports the Commission's proposal in the FNPRM to allow areas receiving one-time Mobility Fund Phase I support to receive funds in Mobility Fund Phase II."); U.S. Cellular *Further Inquiry Public Notice* Comments at 16-17 ("If an unsubsidized carrier is providing only 3G broadband in a service area, then the service area should be treated as eligible for Mobility Fund Phase II support.").

each separate universal service funding mechanism, we are including rules to prevent the disbursement of redundant support.

134. Commenters generally argue that areas covered by Phase I support should not be deemed ineligible for MF-II support and that Phase I support recipients should be eligible to receive Phase II support, whether in the areas for which they had winning bids in MF-I or in other areas.[49] Yet, we note that at least one commenter argued that MF-I winners should not be allowed to participate in Phase II for the same areas because they had certified prior to auction that they would be able to provide the mandated service and thus operate broadband facilities without further support.[50] Another commenter also expressed concern that allowing any provider to seek support for serving the same area in both Phase I and Phase II would drive funding to the lowest-cost eligible areas.[51] We stress that because Phase I provided strictly non-recurring support, the Commission required an MF-I participant to certify at the pre-auction, short-form stage that it was financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it sought support without any assurance of ongoing support, but it did not foreclose the potential of such an entity subsequently receiving ongoing support to maintain that service after the five-year time frame expired.[52] Insofar as it furthers our policy goals to expand and preserve service to areas that would not be covered absent government subsidies, we conclude that a winning bidder in Phase I may participate in the auction to seek ongoing support in Phase II for any area deemed eligible.

135. On the issue of the interrelationship of MF-II and the RAF, we have not limited the availability of MF-II support based on the existence of the RAF, which is a concern for several commenters.[53] Rather, we have set the budget based on the reasons discussed above.[54] We do here, however, reaffirm the commitment to the RAF framework and rules adopted in the *Connect America Phase II Auction Order*.[55] We also conclude that it would not make sense to fund a mobile provider in an eligible area through MF-II and fund yet another such provider (or possibly the same one) in that same area in the RAF. Accordingly, we decide that we shall structure the RAF so as not to award support to a mobile provider in any area where we have awarded MF-II support.

[49] *See supra* note 332.

[50] NTCH *Further Inquiry Public Notice* Comments at 3-5 ("[D]eeming an area 'unsubsidized' is entirely different from proposing that Phase I recipients themselves should also be able to double-dip in the Phase II trough.").

[51] U.S. Cellular *Further Inquiry Public Notice* Reply Comments at 5 ("[T]he Commission's tentative conclusion that areas eligible for MF-I support will also be eligible for Mobility Fund Phase II support will steer significant funding into the lowest-cost eligible areas.").

[52] *USF/ICC Transformation Order*, 26 FCC Rcd at 17801, para. 401; *see also* 47 CFR § 54.1005(a)(2).

[53] *See, e.g.*, ARC *Further Inquiry Public Notice* Comments at 13-14 (contending that the RAF is designed to bring services dependent on *wireline* infrastructure to rural and high-cost areas); Blooston *Further Inquiry Public Notice* Comments at 8 (stating that the RAF "need not be designed or implemented until it can be reasonably estimated what areas will remain unserved by the other high-cost mechanisms"); U.S. Cellular *Further Inquiry Public Notice* Comments at 14 n.47 (indicating that the RAF is not "a plausible complement to an underfunded Mobility Fund Phase II that disburses support in a manner that freezes out higher cost areas").

[54] *See supra* Section IV.B.

[55] *See Connect America Phase II Auction Order*, 31 FCC Rcd at 6018-20, paras. 195-204.

G. Partnerships

136. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission sought comment on whether and the extent to which support recipients should be permitted to partner with other providers to fulfill the public interest obligations associated with MF-II.[56] The Commission asked whether, for example, eligible providers should be permitted to seek support together, provided that they disclose any such arrangements when applying for a Mobility Fund auction.[57] The Commission also invited comment on whether it should establish any limit on the number of geographic areas for which any one provider may be awarded Phase II support and, if it were to do so, what effect would this have on those mobile providers that focus on serving rural areas.[58]

137. *Discussion.* We conclude that the rules we are adopting for MF-II are sufficiently flexible to allow recipients of MF-II to fulfill their public interest obligations associated with MF-II. We are committed to preserving and expanding mobile voice and broadband coverage to those areas that lack services without subsidies, and conclude that allowing support recipients to reach agreements with other providers for this purpose may further that objective.[59] We recognize based on our experience with MF-I that providers are best suited to determine the most efficient and cost effective manner to fulfill their public interest obligations, and we have designed rules that should afford them the flexibility to consider arrangements that meet their individual business needs without prescribing any particular solutions or limitations, provided that such agreements otherwise comply with relevant statutory and regulatory requirements. We caution applicants seeking support, however, that regardless of any agreements they may enter, the winning bidder is the entity responsible for maintaining its eligibility, including but not limited to its ETC status, and meeting its performance obligations for MF-II support. Similarly, all monies awarded through the auction process must flow directly to the winning bidder as that is the entity upon which we have assessed compliance with all support requirements, including its ETC status.

H. Bidding Preference for Small Businesses

138. *Background*. In the *USF/ICC Transformation FNPRM*, the Commission sought comment on whether small businesses should be eligible for a bidding preference in a Phase II auction.[60] Commenters were asked to address the effectiveness of a preference to help smaller carriers compete at

[56] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18074, para. 1137.

[57] *Id*.

[58] *Id*.

[59] Clearwire and U.S. Cellular, the only two parties that commented on this issue, both support allowing Mobility Fund Phase II recipients to partner with other providers to fulfill their public interest obligations. *See* Clearwire Comments at 4 ("Clearwire supports a rule that provides flexibility for recipients of Phase II support to enter into the same range of partnerships available in the market for unsupported services."); U.S. Cellular Comments at 34 (supporting "Commission rules that permit partnering between support recipients and other service providers, particularly if the Commission elects to utilize a single-winner reverse auction mechanism to disburse Mobility Fund Phase II support") (internal citation omitted).

[60] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18077-78, paras. 1157-60. The Commission explained that if adopted, the preference would act as a "reverse" bidding credit that would effectively reduce the bid amount of a qualifying small business for the purpose of comparing it to other bids and that the preference would be available with respect to all census blocks on which a qualified small business bids.

auction and whether the Commission should adopt a preference even if the bidding credit would result in less coverage than would occur without the bidding credit.[61] The Commission also sought comment on how to define small businesses and what size bidding credit might be appropriate.[62] In the *Further Inquiry Public Notice*, following on Phase I where bidding preferences were not available except for Tribally-owned and controlled providers, the Bureaus sought to develop the record on whether to offer small business bidding credits in a Phase II auction.[63] The Bureaus inquired whether entities that were successful bidders in Auction 901 would qualify as small businesses under the definitions the Commission had asked about. The Bureaus also asked whether commenters still believed that a bidding credit was important to smaller carriers' ability to effectively compete at auction for support, and how that should weigh against other Commission objectives.[64]

139. *Discussion.* We decline to adopt a bidding preference for small businesses for MF-II.[65] Commenters that oppose bidding credits for small businesses suggest that establishing such credits is unnecessary and would encourage the inefficient use of universal support funds.[66] These commenters maintain their positions following the results of Auction 901.[67] AT&T, for example, notes that the "Commission awarded most of the Phase I support to non-national wireless providers."[68] Those commenters who support the adoption of a bidding credit[69] argue that small and rural carriers need

[61] *See id.* at 18077-78, para. 1157.

[62] The Commission sought comment on whether a small business should be defined as an entity with average gross revenues not exceeding $40 million for the preceding three years, or whether it should use a larger size definition, such as average gross revenues not exceeding $125 million for the preceding three years. *See id.* at 18078, paras. 1159-60.

[63] *Further Inquiry Public Notice*, 27 FCC Rcd at 14803, para. 18 (citing *USF/ICC Transformation Order*, 26 FCC Rcd at 17807, para. 430).

[64] *Further Inquiry Public Notice*, 27 FCC Rcd at 14803-04, para. 18.

[65] We note that many of the comments filed on the issue of whether bidding credits should be offered address a bidding credit based on the nature of the geographic area to be served rather than the status of the applicant. *See, e.g.*, USA Coalition *Further Inquiry Public Notice* Reply Comments at 6-7 (proposing that priority credits be attached to eligible areas lacking 2G and 3G service, with a larger bidding credit going to areas lacking 2G); RTG *Further Inquiry Public Notice* Reply Comments at 2 ("RTG supports the creation of a bidding credit for rural carriers and for areas that have a low population density.").

[66] *See, e.g.*, AT&T Comments at 34 ("[T]he Commission should reject out of hand its suggestion to establish a bidding credit for small businesses" as it "would cause the Commission to spend more than necessary to achieve ubiquitous broadband deployment.").

[67] AT&T *Further Inquiry Public Notice* Comments at 13 (reporting that the results of the Phase I auction made clear that no bidding credit is necessary for "small businesses").

[68] *Id*.

[69] Those commenters who argue in support of bidding credits based on the status of the applicant often advocated the use of criteria to establish qualification for credits that differ from the criterion that the Commission considered in the *USF/ICC Transformation FNPRM* in addressing a preference for small businesses: the size of the applicant as defined by its revenues. *See, e.g.*, Blooston *Further Inquiry Public Notice* Comments at 7 (proposing that the Commission offer a bidding credit of 35 percent to an entity qualifying as a "rural telephone company"); RTG *Further Inquiry Public Notice* Reply Comments at 2 ("RTG supports the creation of a bidding credit for rural

targeted assistance in securing support.[70] Several commenters continue to argue for bidding credits for small businesses and address small business size standard definitions despite the results of Auction 901.[71]

140. In view of our experience with MF-I, where numerous smaller carriers placed winning bids to receive funding for service without the aid of bidding credits, we conclude that it is unnecessary to adopt small business bidding credits for a MF-II auction. Also, a bidding credit for small businesses would potentially reduce the reach of our finite funds. We are unwilling to forgo additional coverage expansion or preservation in order to favor smaller providers, particularly in light of the participation and success of small and rural businesses in MF-I.

VII. AUCTION RULES AND PROCESS

141. In this section, we discuss the rules we adopt to govern the auction process for MF-II, including pre-auction requirements and general rules for auction design and the bidding process. These rules provide the basic framework and requirements for participating in an auction for MF-II support. Consistent with past practice, the specific procedures will be established as part of the pre-auction process, including determining auction-related timing and dates, identifying areas eligible for support, and establishing detailed bidding procedures consistent with this Order as well as any issues resolved following the *Further Notice of Proposed Rulemaking* we issue below. This pre-auction process will be similar to those we have used for spectrum auctions and to those used in Auction 901 to distribute MF-I support.

carriers and for areas that have a low population density."); RTG *Further Inquiry Public Notice* Comments at 14 (suggesting that the Commission provide a bidding credit to any carrier with a demonstrated "history of offering telecommunications services to rural markets"); USA Coalition *Further Inquiry Public Notice* Reply Comments at 6-7 (urging the Commission to provide bidding credits to carriers that meet certain public interest objectives).

[70] *See, e.g.*, Blooston Comments at 10-12 ("[T]he Commission should establish bidding credits specifically for small businesses, and any entities that qualify as 'rural telephone companies' under Section 51.5 of the Commission's Rules."); RTG Comments at 15-16 ("Bidding credits should also be awarded to carriers already providing mobile wireless service to rural communities and serving few people per square mile."); USA Coalition Comments at 24-25 (supporting bidding credits for small businesses); Cellular One Reply Comments at 9-10 (supporting the use of SBA definitions); NECA Reply Comments at 60 ("[T]he Commission should award Phase II bidding credits that lower bid amounts for carriers that are small businesses or that meet certain public interest objectives associated with delivering mobile broadband to unserved markets."); RCA Reply Comments at 13 (supporting bidding credits for small and rural wireless providers).

[71] *See, e.g.*, RTG *Further Inquiry Public Notice* Comments at 14-15 ("Bidding credits should be awarded to carriers that are small businesses, i.e., entities with average gross revenues not exceeding $75 million for the preceding three years . . . . Alternatively, a small business credit could be available to businesses with fewer than 100 employees or businesses with 100-500 employees."); USA Coalition *Further Inquiry Public Notice* Comments at 15-16 (proposing that the Commission redefine "small business" to reflect the fact that many "small" wireless carriers have average gross revenues in excess of that generally used to identify small businesses and that the Commission should exclude any current USF-support revenues from the determination of whether the company is a "small business"); Cellular One *Further Inquiry Public Notice* Reply Comments at 6 (supporting MTPCS in advocating for bidding credits, but only with use of SBA definitions); USA Coalition *Further Inquiry Public Notice* Reply Comments at 6 (supporting RTG and also urging the redefinition of bidding credit size standards).

A. Pre-Auction Application Process

142. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed to use a two-stage application process similar to that used in spectrum license auctions, which was adopted for Mobility Fund Phase I.[1] The Commission sought comment on this proposal and any alternative approaches.[2]

143. *Discussion.* Based on our experience with MF-I and the process we recently adopted in Connect America Fund Phase II, we adopt a two-stage application process for an applicant seeking to participate in the MF-II auction.[3] Under this process, interested parties will submit a pre-auction "short-form" application, providing basic information and certifications regarding their eligibility to receive support. After the application deadline, Commission staff will review the short-form applications to determine whether applicants have provided sufficient information required at the short-form stage to be eligible to participate in a MF-II auction. Once review is complete, Commission staff will release a public notice indicating which short-form applications are deemed complete and which are deemed incomplete. Applicants whose short-form applications are deemed incomplete will be given a limited opportunity to cure defects and to resubmit correct applications.[4] Only minor modifications to an applicant's short-form application will be permitted.[5] We will then release a second public notice designating the applicants that are qualified to participate in the MF-II auction. As discussed more fully in Section VIII.A below, after the close of the auction, winning bidders will be required to submit "long-form" applications with more extensive information to allow for an in-depth review of their qualifications prior to authorization of support.

144. We also adopt, with certain amendments discussed below, the proposals in the *USF/ICC Transformation FNPRM* regarding the types of information bidders will be required to disclose in their MF-II auction short-form applications. We conclude based on our experience with MF-I that this approach strikes an appropriate balance in ensuring that entities are legally, technically, and financially qualified, while at the same time minimizing the burden on applicants and Commission staff. Thus, we will require that each auction applicant provide information to establish its identity, including disclosure of parties with ownership interests, consistent with the ownership interest disclosure required in Part 1 of the Commission's rules for applicants for spectrum licenses, as well as any agreements the applicant may have relating to the support to be sought through the auction.[6]

145. Each applicant will be required to disclose and certify its ETC status, although, as

[1] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18078-79, para. 1161 n.2262; 47 CFR § 54.1005.

[2] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18078-79, para. 1161.

[3] *See Connect America Phase II Auction Order*, 31 FCC Rcd at 5980-99, paras. 92-141.

[4] *See* 47 CFR § 1.21001(d)(5); *cf. id.* § 1.2105(b)(2).

[5] *See id.* § 1.21001(d)(4). Major modifications would include, for example, changes in ownership of the applicant that would constitute an assignment or transfer of control.

[6] *See id.* §§ 1.21001(b), 54.1005(a)(1). As noted above, applicants will only be able to make minor modifications to their short-form applications. Major amendments, for example, changes in an applicant's ownership that constitute an assignment or transfer of control, will make the applicant ineligible to bid. *See id.* § 1.21001(d)(4).

concluded above, we do not require an applicant to obtain an ETC designation prior to bidding in MF-II.[7] With respect to eligibility requirements relating to spectrum access, applicants will be required to disclose and certify the source of the spectrum they plan to use to meet Mobility Fund obligations in the particular area(s) for which they plan to bid. Specifically, applicants will be required to disclose whether they currently hold a license or lease the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent on obtaining support in an MF-II auction. Applicants must have secured any Commission approvals necessary for the required spectrum access prior to submitting an auction application. Moreover, applicants will be required to certify that they will retain their access to the spectrum for at least ten years from the date support is authorized. We note that no commenters addressed the Commission's proposed pre-auction application process for MF-II,[8] and we therefore conclude the rules we adopt today will best serve the Commission's ability to hold a fair and efficient auction.

B. Bidding Process

1. Auction Design and Competitive Bidding Mechanisms and Procedures

146. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed to use the same approach to establishing the competitive bidding process for MF-II as it did for Mobility Fund Phase I.[9] That is, the Commission proposed to adopt high-level auction rules, leaving to the pre-auction process the determination of the final procedures for the auction.[10] The Commission has found that this two stage approach – by first defining important elements of the basic structure while later considering the details that will implement those fundamentals – gives it the flexibility needed to integrate its auction objectives and high level decisions into a workable and consistent auction process.

147. *Discussion.* We adopt, with certain minor non-substantive changes, the existing Part 1 rules on competitive bidding for universal service support contained in Subpart AA.[11] The high-level auction rules for competitive bidding procedures for universal service support that we adopt here set out a range of options and mechanisms that we may use for such purposes. We take this opportunity to reorganize the way we articulate certain of the relevant rules, without altering the substance, to be consistent with the latest developments regarding the Commission approach to competitive bidding in other contexts.[12] Specifically, we restructure the rules to present them in terms of auction procedures

[7] *See supra* Section VI.A.; *2014 CAF Order*, 29 FCC Rcd at 7064-66, paras. 40-46.

[8] *See* CTIA Comments at 4 (noting generally that the Commission should carefully examine the outcome of the Phase I auction, including the Commission's choices regarding auction design, before completing its implementation of Phase II).

[9] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18076-77, para. 1153.

[10] *See id.* at 18076-77, 18079, paras. 1153-56, 1163.

[11] *See* 47 CFR Part 1, Subpart AA.

[12] *See, e.g., id*. §§ 1.2103, 1.2104; *see also Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6774, para. 499 (2014). The general universal service competitive rules set out in 47 CFR pt. 1, Subpt. AA are subject to revision. Our revisions to the Part 1 rules adopted today align with the Commission's rules and process for spectrum auctions generally. For any specific auction, the Part 1 rules effective at the time of the auction govern that auction.

governing bid collection, assignment of winning bids, determination of support payment amounts, as well as particular mechanisms for conducting the auctions. The reorganized competitive bidding procedures rules will facilitate the development of procedures for the MF-II auction that are consistent with the universal service support technical requirements and policies generally and that address the needs of the Commission and interested bidders. The bidding procedures for the MF-II auction will include, *inter alia*, details pertaining to multiple round bidding and package bidding.

2. Information and Communications

148. *Background.* To maximize competition and promote fairness, the Commission proposed to retain for MF-II its usual auction policies regarding permissible communications during the auction and the public release of certain auction-related information.[13]

149. *Discussion.* We adopt the proposed rules prohibiting auction applicants from communicating with one another regarding the substance of their bids or bidding strategies, and providing for limited public disclosure of auction-related information as appropriate.

C. Auction Cancellation

150. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed, consistent with its approach in spectrum auctions and Mobility Fund Phase I, that its rules provide discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding.[14]

151. *Discussion.* We received no comments on this proposal. Accordingly, based on our experience with spectrum license auctions and Mobility Fund Phase I, we conclude that such a rule is necessary and adopt it here.

VIII. POST-AUCTION PROCESS AND SUPPORT

152. In this section, we discuss the rules we adopt to govern the post-auction process and the authorization of support for MF-II. These rules provide the basic framework and requirements for winning bidders to demonstrate their qualifications for MF-II support. As proposed in the *USF/ICC Transformation FNPRM* and reiterated in the *2014 CAF Order*, this post-auction process will be similar to that used for MF-I support.[1] Shortly after bidding has ended, the Bureaus will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing details and deadlines for next steps, beginning with the long-form application.

A. Long-Form Application

153. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed to apply the same long-form application process for MF-II as it adopted for MF-I.[2] Under this process, applicants for MF-II support would be required to demonstrate in their long-form applications that they

[13] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18079, para. 1162.

[14] *See id.* at 18079, para. 1163.

[1] *See id.* at 18079-80, para. 1164.

[2] *See USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18079-80, para. 1164.

are legally, technically, and financially qualified to receive MF-II support.[3]

154. *Discussion.* We conclude that winning bidders for MF-II support will be required to comply with the same long-form application process we adopted for MF-I, and we hereby adopt a rule to govern this process, modified from that originally proposed consistent with our stance on ETC designation timing and other rules adopted in this Order.[4] No commenter specifically addressed this proposal.[5] Consistent with our standard practices, upon close of an MF-II auction, the Bureaus will release a public notice, which will provide further details regarding the submission and processing of the long-form application.

1. Ownership Disclosure

155. We also adopt the ownership disclosure requirements proposed in the *USF/ICC Transformation Order* for MF-II. Specifically, we will require the same Part 1 ownership disclosure requirements that already apply in the spectrum license context,[6] and we adopt the related proposed rule.[7] Pursuant to these requirements, an applicant for MF-II support must fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application. We anticipate that wireless providers that have participated in spectrum license auctions will already be familiar with the disclosure requirements.[8] These companies will also have ownership disclosure reports (in the short-form application or FCC Form 602) on file with the Commission, which may simply need to be updated, minimizing the reporting burden on winning bidders.[9]

2. ETC Eligibility

156. Consistent with the eligibility requirements adopted above, we will permit a winning bidder in the MF-II auction to obtain its ETC designation after the close of the auction, provided that it submits proof of its ETC designation within 180 days of the public notice identifying winning bidders.

157. Before MF-II support is authorized, a winning bidder must demonstrate that it has been designated an ETC covering each of the geographic areas for which it seeks to be authorized for support and that its ETC designation allows it to fully comply with our coverage requirements within the time provided to meet this requirement. A winning bidder must submit appropriate documentation of its ETC designation in all the areas for which it will receive support in its long form or certify that it will do so

[3] *Id.*

[4] The Commission proposed rule 54.1015(b) (Application by Winning Bidders for Mobility Fund Phase II Support) to govern this process. *See USF/ICC Transformation Order*, 26 FCC Rcd at 18233-34, Appendix B, Proposed Rules, Sec. 54.1015(b).

[5] *But see* ATN *Further Inquiry Public Notice* Comments at 7 (expressing concern about certain requirements for the application, such as obtaining separate letters of credit or commitment letters for each winning bid, and requesting that the Commission provide a greater length of time for winning bidders to complete the long-form application).

[6] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17808-09, para. 438.

[7] *See id.* at 18233, Appendix B, Proposed Rules, Sec. 54.1015(b)(2)(i).

[8] *See id.* at 17808-09, para. 438.

[9] *Id.*

within 180 days of the public notice identifying winning bidders.[10] Appropriate documentation should include the original designation order, any relevant modifications (e.g., expansion of service area or inclusion of wireless), along with any name-change orders. Each winning bidder should connect the designations to the winning bids so that it is clear that the bidder has ETC status in each winning area. This obligation may be satisfied by providing maps of the recipient's ETC designation area, map overlays of the MF-II support areas, and narrative explanations explaining the connections between the ETC designations and MF-II support areas. Before MF-II support is authorized, a winning bidder must demonstrate that it has been designated an ETC covering each of the geographic areas for which it seeks to be authorized for support and that its ETC designation allows it to fully comply with our coverage requirements within the time provided to meet this requirement.

3. Financial and Technical Capability Certification

158. As in the pre-auction short-form application stage, a long-form applicant must certify that it is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support. An applicant should take care to review its resources and its plans before making the required certification and be prepared to document its review, if necessary. We hereby adopt proposed rule 54.1015(b)(2)(ii), as amended.[11]

4. Network Coverage Plan

159. For winning bids, the applicant must submit a project description that describes the network to be built or upgraded; identifies the proposed technology; demonstrates that the project is technically feasible; discloses the complete project budget; and discusses each specific phase of the project (e.g., network design, construction, deployment, and maintenance).[12] A complete project schedule, including timelines, milestones, and costs, must also be provided. Milestones should include the start and end date for network design; start and end date for drafting and posting requests for proposal (RFPs); start and end date for selecting vendors and negotiating contracts; and start date for commencing construction and end date for completing construction.[13] Winning bidders may file as separate documents a public/redacted version of their project descriptions and a confidential version of their project descriptions, if necessary, accompanied by a Request for Confidentiality that aligns with existing Commission rules.[14] Project descriptions must align project schedules with the required buildout milestones, as established above.[15]

5. Spectrum Access

160. We hereby adopt proposed rule 54.1015(b)(2)(iv) (as amended).[16] Specifically, applicants

[10] 47 CFR § 54.1005(b)(2)(iii).

[11] *See USF/ICC Transformation Order*, 26 FCC Rcd at 18233, Appendix B, Proposed Rules, Sec. 54.1015(b)(2)(ii).

[12] *See id.* at Sec. 54.1015(b)(2)(v).

[13] *See id*.

[14] *See* 47 CFR § 0.459.

[15] *See supra* Section V.C.

[16] *See USF/ICC Transformation Order*, 26 FCC Rcd at 18233, Appendix B, Proposed Rules, Sec. 54.1015(b)(2)(iv) (amended to state that the applicant will retain spectrum access for at least ten years after the date on which it is

must provide a description of the spectrum access that the applicant will use to meet its obligations in areas for which it is the winning bidder, including whether it currently holds a license or leases the spectrum, along with any necessary renewal expectancy, and certify that the description is accurate and that the applicant will retain such access for the entire ten-year support term. The description should identify the license applicable to the spectrum to be accessed. The description of the license must include the type of service (e.g., AWS, 700 MHz, BRS, PCS, etc.), the particular frequency bands and the call sign. This information should be verifiable in the Commission's Universal Licensing System. Reference to other Commission data repositories should not be necessary, as the complete information needed to determine on what licenses the applicant intends to rely should be included in the MF-II long-form application. Applications will be reviewed to assess the reasonableness of the certification.

6. Certifications as to Program Requirements

161. With regard to certifications of program requirements, we adopt proposed rule 54.1015(b)(2)(vi), as amended, and conclude that an applicant must certify in its long-form application that it has the funds available for all project costs that exceed the amount of support to be received, and that it will comply with all program requirements.[17] These requirements include the public interest obligations contained in the Commission's rules and set forth above in Section V.[18] Applicants must certify that they will meet the applicable deadlines and requirements for demonstrating interim and final performance benchmarks set forth in the rules, and that they will comply with the MF-II collocation, voice and data roaming, and reasonably comparable rate obligations. We will retain our authority to look behind recipients' certifications and take action to address any violations that develop.

7. Other Information

162. Any additional information that is required to establish whether an applicant is eligible for MF-II support will be announced by public notice.[19]

8. Transfers and Assignments

163. The award of MF-II support is based upon the eligibility and performance of the winning bidder. Therefore, a recipient of MF-II support that later seeks to transfer control or assign its licenses in the winning bid area to another carrier should be aware that, if the buyer or assignee carrier is not eligible to receive MF-II funds or is uninterested in remaining in the program, the winning bidder will remain liable for its winning bid obligations and will be considered to have committed a performance default if it can no longer fulfill those obligations after completing the transfer or assignment. All assignees seeking to receive MF-II support will become subject to the eligibility, certification, and disclosure requirements included in the MF-II rules.

B. Authorization Requirements and Steps

164. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed to apply the same process for authorization of release of awarded funds for MF-II support as was adopted in

authorized to receive support).

[17] *See id.* at Sec. 54.1015(b)(2)(vi).

[18] *See id.*

[19] *See id.* at Sec. 54.1015(b)(2)(xi).

Phase I.[20]

165. *Discussion*. For all the reasons discussed below, we conclude that before being authorized for support, a winning bidder must submit an irrevocable standby letter of credit (LOC), which shall be acceptable in all respects to the Commission. Additionally, winning bidders must supply a legal counsel's opinion letter stating that the funds secured by the LOC will not be considered to be part of the recipient's bankruptcy estate in the event of a bankruptcy proceeding under Section 541 of the Bankruptcy Code. These safeguards will allow us to utilize an LOC to resolve a performance default, as discussed below.[21] Accordingly, the following authorization requirements must be satisfied in order for MF-II support to be authorized.

1. Letters of Credit

166. *Background.* In MF-I, the Commission required all winning bidders to obtain LOCs ensuring the successful fulfillment of each winning bid and protecting the Commission's investment of universal service funds.[22] The Commission proposed the same requirements for MF-II.[23] The Commission sought subsequent comment on this issue in the *Further Inquiry Public Notice* and in the *2014 CAF Further Notice*.[24] In the Connect America Phase II auction context, the Commission adopted LOC requirements with standards that initially cover the first year of support of a recipient's winning bid, and that are adjusted annually thereafter, reasoning that LOCs were an effective means for fulfilling our role as stewards of public funds.[25]

167. *Discussion.* Consistent with the Commission's determinations for the rules governing MF-I and CAF-II auctions, we adopt a rule for MF-II requiring that, prior to the authorization of support, all winning bidders for support must provide us with an irrevocable standby LOC by a bank that is acceptable to the Commission[26] in substantially the same form as the model Letter of Credit set forth in Appendix E.[27] We conclude that an LOC meeting the requirements set out below is neither unreasonably burdensome nor excessively costly for a winning bidder to obtain in light of the benefit to our universal service program. While we understand that obtaining an LOC incurs costs, we anticipate that bidders can incorporate these costs when determining their bids. As we found in MF-I, and in considering this issue in other aspects of the Connect America Fund, companies with existing lending relationships often use LOCs in the normal course of operating their businesses and, generally, are able to maintain multiple

[20] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18079-80, para. 1164.

[21] *See infra* Section IX.B.2.

[22] *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-12, paras. 444-51.

[23] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18079-80, para. 1164.

[24] *See generally Further Inquiry Public Notice*; *see also 2014 CAF Further Notice*, 29 FCC Rcd at 7130, para. 248.

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

[26] The rules adopted relating to Phase I provided specific requirements for a bank to be acceptable to the Commission to issue the LOC. Those requirements vary for United States banks and non-U.S. banks. *See* 47 CFR § 54.1007(a)(1). The same requirements will apply for Phase II, with the exception of the expansion of the acceptable banks noted below.

[27] An MF-II support recipient's LOC must be issued in substantially the same form as one of our model LOCs and, in any event, must be acceptable in all respects to the Commission.

forms of financing for varying purposes.[28] Therefore, on balance, we conclude that the government's need to safeguard the disbursement of these monies outweighs the limited burden incurred by winning bidders.

168. In reaching this conclusion, we carefully weighed the comments we received on whether we should require LOCs for MF-II. For instance, Blooston Rural Carriers comments that irrevocable LOCs and default payment requirements are onerous, particularly for rural carriers, and unnecessary for companies with a documented track record of compliance.[29] ADTRAN agrees, commenting that requiring LOCs in the full amount of the subsidy adds unnecessary costs and discourages participation,[30] with which the Indiana Utility Regulatory Commission agrees.[31] ITTA and U.S. Cellular offer that other processes or requirements could prevent the types of default that an LOC would insure against.[32] The record following the *Further Inquiry Public Notice* also included several comments opposing an LOC or

[28] *USF/ICC Transformation Order*, 26 FCC Rcd at 17811, para. 446 (noting in the context of MF-I that "companies who have existing lenders regularly use LOCs in the normal course of operating their businesses and are able to maintain multiple forms of financing, thus, we give little credence to the suggestion that this requirement could fatally impair a company's ability to obtain private or public market funding"); *Rural Broadband Experiments Order*, 29 FCC Rcd at 8788-89, paras. 56-57 (continuing to view LOCs as beneficial and noting that "our experience has shown that winning bidders are able to obtain LOCs"); *see also Connect America Phase II Auction Order*, 31 FCC Rcd at 5990, para. 120 (agreeing with the rationale in the *USF/ICC Transformation Order* that letters of credit are effective).

[29] Blooston Comments at 16-17; *see also* Mescalero Apache Telecom, Inc. (Mescalero) *Further Inquiry Public Notice* Comments at 6-7 (suggesting that we should adopt an exception to the LOC requirement for Tribally-owned or -controlled carriers or for established rural carriers).

[30] ADTRAN Comments at 5, 15-16; *see also* Letter from L. Charles Keller, Wilkinson, Barker, Knauer, LLP, Counsel to Blue Wireless, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 1 (filed Feb. 14, 2017) (Blue Wireless Feb. 2017 *Ex Parte*) ("[O]verly burdensome letter of credit ('LOC') requirements will present a significant deterrent to participation by small entities such as Blue Wireless.").

[31] Indiana Utility Regulatory Commission (IURC) Comments at 7.

[32] Independent Telephone & Telecommunications Alliance (ITTA) Comments at 10-13; U.S. Cellular Comments at 50-51.

suggesting other means of protecting our interests[33] as well as comments pointing to the inefficiencies of the MF-I LOC requirements.[34]

169. Likewise, we received additional comments on the subject of LOCs in response to the *2014 CAF Further Notice*. CoBank, ACB (CoBank), for example, advocates for revisions to the definitions of entities permitted to issue USF LOCs.[35] RWA suggests the Commission should allow carriers to aggregate LOCs on a project basis, if they can demonstrate in project descriptions that a single site would serve the area covered by a group of winning bids.[36] RWA asserts that permitting LOCs by project rather than by winning bid would reduce costs and time spent obtaining LOCs, while still giving the Commission the ability to recover disbursed funds in the event of a performance default.[37]

170. While the concerns expressed by commenters do not warrant abandoning an LOC requirement altogether, they do support our decision to depart from the LOC provisions utilized in MF-I, and to instead adopt LOC provisions that closely align with the CAF-II LOC process and MF-II performance requirements. For instance, allowing the LOC to decrease over time as a support recipient

[33] *See, e.g.*, Blooston *Further Inquiry Public Notice* Comments at 13 (stressing that "most rural wireless carriers are unlikely to be able to obtain the LOCs contemplated by the Commission from any of the institutions with which they have established financial relationships, and will consequently be effectively excluded from Mobility Fund"); Mescalero *Further Inquiry Public Notice* Comments at 5-7 (arguing that "the LOC requirement has proved to be an insurmountable barrier to participation in the Mobility Fund Phase II process"); RTG *Further Inquiry Public Notice* Reply Comments at 8-10 (joining commenters in opposing the adoption of a Phase II LOC requirement); U.S. Cellular *Further Inquiry Public Notice* Reply Comments at 38 (urging the Commission to "refrain from imposing a LOC requirement on Phase II support recipients and to instead rely on enforcements mechanisms to ensure compliance with Phase II requirements"); *see also* Letter from Brian Gelfand, President, Blue Wireless, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1-2 (filed Nov. 9, 2016) (Blue Wireless Nov. 9, 2016 *Ex Parte*) (describing the difficulties smaller entities face in securing LOCs and requesting that the Commission refrain from requiring LOCs "in excess of any disbursed but unconstructed funding requests").

[34] *See, e.g.*, USA Coalition *Further Inquiry Public Notice* Comments at 16 (asserting that "[a]t most, a LOC could be requested of new carriers that lack a history of regulatory compliance and financial stability"); CCA *Further Inquiry Public Notice* Comments at 8 (commenting that "[o]btaining individual letters requires a carrier to expend valuable time, money and other resources, which directly results in unnecessarily higher bids"); ATN *Further Inquiry Public Notice* Comments at 8-9 ("Obtaining a separate commitment letter for each of the 120 bids that the ATN companies collectively won was an expensive and time-consuming process, one that could have potentially been avoided had ATN been permitted to submit one letter of credit per winning bidder."); *id.* at 8 n.26 (noting that it is unlikely carriers would incur the expense of obtaining an LOC until there is the certainty of winning a bid).

[35] CoBank notes that the Commission's proposed rule (Section 54.1016(a)(2)(ii)(B)) should be corrected to reflect that the "obligations" (rather than the "deposits") of agricultural credit banks that are members of the U.S. Farm Credit System are insured by the Farm Credit Insurance Corporation. *See* CoBank *2014 CAF Further Notice* Comments at 1-4 (discussing rules related to the competitive bidding process for Phase II of the Mobility Fund and Phase II of the Connect America Fund). CoBank also comments that to the extent the Commission requires applicants to post a bond or some other form of deposit in connection with USF support, the modified definition accounting for U.S. Farm Credit System institutions should be used in determining what qualified banks may make such guarantees. *See* CoBank *2014 CAF Further Notice* Comments at 5.

[36] RWA *2014 CAF Further Notice* Comments at 12.

[37] *Id*.

satisfies its minimum coverage and service requirements, as the Commission allowed in the CAF-II context, should effectively protect public funds under less onerous terms than were applied in the MF-I auction.[38] Moreover, and as discussed further below, we can also incorporate other terms and processes adopted in the CAF-II auction context to address the concerns of commenters to achieve greater efficiencies in our MF-II LOC requirements. We therefore require an LOC for MF-II winning bids that will remain in place until USAC, in conjunction with the Commission, verifies that a MF-II winning bidder has met its minimum coverage and service requirements at the end of the six-year milestone.[39]

171. Consistent with the approach utilized in CAF-II,[40] we will require that the initial value of the LOC to be set to at least the amount of authorized MF-II support for the first year. Before the winning bidder can receive its next year's MF-II support, it must modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year.[41]

172. Moreover, similar to the process adopted in CAF-II, we will allow a support recipient to modestly reduce its LOC as it meets its interim benchmarks.[42] We require that the LOC be maintained for 100 percent of the total support amount disbursed plus the amount to be disbursed in the next year until USAC, in coordination with the Commission, has determined that the recipient has met its interim benchmark for deployment to 60 percent of the required coverage area; and subject to USAC's consent, the amount of the LOC may decrease to an amount equal to 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.[43] Once USAC, in coordination with the Commission, has determined that the recipient has met its interim benchmark for deployment to 80 percent of the required coverage area; and subject to USAC's consent, the amount of the LOC may decrease to an amount equal to 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.[44] After USAC, in coordination with the Commission, has determined that the recipient has met its final benchmark for deployment to a minimum of 85 percent of the required coverage area by state and at least 75 percent by each census block group or census tract in a state included in the LOC, the recipient may relinquish its LOC.[45] Recognizing that the risk of a default will lessen as a recipient makes progress towards building its network, we find that it is appropriate to modestly reduce the value of the letter of credit in an effort to reduce the cost of maintaining a letter of credit as the recipient meets certain service milestones.[46]

[38] Blue Wireless sought to have MF-II LOCs better tailored to the deployment milestones and the end of the deployment period than previous LOCs. *See* Blue Wireless Feb. 2017 *Ex Parte* at 1-2.

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

[40] *Id.* at 5997, para. 135.

[41] *Id.*

[42] *Id*. at 5991-92, paras. 123-24.

[43] *Id*.

[44] *Id*.

[45] *Id*.

[46] A system of modest reductions in the value of the LOC aligns with the LOC procedure adopted in CAF-II. *See Connect America Phase II Auction Order*, 31 FCC Rcd at 5997-98, paras. 136-37. Although Blue Wireless

173. We conclude that these LOC requirements should help to achieve our goal of fiscal responsibility and should protect the disbursement of universal service funds while also being responsive to concerns expressed in the record that MF-II LOC requirements should not be onerous. The reporting and performance requirements that we have adopted for MF-II together with these LOC provisions, which are consistent with the CAF-II auction LOC requirements previously adopted by the Commission, should ensure that in the event of a performance default monies are in place to satisfy a recipient's obligations for failing to comply with the terms of support. For these reasons, we decline to adopt suggestions from commenters that we remove the LOC requirement entirely, either for all winning bidders or for certain groups of winning bidders such as Tribally-owned and -controlled carriers or for established rural carriers. All MF-II recipients, along with the federal government, should bear the responsibilities of safeguarding these funds. However, for the same reasons articulated in the *Rural Broadband Experiments Order*,[47] and more recently in the *Connect America Phase II Auction Order*[48] we nonetheless recognize that there may be a need for greater flexibility regarding LOCs for Tribally-owned and controlled winning bidders. Thus, if any Tribally-owned and -controlled MF-II winning bidder is unable to obtain a LOC, it may file a petition for a waiver of the LOC requirement. Waiver applicants must show, with evidence acceptable to the Commission, that the Tribally-owned and -controlled winning bidder is unable to obtain a LOC.[49]

174. In addition to providing greater flexibility on the amount of support the LOC will cover, we conclude that there are additional specific measures we can take to provide MF-II recipients greater flexibility in obtaining their LOCs. For instance, to reduce the number of LOCs that a winning bidder may need, and as suggested by some commenters, including CCA[50] and ATN,[51] that argue that obtaining an LOC for each separate bid is inefficient we will allow winning bidders to provide a single LOC covering all its winning bids within a single state.[52] We therefore direct the Bureaus to establish a

contends that adopting MF-II LOC requirements that are consistent with the CAF-II LOC requirements would require funding recipients to maintain LOCs to guarantee performance long after construction of a portion of the network already has been completed, Blue Wireless misunderstands the CAF-II LOC requirements. *See* Blue Wireless Feb. 2017 *Ex Parte* at 1-2 (proposing instead that small entity participants be given "the opportunity to verify their satisfaction of their construction obligations to USAC and be relieved of LOC obligations for the funding that has been disbursed through that milestone" or, alternatively, winning bidders be provided with "the opportunity to receive funding disbursements at regular intervals (e.g., annually) *after* the provider has constructed the facilities associated with the funding"). The Commission adopted a 10-year term for CAF-II support with a six-year (not eight-year) buildout requirement, phasing out the LOC over the six-year term. In any case, the MF-II LOC requirements allow a support recipient to relinquish its LOC upon meeting its final benchmark for deployment at year six, alleviating concerns that recipients would be required to maintain an LOC long after construction.

[47] *Rural Broadband Experiments Order*, 29 FCC Rcd at 8792, paras. 67-68.

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

[49] *Id*.

[50] CCA *Further Inquiry Public Notice* Comments at 8 ("[T]he Commission should not require separate commitment letters or letters of credit for each winning bid.").

[51] ATN *Further Inquiry Public Notice* Comments at 8, 9 n.26 (recommending one letter of credit per one winning bidder).

[52] *See, e.g.*, *Connect America Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 (allowing a support recipient to cover all its bids in a state with a single LOC).

reasonable means to permit a winning bidder to provide a single LOC that covers all its winning bids within a single state in the amount specified above, if the recipient so desires.[53]

175. Furthermore, consistent with the acceptable bank standards recently adopted for the CAF Phase II auction process, and as requested by commenters, we amend and expand the definition of an "acceptable bank" for the purposes of MF-II LOC requirements.[54] This decision is supported in the record.[55] By expanding the list of banks eligible to provide LOCs, we seek to lower barriers for entities, particularly small and rural businesses that might otherwise face obstacles in obtaining an LOC from a smaller pool of banks, while still ensuring that there are adequate considerations given to the soundness of the bank issuing a letter of credit.

176. Accordingly, and consistent with our decision in the *Connect America Phase II Auction Order*, we will require that, for U.S. banks, the bank must be insured by the Federal Deposit Insurance Corporation (FDIC) and have a Weiss bank safety rating of B- or higher.[56] This modification to our definition of acceptable banks expands the number of eligible U.S. banks from fewer than 70 banks, as we allowed in MF-I, to approximately 3,600 banks for MF-II winning bidders.[57] These provisions together should help to ensure that LOCs are secured by financially sound institutions. As explained in the *Connect America Phase II Auction Order*, unlike credit ratings obtained by banks in the commercial markets, Weiss rates all banks that report sufficient data for Weiss to analyze and, more importantly, is a subscription service and is not compensated by the banks that it rates.[58] Weiss therefore offers an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes.[59] By requiring that the banks have a Weiss rating of at least B-, we ensure that the bank has a rating that at a minimum demonstrates that the bank "offers good financial security and has the resources to deal with a variety of adverse economic conditions."[60]

[53] Consistent with the Commission's decision in the CAF-II context, we note that if a winning bidder chooses to obtain a letter of credit for each of its bids that are located in a state and defaults after its failure to pay the recoupment calculation for non-compliance, the Bureaus will authorize a draw on all the letters of credit covering all the bids in that state. *See infra* paras. 215-18; *see also Connect America Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 n.242.

[54] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5992-96, paras. 126-31.

[55] For instance, CoBank recommends modifying the definition of "acceptable bank" to allow the use of banks that are insured by either the FDIC or the FCSIC, or issuing a waiver to permit CoBank to issue LOCs. *See* CoBank *Further Inquiry Public Notice* Comments at 6.

[56] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

[57] *Id*.

[58] *Id.*; Weiss Ratings, "Why Weiss Ratings?," https://www.weissratings.com/why-weiss-ratings (last visited May 2, 2016).

[59] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127; Weiss Ratings, "Ratings Definitions," https://weissratings.com/help/rating-definitions (last visited Apr. 29, 2016).

[60] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127 (citing Weiss Ratings, "Ratings Definitions," https://weissratings.com/help/rating-definitions (last visited Apr. 29, 2016)); *see also* Letter from Thomas Cohen, Kelley Drye & Warren, LLCP, Counsel to ACA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2-3 n.3 (filed May 2, 2016) (reporting on a meeting ACA and WISPA had with the Commission to

And by requiring that U.S. issuing banks also be FDIC-insured, we have the added benefit of relying on the oversight of the FDIC and its protections.[61] We therefore conclude that this more expansive definition of acceptable banks achieves an appropriate balance between reducing burdens for winning bidders, particularly small and rural entities, while still protecting the public funds.

177. For similar reasons, and as we also concluded in the *Connect America Phase II Auction Order*,[62] we will also permit entities to obtain letters of credit from CoBank or the National Rural Utilities Cooperative Finance Corporation (CFC) as long as each of these two entities maintains assets that place them among the top-100 U.S. banks in terms of the amount of assets,[63] and they maintain a credit rating of BBB- or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency). We recognized in the *Connect America Phase II Auction Order* that these entities are not traditional banks in that they do not accept deposits from members of the public.[64] Thus, these entities do not have a Weiss bank safety rating and are not FDIC-insured. However, we found there and agree here that CFC and CoBank can be considered banks in the context of our program because they use their capital resources to make loans.[65] As we similarly concluded in CAF Phase II, we find these two entities to be sufficiently comparable to commercial depository banks to issue letters of credit in the MF-II program for the reasons stated below.[66]

178. As we noted in the *Connect America Phase II Auction Order*, CoBank has met the more stringent issuing bank eligibility requirements for MF-I and rural broadband experiments, and has issued

discuss CAF Phase II and noting that Weiss ratings are correlated with banks that meet the "Well-Capitalized" Prompt Corrective Action threshold under Basel III Capital Adequacy Standards, that requiring a B- or higher Weiss rating acts as a "*de facto* filter" on "Well-Capitalized" banks by "filtering out many lower-end (near junk-rated) investment grade banks," that banks that are "Well-Capitalized" and banks that have a Weiss rating of B- or higher have a "negligible" failure rate, and that most of the banks that have such a Weiss rating have experience with commercial lending).

[61] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5993, para. 127.

[62] *Id*. at 5994, para. 128.

[63] The entity's assets will be determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit, determined on a U.S. dollar equivalent basis as of such date.

[64] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5994, para. 128; Letter from John T. Nakahata, Counsel to the CFC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, WC Docket No. 14-58, WC Docket No. 14-259, at Attach. at 7 (filed Mar. 24, 2015) (CFC Mar. 24, 2015 *Ex Parte* Letter) (describing its meeting with the FCC to discuss CFC's Petition for Waiver of bank eligibility requirements for rural broadband experiment projects to permit CFC to issue irrevocable standby LOCs to provisionally selected winners); CoBank *2014 CAF Further Notice* Comments at 4.

[65] CoBank *2014 CAF Further Notice* Comments at 4 (noting that CoBank "is an agricultural credit bank within the [Farm Credit System] that was established by the Farm Credit Act to meet the lending needs of agribusiness and utilities, including communications in rural America," and that CoBank "provides loans, leases, [letters of credit], and other financial services to vital industries across rural America"); *see also Mobility Fund Phase I; Waiver of Section 54.1007(a)(1) of the Commission's Rules*, Order, 27 FCC Rcd 13457, 13460, para. 9 (WTB/WCB 2012) (*Mobility Fund CoBank Waiver Order*).

[66] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5994-95, paras. 128-30.

a number of letters of credit for these programs.[67] Although CoBank is not FDIC-insured, it is insured by the Farm Credit System Insurance Corporation, which we found provides protections that are equivalent to those indicated by holding FDIC-insured deposits.[68] As long as CoBank retains its standing with assets equivalent to a top 100 U.S. bank and a qualified credit rating, we see no reason to depart from our conclusion not to exclude CoBank from eligibility simply because it is not rated by Weiss.

179. CFC's assets also make it comparable to commercial depository banks that are in the top 100 based on total assets[69] and it has a credit rating from Standard & Poor's of A. But because CFC is not a depository institution and it is not part of the Farm Credit System, it is not FDIC or FCSIC-insured.[70] Nevertheless, we conclude here, as we did in the *Connect America Phase II Auction Order*, that CFC is uniquely situated and should be made eligible to the extent it retains its standing with assets equivalent to a top-100 U.S. bank and a qualified credit rating. CFC is "owned by, and exclusively serves" rural utility providers, and CFC manages and funds its affiliate, the Rural Telephone Finance Cooperative (RTFC), which lends primarily to telecommunications providers and affiliates across the nation.[71] As the largest non-governmental lender for rural utilities,[72] CFC has specialized institutional knowledge regarding the types of entities that we expect will participate in universal service competitive bidding to serve fixed locations and has demonstrated that it has significant and long-term experience in financing the deployment of rural networks.[73] This unique and long-standing role in rural network deployment coupled with CFC's qualifications, as stated above, provides us with sufficient assurance that CFC has the qualifications to assess the financial health of winning bidders and honor the LOCs that it issues, without the need for the independent oversight of CFC's safety and soundness that would be offered by FDIC or FCSIC insurance or a Weiss safety rating. We conclude that based on the totality of these circumstances, CFC is eligible to issue LOCs despite the fact that it does not meet the FDIC and Weiss rating requirements.[74] We note that we are not adopting alternative eligibility requirements that would permit banks that are not FDIC or FCSIC-insured or that do not have a Weiss bank safety rating to issue letters of credit. Instead, as in CAF-II,[75] we conclude that, for purposes of providing security for winning bidders,

[67] *Id*. at 5994, para. 129.

[68] *Id.*; *Rural Broadband Experiments Order*, 29 FCC Rcd at 8790, para. 60; *Mobility Fund CoBank Waiver Order*, 27 FCC Rcd at 13460-61, para. 9.

[69] *See* Petition for Waiver of National Rural Utilities Cooperative Finance Corporation and Rural Telephone Finance Cooperative, WC Docket No. 10-90 and WC Docket No. 14-58, at 6 (filed Jan. 21, 2015) (CFC/RTFC Jan. 2015 Petition) (petitioning the Commission to grant a waiver of the bank eligibility requirements for rural broadband experiment projects to permit CFC to issue irrevocable standby LOCs to provisionally-selected bidders for rural broadband experiments and to any other bidders that seek to be considered and discussing, in particular, CFC's liquidity).

[70] *Id.* at 5.

[71] *Id.* at 3-4; CFC Mar. 24, 2015 *Ex Parte* Letter at Attach. at 5.

[72] CFC/RTFC Jan. 2015 Petition at 2.

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

[74] Our decision to make CFC an eligible issuer is conditioned on CFC notifying us of any significant change to any of the showings it has made to us.

[75] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5995, para. 130.

an LOC from CFC provides assurances that are equivalent to those provided by banks meeting our general criteria, due to CFC's uniquely extensive experience in financing rural networks, its significant participation in other federal government programs, and its long-standing relationship with many entities that may become MF-II winning bidders.

180. If a recipient seeks to obtain its LOC from a non-U.S. bank, the rules we adopt today will require that the bank be among the 100 largest non-U.S. banks in the world (determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit, determined on a U.S. dollar equivalent basis as of such date) and maintain a credit rating of BBB- or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency). The bank must also have a branch in the District of Columbia or such other branch office as agreed to by the Commission and must issue the letter of credit payable in United States dollars.

181. As in the process permitted in the CAF-II rules and also followed in MF-I,[76] if the winning bidder is not prepared to present its LOC at the time of the long-form application filing we will allow the submission of a commitment letter from the bank issuing the LOC in the long-form application filing. A winning bidder will, however, be required to have its LOC in place and approved by USAC before it is authorized to receive MF-II support.

2. Opinion Letters

182. *Background*. The Commission required all winning bidders for MF-I support to obtain a confidential opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the LOC, under section 541 of the Bankruptcy Code.[77] The Commission proposed the same requirements for MF-II[78] and has required the same opinion letter in CAF-II.[79] The Commission sought subsequent comment on this issue in the *Further Inquiry Public Notice* and in the *2014 CAF Further Notice*.[80]

183. *Discussion*. Consistent with the rules for MF-I and CAF-II, at the time a winning bidder for MF-II support submits its LOC, it also will be required to provide an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the LOC, under section 541 of the Bankruptcy Code.[81] A winning bidder will be required to have its opinion letter in place before it is authorized to receive MF-II support and

[76] *Id.* at 5985, para. 106.

[77] *USF/ICC Transformation Order*, 26 FCC Rcd at 17812, para. 450.

[78] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18079-80, para. 1164 (proposing to apply to MF-II the same post-auction long-form application process adopted with respect to Phase I).

[79] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5992, para. 125.

[80] *See generally Further Inquiry Public Notice*; *see also 2014 CAF Further Notice*, 29 FCC Rcd at 7130, para. 248; *CAF Further Notice*, 29 FCC Rcd at 7173, Appendix B, Proposed Rules, Sec. 54.1017(b).

[81] 11 U.S.C. § 541.

before any support is disbursed.

184. Commenters express general concern about opinion letters due to their costs and because the Commission has other tools to enforce its performance requirements.[82] However, consistent with the Commission's requirement to have such a letter in the both MF-I and CAF-II,[83] we conclude the limited burden imposed on winning bidders to obtain this letter is outweighed by our policy goal to be fiscally responsible with finite universal service funds.

C. Disbursements

185. *Background.* In the *Further Inquiry Public Notice*, the Bureaus sought comment on how to structure ongoing support payments from the USF in a way that provides sufficient and predictable support throughout the term of MF-II.[84] In the *USF/ICC Transformation FNPRM*, the Commission proposed to disburse MF-II support on a quarterly basis,[85] but in the CAF program, including CAF-II, the Commission carried over monthly ongoing support payments from legacy programs.[86]

186. *Discussion.* Consistent with the process adopted in the CAF-II auction context, we conclude that MF-II support should be disbursed in monthly installments over the course of the ten-year support term.[87] For MF-II, support recipients will have made winning bids to provide service at established performance requirements to at least 85 percent of the eligible square miles across all winning bid areas for which they win MF-II support in a state by the final milestone, to provide service to at least 75 percent of every census block group or census tract in a state (depending on minimum bidding unit),[88] and to continue to provide service throughout the ten-year support term. During the ten-year support term, provided that the winning bidder files acceptable, complete, and timely annual and milestone reports, fulfills the milestone coverage requirements, and does not otherwise have a performance default, the recipient will receive monthly disbursements of 100 percent of the total winning bid(s).

187. The approach we adopt today provides MF-II recipients with reliable and predictable

[82] *See, e.g.*, Letter from David A. LaFuria and Marc A. Paul, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to Union Wireless, MTPCS, LLC, and Carolina West, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at Attach. at 10 (filed June 25, 2013) (noting that "[c]osts of LoC and related opinion letters have been extraordinary in Phase I"); Letter from David A. LaFuria, Lukas, Nace, Gutierrez & Sachs, LLP, Counsel to C Spire Wireless, WC Docket No. 10-90 and WT Docket No. 10-208, at 1 (filed June 14, 2013) ("C Spire favors removing the letter of credit and opinion letter requirements in Phase II, as the FCC has ample tools at its disposal to enforce its performance requirements.").

[83] *USF/ICC Transformation Order*, 26 FCC Rcd at 17812, para. 450 (requiring an opinion letter for MF-I); *Connect America Phase II Auction Order*, 31 FCC Rcd at 5992, para. 125 (requiring an opinion letter for CAF II).

[84] *See Further Inquiry Public Notice*, 27 FCC Rcd at 14804, para. 19 (requesting comment on how to structure ongoing support payments over the term of support in a way that achieves the Commission's goals of providing sufficient and predictable support throughout the term of MF-II, while ensuring compliance with the Anti-Deficiency Act); *see also USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18902, para. 1221.

[85] *See USF/ICC Transformation Order*, 26 FCC Rcd at 18233, Appendix B, Proposed Rules, Sec. 54.1018(b).

[86] *See, e.g., id.* at 17765, para. 274.

[87] *Connect America Phase II Auction Order*, 31 FCC Rcd at 5967, para. 50.

[88] *See supra* Section IV.D.2.

support payments that conform to a variety of business cycles and correspond to suggestions in the record. Blooston Rural Carriers comments that monthly disbursements of awarded funds would conform most closely to carriers' business cycles.[89] CTIA argues that infrastructure expansion projects might justify larger payments in the earlier years of the disbursement term.[90] RTG agrees, suggesting different disbursement schedules for "expansion" projects versus "sustaining" of services.[91]

188. We are mindful, as CTIA's comments note, that some carriers might incur higher up-front project costs prior to their ability to commence the provision of service to the targeted area because infrastructure expansion projects might require larger payments in the earlier years of the disbursement term.[92] Although we considered RTG's suggestion of adopting different disbursement schedules for "expansion" projects versus "sustaining" of services,[93] we recognize that the timing of project expenses are uniquely varied, and it would be administratively burdensome for the Commission, USAC, and the winning bidders to try to match payments to expenses in a manner that would treat all bidders fairly. While the support payments in MF-I were based on achievement of certain milestones, disbursements were not tied to when recipients actually incurred the expenses of buildout or operation. We conclude that in MF-II monthly disbursements will best accommodate carriers' project schedules or ongoing expenses of providing service in a manner that is efficient from an administrative prospective.[94]

189. As discussed more fully below, all MF-II recipients have a continuing obligation to maintain the accuracy and completeness of the information provided in their long-form applications and their annual and milestone reports. All winning bidders shall provide information about any substantial change that may be of decisional significance regarding their eligibility for MF-II support and compliance with MF-II requirements.[95]

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[89] Blooston *Further Inquiry Public Notice* Comments at 13 ("[M]onthly disbursements are consistent with the business operations and cash flow needs of mobile broadband carriers."); *see also* T-Mobile Feb. 2017 *Ex Parte* at 3 (agreeing that support should be disbursed monthly).

[90] CTIA *Further Inquiry Public Notice* Comments at 10 ("[T]he efficiency of the funding process would be improved if larger support amounts were distributed during the early years of the term.").

[91] RTG *Further Inquiry Public Notice* Comments at 9-10 ("RTG proposes that the Commission consider splitting up funding – one amount for buildout and network upgrades and another amount designated for supporting sustained operations. The Commission also should consider different benchmarks for 'expanding' mobile services and 'sustaining' mobile services.").

[92] CTIA *Further Inquiry Public Notice* Comments at 10 (noting that "[t]he Commission should structure the disbursement of support payments over the term of support, but with recognition that carriers will have substantial up-front deployment costs at the beginning of the support term").

[93] RTG *Further Inquiry Public Notice* Comments at 9-10.

[94] Because we decide that support payments should be regular and predictable over the entire course of the ten-year term for all recipients, and because we seek to not exceed the budget in any one year of the term, recipients will not be able to receive accelerated payment of their support for attaining the interim milestones early. This determination aligns with the decision to reject accelerated payments in CAF-II as well. *Connect America Phase II Auction Order*, 31 FCC Rcd at 5967, para. 50.

[95] *See infra* para. 202; 47 CFR § 54.1019(e).

190. We reserve the right for USAC to cease monthly disbursements immediately should the winning bidder have a performance default, or if it fails to comply with any of the terms or conditions for the receipt of the support under any of our rules. In addition, we direct the Bureaus and the Office of Managing Director to postpone disbursements and/or the incurrence of additional obligations, to preclude an ADA violation if the USF's current exemption expires or is repealed.

IX. ACCOUNTABILITY AND OVERSIGHT

191. As the Commission recognized from the outset of this proceeding, the monies used to achieve our Mobility Fund goals come from American consumers and businesses, and therefore it is critical for the success of the program that support recipients meet their obligations.[1] This task requires ongoing vigilance and oversight by the Commission together with the Fund administrator, USAC.[2] As the Commission noted in the CAF-II proceeding, reporting obligations serve the public interest by enhancing the ability to monitor the use of Connect America Fund support and ensure its use for intended purposes.[3]

192. In the *USF/ICC Transformation FNPRM*, the Commission proposed applying the same general rules for accountability and oversight to MF-II as were applied to recipients of MF-I support, including reporting, audit, and record retention requirements.[4] The Commission also proposed that MF-II support recipients should be required to include in their annual reports the same information required of MF-I support recipients.[5] The Commission further asked commenters if these proposed requirements should be modified or omitted and if there were additional types of information that should be required.[6] Below, we adopt certification and reporting requirements relating to the performance obligations adopted in this Order. We also address consequences for failure to meet program reporting rules and discuss our record retention rules.

[1] *USF/ICC Transformation Order*, 26 FCC Rcd at 17848-49, para. 568.

[2] As the Commission concluded in the *USF/ICC Transformation Order*, "[b]ecause the Connect America Fund, including the Mobility Fund, are part of the Universal Service Fund, we conclude that USAC shall administer these new programs under the terms of its current appointment as Administrator, subject to all existing Commission rules and orders applicable to the Administrator." *USF/ICC Transformation Order*, 26 FCC Rcd at 17848, para. 568 n.936.

[3] *Connect America Phase II Auction Order*, 31 FCC Rcd at 6010, para. 172.

[4] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18082, para. 1173. The reporting requirements the Commission adopted for MF-I, and adopt here for MF-II, differ in certain respects from those adopted for CAF and CAF-II due to the specific requirements of the provision of mobile service. Therefore, the Commission excluded MF-I from the application of Section 54.313(k), which applies generally to recipients of high cost support. We extend that exclusion from Section 54.313(k) to MF-II in the rules adopted in this Order.

[5] *Id.*

[6] *Id.*

A. Mobile Reporting, Mobility Fund Phase II Annual Reports, and Mobility Fund Phase II Milestone Reports

193. *Background*. In the *USF/ICC Transformation FNPRM*, the Commission sought comment on ways that annual reporting for ETCs providing mobile service should differ from previous annual reporting requirements for ETCs providing fixed service, due to the different nature of the services being offered and the objectives of USF support received.[7]

194. In the *USF/ICC Transformation Order*, the Commission adopted an annual reporting requirement specific to recipients of MF-I support.[8] The Commission revised the overall CAF rules to set a common filing deadline for annual reports of July 1 of each calendar year, and the MF-I annual reporting deadline was also revised to conform with that filing date.[9]

195. In the *USF/ICC Transformation FNPRM*, the Commission proposed an annual reporting requirement for MF-II, similar to the one it adopted for MF-I.[10]

196. *Annual Reports*. We adopt an annual reporting requirement that will enable the Commission and USAC to monitor the ongoing progress and performance of all MF-II recipients, similar to the annual reporting obligations of all other recipients of federal high-cost universal service support.[11] Winning bidders of MF-II support will be subject to the annual reporting requirement, and recipients will be required to file their reports each year following the year in which the auction closes by July 1, including all the certifications required under our MF-II rules, and in which the recipient will update information, as required for the following year.

197. We acknowledge that some commenters in MF-II oppose collection of some of the information the Commission requires ETCs to submit in their annual reports.[12] We disagree. As the

[7] *Id.* at 18068-69, paras. 1117-20.

[8] *USF/ICC Transformation Order*, 26 FCC Rcd at 18223, Appendix A, Final Rules, 47 CFR § 54.1009 (Annual Reports).

[9] *See Connect America Fund et al.*, Third Order on Reconsideration, 27 FCC Rcd 5622, 5626, para. 11 (2012) ("[I]n order to maintain the uniform deadline for filing of these annual reports, we also move the Mobility Fund annual report filing deadline from April 1 to July 1.").

[10] 47 CFR § 54.1019 (Annual Reports); *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18082, para. 1173; *USF/ICC Transformation Order*, 26 FCC Rcd at 18237, Appendix B (Proposed Rules).

[11] 47 CFR §§ 54.313, 54.320.

[12] For example, the California Public Utilities Commission (CPUC) specifically opposes the use of customer billing addresses to determine number of affected customers for outages because some prepaid wireless providers may not have billing addresses for their customers. *See* CPUC Comments at 5. Thus, CPUC claims that this requirement would result in underreporting and suggested that we consider call completion volumes as a possible additional measure. *Id.* at 5-6. By implementing this suggestion, CPUC contends that carriers would report the tower's previous average hourly volumes as a method to gauge customer impact following an outage event. *Id.* The MPSC suggests that annual reporting should include auditable information, documentation of milestones, and projections for the upcoming year. *See* MPSC *Further Inquiry Public Notice* Comments at 3. USA Coalition suggests requesting evidence of compliance through specific requests for supporting information instead of requiring the submissions of price offerings and performance data for all recipients. *See* USA Coalition *Further Inquiry Public Notice* Comments at 17-18. CTIA comments that any outage reporting requirements should be closely tailored for

Commission did in CAF-II,[13] we find that the benefits in establishing annual and milestone reporting obligations outweigh any potential burdens on the recipients in filing these reports because the targeted information required is the type of data that MF-II recipients will be already collecting for their own business purposes and will help to ensure that program goals are met.

198. *Milestone Reports*. In order to ensure that ongoing payment of MF-II support is warranted, and in alignment with the similar progress reporting system instituted for CAF-II,[14] we will require recipients to file a Milestone Report on or before its third, fourth, fifth, and sixth year performance deadline.[15] These Milestone Reports will be where MF-II recipients report the data that demonstrates that they have met their interim benchmarks for deployment and their minimum final deployment requirement at the end of the construction term necessary to support the disbursements of MF-II funds.[16] We direct the Bureaus to define more precisely the content and format of the information, including substantiation that recipients are required to include in their Milestone Reports, such that it is consistent with the evidence that will be required in the challenge process.[17]

199. We also conclude that all recipients of MF-II support will be subject generally to the same audit requirements as recipients of CAF-II support and all other high-cost support.[18]

200. In line with the procedures adopted in CAF-II to address missed filing deadlines,[19] we adopt a rule to reduce the support for recipients that miss reporting, certification, and milestone filing deadlines. We will impose a minimum reduction of seven days of total statewide support for a winning bid in any state for which a filing deadline is missed, given the importance of recipients meeting filing deadlines. In addition to the reduction of the initial seven days of support, support will be reduced further state-wide on a pro-rata daily basis until the MF-II recipient files the required report or certification. Reducing support on a day-by-day basis plus an additional seven-day reduction is an appropriate measure to create incentives for MF-II recipients to make their filings as soon as they have determined that they have missed the applicable deadlines.

201. We recognize that despite its best efforts, a recipient may miss a deadline due to an administrative oversight but still file within a few days of the deadline. For a late filer, we find that it is

mobility. *See* CTIA *Further Inquiry Public Notice* Comments at 8. Verizon comments that the FCC should not micro-manage broadband network coverage and deployment by, for example, unreasonably complex and burdensome reporting requirements. *See* Verizon Comments at 23. U.S. Cellular comments that mobile wireless broadband providers should be subject to separate speed testing and reporting requirements. *See* U.S. Cellular Comments at 44, 54.

[13] *December 2014 Connect America Order*, 29 FCC Rcd at 15680, paras. 124-26.

[14] *Id*.

[15] *See supra* Section V.C.; *supra* para. 96.

[16] Reports should be filed via the portal that USAC is creating to receive filings by universal service support recipients. *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3166, para. 214. We direct USAC to make any necessary modifications to the portal in order to collect MF-II data.

[17] *See* Further Notice of Proposed Rulemaking accompanying this Order.

[18] *See* 47 CFR § 54.320.

[19] *December 2014 Connect America Order*, 29 FCC Rcd at 15681-82, paras. 131-33.

appropriate to provide a one-time grace period of three days so that a recipient that quickly rectifies its error within three days of the deadline will not be subject to the seven-day minimum loss of support. We direct USAC to send a letter to such a recipient notifying it that its filing was late but cured within the grace period. If the recipient again files any filing late, the grace period will not be available. Repeated mistakes, even inadvertent, are indicative of a lack of adequate policies and procedures to ensure timely filing. If a recipient misses a filing deadline more than once due to its inadvertence, we find that the support reductions that we adopt should provide an incentive to recipients to revise their procedures to ensure that such inadvertence does not become a pattern.

202. *Maintaining the Accuracy of Filings*. To additionally safeguard the government's monthly disbursement of support, we will require recipients to maintain the accuracy and completeness of the information they furnish in their long-form applications and their annual and milestone reports. Accordingly, we will require recipients to update their annual reports and milestone reports to provide information about any substantial change that may be of decisional significance regarding their eligibility for MF-II support and compliance with MF-II requirements. Such notification of a substantial change, including any reduction in the percentage of eligible square miles being served or any failure to comply with any of the MF-II requirements, shall be submitted within 10 business days after the reportable event occurs, as is also required in CAF-II.[20] While we expect that it will be a rare occurrence, if a support recipient drops below the level of service to which it has certified in a milestone report or an annual report during the six-year deployment period, it will be subject to the provisions set out below in Section IX.B.2 for non-compliance.

B. Defaults

203. In the *FNPRM*, the Commission proposed to apply the same rules for default obligations in MF-II as it did for MF-I.[21] In MF-I, the Commission adopted two types of default payment obligations for MF-I winning bidders: an auction default payment owed by winning bidders if they failed to satisfy their auction obligations prior to being authorized to receive support, and a performance default payment owed by winning bidders authorized for support who subsequently failed to meet their public interest obligations or other terms and conditions of MF-I support.[22] As articulated below, for ease of administration, we modify our proposal and adopt default rules for MF-II that more closely parallel our CAF-II rules.

1. Forfeiture in the Event of an Auction Default

204. *Background.* Under the competitive bidding rules adopted in the *USF/ICC Transformation Order*, MF-I winning bidders, like all winning bidders in Commission spectrum auctions, had a binding obligation to file a post-auction long-form application – by the applicable deadline and consistent with other requirements of the long-form application process – and failure to do so constituted an auction default.[23] The Commission further proposed that a winning bidder for MF-II support would be subject to the same auction default payment obligations adopted for winning bidders of MF-I support,

[20] A recipient that is required to provide such updated or supplemental information prior to having filed its first annual report, may nevertheless comply with the 10-day filing requirement by submitting that information to the entities listed in Section 54.1019(c).

[21] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18091, para. 1218.

[22] *USF/ICC Transformation Order*, 26 FCC Rcd at 17814, paras. 460-61; 47 CFR § 54.1006(f).

including a default on a winning bid before authorizations, the failure to timely file a long-form application, being found ineligible or unqualified to be a recipient of MF-II support, or if a long-form application is dismissed for any reason after the close of the auction.[24]

205. Last May, in the *Connect America Phase II Auction Order*, the Commission concluded that any entity that files a short-form application to participate in the CAF-II competitive bidding process will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support.[25]

206. *Discussion*. We conclude that we will align our MF-II rules with the Commission's approach in CAF-II and adopt a rule that subjects a MF-II winning bidder to a forfeiture payment if it defaults on its bid(s) before it is authorized to begin receiving support.[26] We agree with the Commission's reasoning in the *Connect America Phase II Auction Order* that such an approach will ensure that each violation has a relationship to the area affected by the auction default, but will not be unduly punitive.[27] Moreover, such an approach will also ensure that the total forfeiture for a default is generally proportionate to the overall scope of the winning bidder's bid.[28]

207. An entity will be considered to have an auction default and will be subject to forfeiture if it fails to timely file a long-form application or meet the document submission deadlines outlined above or is found ineligible or unqualified to receive Phase II support by the Bureaus, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support. Specifically, as the Commission found in the CAF-II context, we conclude that it is reasonable to subject all bidders to the same $3,000 base forfeiture per violation, subject to adjustment based on the criteria set forth in our forfeiture guidelines.[29] We note that a winning bidder will be subject to the base forfeiture for each separate violation of the Commission's rules.

208. For MF-II competitive bidding purposes, we define a violation as any form of default with respect to each geographic unit subject to a bid. However, to ensure that the amount of the base forfeiture is not disproportionate to the amount of an entity's bid, we limit the total base forfeiture that could be owed by a winning bidder to five percent of its total bid amount for the entire ten-year support

[23] *USF/ICC Transformation Order*, 26 FCC Rcd at 17808, para. 436; 47 CFR § 1.21004(a).

[24] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18079-80, para. 1164.

[25] *Connect America Phase II Auction Order*, 31 FCC Rcd at 6000, para. 143; *see also* 47 U.S.C. § 503(b)(2)(B).

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

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

[28] The Commission will determine the minimum geographic unit to be census block groups or census tracts in the pre-auction process. *See supra* Section IV.D.2. A winning bidder that fails to become authorized to receive MF-II support will then have violated the Commission's rules for each of the census block groups or census tracts included in its defaulted bid. If a winning bidder defaults on a bid that includes 10 census block groups/census tracts, that entity could be subject to a base forfeiture of $30,000 (10 census block groups/census tracts multiplied by the base forfeiture of $3,000).

[29] 47 CFR § 1.80(b)(8), note to paragraph (b)(8). As the Commission reasoned in its CAF-II decision, $3,000 base forfeiture amount is equivalent to the base forfeiture that is imposed for failing to file required forms or information with the Commission. *Connect America Phase II Auction Order*, 31 FCC Rcd at 6000, para. 143.

term.[30]

209. We find that by adopting such a forfeiture, we will impress upon recipients the importance of being prepared to meet all our requirements for the post-selection review process, and emphasize the requirement that they conduct a due diligence review to ensure that they are qualified to participate in the MF-II competitive bidding process and meet its terms and conditions.

210. The record generally supports requiring a payment in the event of auction defaults. For instance, ADTRAN notes that the Commission could utilize its forfeiture authority to ensure program compliance.[31] Similarly, ACA comments that to ensure integrity in the auction process, we should impose a default payment if it finds that a winning bidder is not sufficiently capable and qualified to provide service in the high-cost area and did not bid in good faith.[32] Although two parties noted the general burdens associated with having to make an additional payment in the event of a default,[33] no party specifically opposed the Commission's original proposal to establish five percent as the amount owed for an auction default payment.

211. Failures by MF-II bidders to fulfill their auction obligations will undermine the stability and predictability of the auction process, and impose costs on the Commission and higher support costs for USF. We therefore find that subjecting entities to a forfeiture for an auction default is appropriate to ensure the integrity of the auction process and to safeguard against costs to the Commission and the USF. Thus, as a condition of participating in an MF-II auction, entities acknowledge that they are subject to a forfeiture in the event of an auction default.

212. As explained below, we distinguish here between an MF-II winning bidder that is subject to an auction default, and a winning bidder whose long-form application is approved but subsequently has a performance default or otherwise fails to comply with the terms and conditions of receiving MF-II support.

[30] This would occur in situations where the dollar amount associated with the bid is low. For example, assume Bidder A bids to serve 100 census block groups/census tracts for $100,000 over the ten-year support term. We would impose a base forfeiture of $5,000 (5 percent of $100,000) because otherwise the base forfeiture would be $300,000 ($3,000 x 100 census block groups/census tracts), which is three times the entire bid amount. In contrast, if Bidder B bids to serve 100 census block groups/census tracts for $7,000,000 over the support term, we would impose a base forfeiture of $300,000 ($3,000 x 100 census block groups/census tracts), which is 4.3 percent of the total bid.

[31] *See* ADTRAN Comments at 16 (agreeing that the Commission must take steps to ensure that the broadband subsidies are used for their intended purpose and noting generally that "[t]o the extent the Commission is concerned with egregious conduct, then the Commission's general forfeiture powers or criminal prosecution remain as tools").

[32] *See* ACA Comments at 17; *see also* DISH Network L.L.C. et al. (Satellite Providers) Comments at 17-18 (encouraging no support to be provided for a partial build out, and recommending barring defaulters from receiving funds in the future for a period of time).

[33] *See* Blooston Comments at 17 (stating that the LOC/default payment requirements adopted in MF-I were onerous and unnecessary and thus "should not be applied to rural carriers in general, and should not be used for Phase II compliance"); RWA *2014 CAF Further Notice* Reply Comments at 5 n.17 (arguing that the FCC should relax its LOC requirements because tying up the capital necessary to cover disbursements and an additional performance amount, which RWA notes can be as high as 20 percent, will be excessively burdensome).

2. Measures for Non-Compliance

213. *Background.* In the *USF/ICC Transformation FNPRM*, the Commission proposed that a recipient of MF-II support would be subject to the same performance default payment provisions as recipients of MF-I support.[34] For Mobility Fund Phase I, the Commission required that in the event of a default, a recipient would be required to repay all the support that it had received plus an additional performance default of 10 percent of total support for which the recipient is eligible.[35]

214. In the *December 2014 Connect America Order*, the Commission adopted a framework for reporting and support reductions for all recipients of Phase II Connect America support that fail to meet the requisite service milestones.[36] Specifically, the framework was adopted to calibrate support reductions to the extent of an ETC's non-compliance with service milestones.[37] The Commission subsequently extended that framework to rate-of-return carriers in the recent *Rate-of-Return Reform Order*.[38]

215. *Discussion.* Given the policy goals underlying MF-II support, the public interest benefit of establishing procedures for MF-II that are substantially the same as those adopted for CAF-II, and the record gathered on this issue, we conclude that we should adopt a more measured approach to recouping payment in the event of default than the Commission employed in the MF-I auction.[39] Accordingly, as explained below, we adopt a process by which the Wireline Competition Bureau or the Wireless Telecommunications Bureau will authorize USAC to draw on the LOC(s) to recover all the support that has been disbursed in a state in the event that the MF-II recipient does not meet the relevant service milestones and does not cure its compliance gap pursuant to the steps outlined below.[40] In the *December 2014 Connect America Order*, the Commission determined that USAC would recover support from ETCs associated with their compliance gap in three separate circumstances.[41] We will adopt a corresponding approach for MF-II recipients.[42] If after six months, the ETC fails to repay in full, either the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter authorizing USAC to draw on the letter of credit to recover 100 percent of the support that has been disbursed to the ETC within the state.

216. First, for interim milestones, if the ETC has a compliance gap of 50 percent or more of the eligible square miles that the ETC is required to have covered by the relevant interim milestone (i.e.,

[34] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18079-80, para. 1164.

[35] *USF/ICC Transformation Order*, 26 FCC Rcd at 17814, para. 461; *Auction 901 Procedures Public Notice*, 27 FCC Rcd at 4777-78, paras. 189-92.

[36] *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54.

[37] *Id.* at 15694, para. 142.

[38] *Rate-of-Return Reform Order*, 31 FCC Rcd at 3116-17, para. 78.

[39] *See Connect America Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 188-94 (discussing measures for non-compliance).

[40] *Id.*

[41] *December 2014 Connect America Order*, 29 FCC Rcd at 15695-98, paras. 147-49.

[42] *Connect America Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 188-94.

Tier 4 status) at the state level,[43] USAC will withhold 50 percent of the ETC's monthly support for that state, and the ETC will be required to file quarterly reports. If, after having 50 percent of support withheld for six months, the ETC has not reported that it has a compliance gap of less than 50 percent at the state level (i.e., the ETC is eligible for Tier 3 or lower or is in compliance), USAC will withhold 100 percent of the ETC's support for the state and will commence recovery action for a percentage of support that is equal to the ETC's compliance gap plus 10 percent of the ETC's support that has been paid to that point.[44] At this point, this ETC will have six months to pay back the amount of support that USAC seeks to recover. An ETC is encouraged to continue building out its MF-II projects during and after any recovery of funds by USAC. If at any point during the six-year period for deployment the ETC reports that it is eligible for Tier 1 status, and USAC is able to substantiate that report, the ETC will have its support fully restored including any support that had been withheld, USAC will repay any funds that were recovered, and the ETC will move to Tier 1 status.[45] If at the end of six months the ETC has not fully paid back the support, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all the support that has been disbursed to the ETC.[46]

217. Second, if an ETC misses the final milestone(s), it must identify by what percentage the milestone has been missed at the state level and/or any of the census block group(s) or census tract(s) in the state.[47] The ETC will then have 12 months from that date to come into full compliance with both of those milestones. If it does not come into full compliance within 12 months because it fails to meet the 85 percent benchmark (even if it meets the 75 percent benchmark for some or all the census block group(s) or census tract(s)), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter, and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the ETC received per eligible square mile in the state over the six-year period multiplied by the number of square miles unserved in the ETC's winning areas in the state that would be required to meet the 85 percent benchmark, plus 10 percent of the ETC's total MF-II support received in the state over the six-year period for deployment.[48] After the ETC has paid the

[43] 47 CFR § 54.320(d)(1)(iv)(B); *see also December 2014 Connect America Order*, 29 FCC Rcd at 15698, para. 150 (explaining the different tiers).

[44] As noted in the *December 2014 Connect America Order*, the Commission there concluded "that recovering the additional ten percent of the ETC's support that has been disbursed up to that point will deter ETCs from deciding that they would rather return the support than meet their commitments for the supported area. Because these are high-cost areas that lack unsubsidized providers at the outset of the support term, an ETC's refusal to serve these locations could potentially leave the locations with no options for reasonably comparable service." *December 2014 Connect America Order*, 29 FCC Rcd at 15695-96, para. 147.

[45] *Connect America Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 188-94.

[46] Consistent with CAF-II, we will review compliance with build-out milestones on a state-wide basis. Accordingly, as noted in note 421 above, if a winning bidder chooses to obtain multiple letters of credit for separate bids that are located in a state and defaults, the Bureaus will authorize a draw on all the letters of credit covering all the bids in that state. *See Connect America Phase II Auction Order*, 31 FCC Rcd at 5991, para. 122 n.242.

[47] 47 CFR § 54.320(d)(2).

[48] It is reasonable to assume that many of the areas left unserved would have higher than the average cost per area of the winning bid. Therefore, a higher amount per area than the average is appropriate. Moreover, we want to

calculated recovery amount for failure to comply with the final deployment milestone, the Bureaus will calculate a reduced support payment for the remaining support term based on the percentage of deployment coverage completed.[49] If at the end of six months the ETC has not fully paid back the support for missing the relevant 85 percent benchmark, the ETC shall be liable for repayment of all the support that has been disbursed to the ETC for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the LOC(s) to recover all the support that has been disbursed to the ETC for that state. A similar approach will apply if the ETC meets the 85 percent statewide benchmark but misses the 75 percent benchmark(s) for any census block group(s) or census tract(s) in the state at the final milestone and the ETC does not come into full compliance by meeting the 75 percent benchmark within 12 months. The Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter for any such census block group(s) or census tract(s), and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the ETC received per eligible square mile in the census block group(s) or census tract(s) in the state over the six-year period multiplied by the number of square miles unserved in each of the ETC's winning census block group(s) or census tract(s) in the state that would be required to meet their respective 75 percent benchmarks, plus 10 percent of the ETC's total MF-II support received in the relevant census block group(s) or census tract(s) over the six-year period for deployment. At this point, the ETC will have six months to repay the support USAC seeks to recover. After the ETC has paid the calculated recovery amount, the Bureaus will calculate a reduced support payment for the remaining support term.[50] If at the end of six months the ETC has not fully paid back the support for missing the relevant 75 percent benchmark(s), the ETC shall be liable for repayment of all the support that has been disbursed to the ETC for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the LOC(s) to recover all the support that has been disbursed to the ETC for that state. In the event that USAC draws on

provide more incentive to carriers to complete the build out for their winning bid. We find that the administrative simplicity and predictability of using one factor for all bidders outweighs the precision that would come from applying a factor specific to each winning bidder and area. This multiplier was adopted by the Commission for CAF-II. *See Connect America Phase II Auction Order*, 31 FCC Rcd at 6017, para. 191.

[49] The reduced ongoing annual support amount will be the total of the ETC's original winning bid amounts for annual support in the state multiplied by the sum of the actual deployment percentage plus 15 percent (i.e., the difference between 100 percent coverage and the required 85 percent minimum coverage), or (annual support)*(percentage covered + 0.15). For example, if the ETC's authorized maximum amount of annual support in the state was $1,000,000, and the ETC deployed service at required performance levels to 73 percent of the eligible square miles in its winning bid areas in the state by the end of the additional 12-month period granted, then its annual support payments for the remainder of the support term following the cure period would be its total original winning bid amount for annual support of $1,000,000 multiplied by (0.73 + 0.15), or $880,000 annually.

[50] The reduced ongoing annual support amount will be the ETC's original winning bid amount for annual support in any such census block group or census tract, multiplied by the sum of the actual deployment percentage plus 25 percent (i.e., the difference between 100 percent coverage and the required 75 percent minimum coverage), or (annual support)*(percentage covered + 0.25). For example, if the ETC's annual winning bid amount in the census block group or census tract were $1,000,000 annually, and the ETC deployed service at required performance levels to 73 percent of the eligible square miles in its winning bid area by the end of the additional 12-month period granted, then its annual support payments for the remainder of the support term following the cure period would be its original winning bid amount for annual support of $1,000,000 multiplied by (0.73 + 0.25), or $980,000 annually.

a letter of credit to recover all the support that has been disbursed to the ETC for a state, the ETC's participation in MF-II in that state will immediately end and no further support will be paid.

218. Third, after compliance with the final build-out milestones has been verified and the ETC closes its letter of credit, if at any point during the remainder of the 10-year term of support it is determined that the ETC does not have sufficient evidence to demonstrate that it is offering the requisite service to the required percentage of square miles by census block group or census tract, or state, USAC will withhold support for a period not to exceed six months until the ETC demonstrates that it is again providing the requisite service to the required percentage of square miles. When the ETC's demonstration of coverage has been verified by USAC, USAC will pay any withheld support and resume ongoing disbursements. If the ETC cannot provide a verifiable demonstration of coverage within the permitted six-month period, USAC will recover an amount of support that is equal to 1.89 times the average amount of support per square mile received in the winning bid area over the six-year deployment period for the relevant number of square miles for which the ETC has failed to produce sufficient evidence, plus 10 percent of the ETC's total support received in that winning bid area over the six-year deployment time period.[51] Because the ETC's build-out will have already been verified before it may close its letter of credit, we do not find it necessary to require that the ETC continue to keep its letter of credit open in the event that the ETC does not repay the Commission after it is found to be lacking evidence of continued service deployment. Instead, we note that if the ETC does not repay the Commission after a six-month period permitted for repayment, it may be subject to additional non-compliance measures, including the reduction of support payments for the remaining support term as discussed above, and forfeitures.[52]

219. As the Commission concluded in the *Connect America Phase II Auction Order*, we agree that drawing on the letter of credit in the event that the ETC fails to repay the support that USAC is instructed to recover will ensure that the Commission will be able to recover the support in the event that the ETC is unable to pay.[53] We note that through the support reduction framework the Commission adopted in the *December 2014 Connect America Order*, the ETC will have a number of opportunities to cure before the Commission will seek to recover the support that is associated with the compliance gap. And the Commission will only recover 100 percent of the support that has been disbursed via the LOC in those cases where the ETC is unable to repay the support associated with its compliance gap. Because an ETC that is unable to repay the support is also unlikely to be able to meet its obligations to use the support disbursed to offer service meeting the Commission's requirements, recovering 100 percent of the support will allow the Commission to re-award the support through an alternative mechanism to an ETC that will be able to meet its obligations.[54]

220. In reaching these conclusions on disbursed support that will be recouped upon a

[51] 47 CFR § 54.320(d)(3).

[52] *Connect America Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 188-94.

[53] *Id*.

[54] *Id*. at 6018, para. 193. This decision is consistent with the conclusions reached by the Commission in the CAF II context, that if an entity fails to repay the support amount associated with its compliance gap, the risk becomes greater that the entity will be unable to continue to serve its customers or may go into bankruptcy, and thus it is necessary to ensure that the Commission can recover the entire amount of support that it has disbursed. *Id.* at 5992, para. 124.

performance default, we are particularly mindful of commenters that have expressed concerns that our performance default rules should not be as onerous as those in MF-I.[55] Adopting such an approach for MF-II performance defaults is generally supported in the record to the extent commenters sought greater flexibility than the rules adopted for the MF-I auction. Overall, commenters support holding recipients responsible for performance default payments, noting that"[s]uch measures are necessary to protect the process from abuse and to ensure that the greatest number of high cost locations are actually served with effective broadband service for the amount of support provided."[56] At the same time, commenters generally agree that a more flexible approach is appropriate for MF-II.[57] For example, Blooston Rural Carriers submits that because "… default payment requirements adopted in the Mobility Fund Phase I Rules are onerous and unnecessary", such requirements should not be applied to rural carriers in general or used in Phase II.[58] Similarly, RTG asserts that the Commission's MF-II performance default provisions "should be much less burdensome than [those] adopted for Phase I and there should be an exemption for certain carriers."[59] By aligning the MF-II process with the process to be used in CAF-II, we conclude that this approach recognizes the substantial benefit and challenges of bringing service to hard-to-serve areas, while safeguarding limited universal service funds where performance commitments are not met.

221. Finally, we note that MF-II recipients may also be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including, but not limited to potential revocation of ETC designation and suspension or debarment.[60]

C. Record Retention

222. *Background*. In the *USF/ICC Transformation FNPRM*, the Commission proposed that a recipient of MF-II support would be subject to the same rules for accountability and oversight (including reporting, audit, and record retention requirements) that apply to all recipients of CAF support.[61] The Commission also proposed that recipients of MF-II support be required to include in their annual reports the same types of additional information that are required of recipients of MF-I support.[62] In MF-I, the Commission adopted requirements that the record retention requirements for recipients of support apply

[55] *See infra* note 521.

[56] *See, e.g.*, ACA Comments at 17.

[57] *See, e.g.*, Blooston Comments at 17 (adding that "[t]hese new accountability remedies are so onerous and expensive that they will impair the ability of existing rural carriers and other small businesses to obtain support for their investments and operations"); Blooston *Further Inquiry Public Notice* Comments at 13 ("The Commission should reduce or eliminate the irrevocable letter of credit and default payment requirements it adopted for Phase I of the Mobility Fund."); ACA Comments at 17 n.37 (noting that "the Commission should not require any form of a primary lien or similar security against the applicant's assets or facilities"); RTG *Further Inquiry Public Notice* Reply Comments at 10 ("If the burdensome LOC requirement is carried over into Phase II, it will discourage participation."); *see also* T-Mobile Feb. 2017 *Ex Parte* at 5 (requesting a grace period to cure defaults).

[58] Blooston Comments at 17.

[59] RTG *Further Inquiry Public Notice* Reply Comments at 10.

[60] *See* 47 CFR § 54.320(c); *see also December 2014 Order*, 29 FCC Rcd at 15694, para. 141 ("We emphasize that we will enforce the terms and conditions of high-cost support vigorously.").

[61] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18082, para. 1173. The Commission's proposed rule for MF-II is 47 CFR § 54.1020 (Record Retention). *See id.* at 18238, Appendix B (Proposed Rules).

to all agents of the recipient, and any documentation prepared for or in connection with the recipient's MF-I support.[63] The Commission also adopted revised requirements that extend the record retention period to 10 years for all recipients of high-cost and CAF support, including recipients of Mobility Fund support.[64] The retention period runs from the date of the receipt of the final disbursement of Mobility Fund funds.[65]

223. *Discussion*. We did not receive comment on the issue of record retention in MF-II. We hereby conclude that MF-II recipients are subject to the same accountability and oversight requirements in Section 54.320 of our rules, including the same audit and record retention requirements as all other recipients of high-cost support.[66]

X. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Background

224. As discussed in Section IV.D.6, in the *2014 CAF Further Notice*, the Commission sought comment on the challenge process for MF-II, stating that it expected to use a similar challenge process to that used in MF-I.[1] Commenters generally supported a challenge process,[2] with some commenters requesting an earlier distribution of the initial eligible areas list, more clearly defined evidentiary and

[62] *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18082, para. 1173.

[63] *USF/ICC Transformation Order*, 26 FCC Rcd at 17818, para. 475.

[64] *Id*. at 17864, paras. 620-21 (adopting the 10-year record retention requirement for all high-cost support recipients); *see also id.* at 17818, paras. 476-78 (discussing the application of the 10-year record retention requirement specifically for Mobility Fund Phase I).

[65] *See id.* at 17818, para. 478.

[66] *See* 47 CFR § 54.320.

[1] *See 2014 CAF Further Notice*, 29 FCC Rcd at 7128-29, para. 242.

[2] *See supra* note 180.

decisional standards,[3] and sufficient timeframes for raising evidence-based challenges in the process.[4]

225. While we received comments on the challenge process in response to the *2014 CAF Further Notice*, record filings have become more specific the past several months, including detailed, technical proposals regarding the challenge process in the past few weeks. In order to make more informed decisions on the challenge process, we here seek further comment on the parameters for the challenge process for MF-II.[5]

B. Discussion

226. We are committed to a robust, targeted challenge process that efficiently resolves disputes about areas eligible for MF-II support. Our overarching objective is to quickly transition away from the legacy CETC support system, where support was never awarded based on the need to support the

[3] *See, e.g.*, AT&T Jan. 27, 2017 *Ex Parte* at 1 (recommending that the Commission "specify both the data that must be provided and how it will be evaluated prior to the start of the process"); Blooston *2014 CAF Further Notice* Comments at 4-5 ("[T]he Blooston Rural Carriers believe that the Commission should accept proposed corrections in the form of maps, drive tests, and explanation of methodologies for determining coverage and certifications by one or more individuals as to the veracity of the material provided."); Deere Nov. 7, 2016 *Ex Parte* at 2 (commenting that "[s]ome examples of empirical evidence that could be submitted in the challenge process include drive tests and the results of tests of John Deere's JDLink™ system"); Letter from Wade McGill, Vice President, U.S. Wireless Operations, ATN, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at 1, 4 (filed Nov. 9, 2016) (suggesting that "challenges to Form 477 data should be supported by drive test results based on a standardized drive-test approach" and that the challenge process can be completed by the first half of 2017); Blue Wireless Nov. 9, 2016 *Ex Parte* at 1 ("[A]ny entity wishing to challenge the Form 477 coverage data should be required to submit drive test data to refute the coverage reported on another carriers' Form 477."); Nielsen *Ex Parte* at 1 (urging the Commission "not to craft any Mobility Fund Phase II challenge process in a way that would exclude the use of Nielsen data as a source of evidence to verify or dispute the presence of LTE (or any other technology) in a particular area"); *see also* MPSC *Further Inquiry Public Notice* Comments at 1-2 (discussing Mississippi's "Zap the Gap" multistate initiative to identify areas with deficient wireless coverage and suggesting that the Commission use a similar approach to complement its resources in identifying unserved areas).

[4] *See, e.g.*, RTG *Further Inquiry Public Notice* Comments at 5 (requesting "45 days for comments and 30 days for reply comments"); USA Coalition *Further Inquiry Public Notice* Comments at 11-12 (submitting that "the time period for the challenge process should be extended for as long as possible"); RTG *Further Inquiry Public Notice* Reply Comments at 3-4 (supporting "the establishment of a period of time in which carriers may provide input on the accuracy of whatever data the Commission ultimately uses to designate areas as unserved or served"); Blooston *2014 CAF Further Notice* Comments at 5 ("[T]he FCC must make available to prospective bidders the proposed eligible areas map well in advance of the Phase II auction, and provide sufficient time for companies to verify this data."); *see also* RWA Oct. 21, 2016 *Ex Parte* at 3 ("[The] process must provide all parties (not just those with nearly unlimited technological and personnel resources) sufficient time and opportunity to carefully review and provide input on areas determined to be both eligible and ineligible for support.").

[5] *See, e.g.*, Letter from Rebecca Murphy Thompson, EVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 10-208 and WC Docket No. 10-90, at 2 (filed Feb. 17, 2017) ("CCA therefore agrees that the Commission should seek comment on the structure and standards to be applied in the challenge process . . . ."); RWA Feb. 14, 2017 *Ex Parte* at 2 ("If the challenge process is, in fact, going to improve the Form 477 data, carriers must be able to participate meaningfully to vet the process used."); U.S. Cellular Feb. 14, 2017 *Ex Parte* at 2 ("[A] challenge process should be developed through a notice and comment proceeding, to allow a fulsome examination of the various app-based tools . . . .").

deployment of mobile broadband, to a system directed to that policy goal. Our commitment to fiscal responsibility requires that we not fund areas that already have 4G LTE from an unsubsidized provider. At the same time, we want to ensure that areas that may require support for qualified 4G LTE are eligible for, and potentially receive, MF-II support. The challenge process is an integral part of that determination, to build upon and improve provider-filed and -certified Form 477 data, which remain the best available data source.

227. We recognize that any challenge process will necessarily involve tradeoffs in terms of burdens imposed on interested parties and the Commission, as well as the timeliness and accuracy. As such, we are committed to designing the challenge process so that it is as efficient as possible. We do not want to unduly burden challenging parties by creating so high an evidentiary standard that it deters stakeholders from challenging even the most obviously mis-categorized areas. Conversely, we are cognizant of the burdens imposed on parties whose coverage is challenged merely on the basis of anecdotal, unsystematic claims – the burdens of having to spend resources to defend coverage areas in Form 477 filings that they have already certified as accurate. We also will take into account that smaller providers will have fewer resources available, and therefore specifically seek comment on ways in which we can reduce the burden of the challenge process on smaller providers.[6]

228. Finally, the challenge process must be administratively efficient. As discussed in the Order, there is a need to move forward rapidly with MF-II to retarget universal service support being provided to mobile carriers; the challenge process must not impede the implementation of MF-II support. There is a demonstrated need for MF-II support in many areas of the country where support is not provided today, and that support must be disbursed to unserved areas without unreasonable delay.

229. We seek comment on these guiding principles for the challenge process and whether we should take into consideration additional principles as we design the process. In addition, we seek comment on the extent to which these principles are furthered by the specific parameters for the challenge process that we outline below.

230. In addition, we recognize that no matter how well engineered, no wireless network has 100 percent reliability. Even in areas of generally good coverage there may be small regions where performance is less than desired, especially due to natural or manufactured obstructions, areas far inside buildings, basements, and so forth. In light of these network characteristics, what standards and guidance will help Bureau staff evaluate challenges and expedite their resolution?

231. We are seeking general comment on a couple of potential structures for the challenge process. While we are presenting them in this Further Notice as separate options, we want to be clear that we are not proposing to adopt either option wholesale. Rather, we intend to take the most effective parameters from these various options, as well as possible additional alternatives, to assemble a “best in class” structure for the challenge process.

[6] *See, e.g.*, U.S. Cellular Feb. 17, 2017 *Ex Parte* at 2 (“It will be difficult, if not impossible, for small competitors to rebut coverage claims for multiple carriers that is overstated in rural areas.”); CCA Feb. 2017 *Ex Parte* at 3 (“Burdensome and bureaucratic parcel-by-parcel challenges . . . will deplete the resources of the Commission and small carriers alike—unless the burden of filing such challenges is so overwhelming that rural carriers are forced to give in.”); RWA Feb. 14, 2017 *Ex Parte* at 2 (“The draft’s current requirement that a subsidized carrier demonstrate unsubsidized coverage is not LTE at 5/1 speed by a ‘preponderance of the evidence’ imposes a hardship on rural carriers with limited resources.”).

1. Option A

232. *Initial Challenge*. The challenge would consist of a certification by the challenging party that in a specific area, the party has a good faith belief, based on actual knowledge or past data collection, that there is not 4G LTE with at least 5 Mbps download speed coverage as depicted on Form 477.[7] The specific area challenged may be for a partial census block or full census block(s). In support of such a challenge, the party would need to file a shapefile in a standard format of the challenged area. What, if any, evidence should be required in support of an initial challenge? What standards should be required for the submission of an initial challenge?[8]

233. Challengers could be either a carrier that is submitting a challenge within its licensed area[9] or a state or local government that is submitting a challenge within its jurisdiction, potentially through a state PUC. We seek comment on whether additional parties (carriers that are potential entrants, consumers, etc.) should be allowed to submit challenges.

234. We seek comment regarding whether we should require that the challenged area be at least a minimum size. Would automatically dismissing *de minimis* challenges (e.g., challenges that address a very small percentage of the square miles in a given census block group or census tract) further administrative efficiency? If so, what should we set as the minimum size for a challenge?

235. Moreover, we seek comment regarding whether we should permit challenges for areas that the Bureaus identify as eligible (i.e., areas where the Form 477 data show no qualified 4G LTE coverage from an unsubsidized carrier). We anticipate that there would be far fewer such challenges than for ineligible areas since the challenging party would likely be the same carrier that submitted – and certified – the Form 477 data that allegedly shows too small a coverage area. Should our challenge process allow what are in essence Form 477 corrections? Should those challenges be limited to corrections in the Bureaus' processing of the Form 477 data as filed?

236. *Propagation Map Response*. A challenged carrier may respond by submitting an engineering (propagation) map that demonstrates expected coverage for the challenged area. The submission must be substantiated by the certification of a qualified engineer, under penalty of perjury. We seek comment on the specific technical parameters for the propagation model and the shapefile, and how much time challenged carriers would require to respond. Should we adopt a signal strength threshold for the map? Should the measure be -90 dB (RSSI) or a different amount? U.S. Cellular, for example, proposes that a coverage map for the challenge process use a -85 dB measure.[10] Should any signal strength be set based on RSSI or RSRP measurements?[11] Is there a particular resolution we should require for the shapefile? Should we specify any other parameters?

237. We seek comment on the utility of such shapefiles in the challenge process. We

[7] *See* Letter from David LaFuria, Lukas, LaFuria, Gutierrez & Sachs, LLP, Counsel to U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 and WT Docket No. 10-208, at Prelim. Proposal (filed Feb. 17, 2017) (U.S. Cellular Proposal).

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] RSSI stands for Received Signal Strength Indicator. RSRP is Reference Signal Received Power.

recognize that such maps do not actually portray the consumer's experience throughout the area at issue, given in part that a consumer's experience depends on variables other than signal strength. Nevertheless, such maps may be a reasonable step to build into the challenge process for the purpose of narrowing the areas requiring further evidence to resolve the challenge.

238. *Submission of Evidence of Actual Speeds Being Provided to Consumers*. Once the challenged carrier has timely submitted a map that shows the challenged area to be within the contour of coverage, the original challenger may submit actual speed data (potentially with supporting signal strength data) from hardware- or software-based drive tests or app-based tests (e.g., such as those from established companies such as Ookla, Rootmetrics, Nielsen, and Mosaik) that spatially cover the challenged area. This submission must also be substantiated by the certification of a qualified engineer, under penalty of perjury. What parameters should be specified to ensure that the evidence accurately reflects consumer experience in the challenged area? For instance, should the number of test locations be proportionate to the amount of area challenged? How many tests should be done per location? What other parameters should be included in specifying how these tests are done?

239. Once a challenger submits evidence of actual speeds, what evidence of actual speeds should be accepted from the provider whose coverage is being challenged? How much time should be allowed for the submission of actual speed data?

240. *Resolution of Challenge*. A party seeking to challenge the Bureaus' initial determination of eligibility for MF-II support would have the burden of proving its claims by a preponderance of the evidence.[12] We seek comment on this evidentiary standard. Should we require challengers to meet a higher standard, such as clear and convincing evidence? Should the submission of evidence of actual speeds be permitted, or required, and how should that affect the resolution of challenges?[13]

2. Option B

241. In a recent filing, AT&T, ATN, and Blue Wireless – composed of a large, mid-sized, and small provider – submitted a joint proposal for how we should structure the challenge process.[14] The Updated Joint Proposal includes the following parameters:

242. *Challenge*. Challenging parties would have 60 days following the Commission's release of a list of eligible areas to submit evidence, which would be filed in the public record. Parties would be permitted to challenge areas that they claim are incorrectly identified as ineligible or eligible. Service providers and governmental entities located in or near the relevant areas would be only parties eligible to participate.

243. The evidence submitted in a challenge must include a map(s) in shapefile format, of the challenged area. In addition, challenging parties must report actual download speed test data using either actual speed tests or transmitter monitoring data. For the actual speed tests, data from app-based tests

[12] A preponderance of evidence is described as enough evidence to make it more likely than not that the status the claimant seeks to prove is true. *See, e.g.*, *Connect America Fund*, Report and Order, 28 FCC Rcd 7766, 7779, para. 33 (2013) (describing the burden of proof in the challenge process for parties contesting the classification of a census block for the second round of Connect America Phase I incremental support).

[13] *See* U.S. Cellular Proposal.

[14] *See* Updated Joint Proposal.

(many of which are freely available on consumer devices), and both hardware- and software-based drive tests would be permitted, so long as they met certain standards. For example, with app-based tests and software-based drive tests, late-model LTE devices compatible with a particular carrier's LTE network could be used to measure the speed. What requirements should we adopt for speed tests to ensure that they will be representative of coverage in a disputed area, including those pertaining to time and distance between tests. In considering these issues, we will need to balance the accuracy of any challenge, the burdens on affected parties, and the timeliness of resolution. The challenge evidence must be certified under penalty of perjury.[15]

244. *Response*. Challenged parties would have 30 days to file their certified responses. The responses must meet the same requirements as those for challenging parties – i.e., coverage shapefiles and speed test data.

245. We seek comment on the burden of requiring this level of response from challenged parties. In particular, should we require the same or reduced evidence from those parties that do not have the burden of proof? We acknowledge that requiring equivalent data from both parties is likely to assist the Bureaus in resolving challenges more efficiently. However, are those efficiency gains outweighed by the burden placed on the challenged party?

246. *Resolution*. The Commission would reach decisions based on the weight of the evidence and determine whether any changes to its initial list of eligible areas is warranted.

3. Additional Options

247. We seek comment as well on any additional options that parties may wish to propose.[16] We reiterate that we are not necessarily going to adopt either of the options discussed above. Therefore, we urge commenters to come up with additional proposals, including consensus proposals that accommodate the interests of multiple parties. This is particularly important to the extent the options discussed above do not adequately address issues that are essential to our structuring of an effective and efficient challenge process.

XI. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

248. The Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It will be submitted to the Office of

[15] We note that the Updated Joint Proposal proposes specific technical parameters on a number of issues on which we are here seeking comment.

[16] We note, for instance, NTCA's recent proposal that would require all Form 477 filers whose filings represent a basis for declaring certain areas not eligible for MF-II support to supplement those filings within 60 days of the release of a preliminary list of areas not eligible for MF-II support. *See* NTCA Feb. 2017 *Ex Parte* at 2-3. They also would notify other service providers in those areas of their supplemented Form 477 filings and their declaration that they provide voice and LTE service in those areas. *Id.* Those other service providers would have 30 days to challenge those declarations of service. *Id.* However, Verizon argues that NTCA's proposal would turn the challenge process "on its head" because it "would presume that a census block is eligible for funding and would place virtually the entire burden of the challenge process . . . on carriers that receive no support from the universal service fund." Verizon Feb. 2017 *Ex Parte* at 3.

Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,[1] we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B, infra. The FNPRM 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,[2] we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

249. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[3]

C. Final Regulatory Flexibility Analysis

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

D. Initial Regulatory Flexibility Analysis

251. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the FNPRM. This analysis is found in Appendix C. The FNPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. § 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

E. Ex Parte Presentations

252. *Permit-But-Disclose*. The proceeding this FNPRM initiates shall be treated as a "permit-

[1] *See* 44 U.S.C. § 3506(c)(4).

[2] *See id.* § 3506(c)(4).

[3] *See* 5 U.S.C. § 801(a)(1)(A).

but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[4] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

F. Comment Filing Procedures

253. *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: http://apps.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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

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

[4] 47 CFR § 1.1200 *et seq.*

Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

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

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

256. *Additional Information*. For additional information on this proceeding, contact Mark Montano of the Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, Mark.Montano@fcc.gov, (202) 418-0660.

XII. ORDERING CLAUSES

257. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.427, and 1.429, that this Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED. It is our intention in adopting these rules that if any of the rules that we retain, modify, or adopt herein, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

258. IT IS FURTHER ORDERED that Parts 1 and 54 of the Commission's rules, 47 CFR §§ 1 and 54, ARE AMENDED as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after publication in the Federal Register, except to the extent they contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act. The rules that contain new and modified information collection requirement subject to PRA review SHALL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

259. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.421, 1.427, and 1.429, NOTICE IS HEREBY GIVEN of the proposals described in this Further Notice of Proposed Rulemaking.

260. IT IS FURTHER ORDERED that the Petition for Declaratory Ruling filed by United States Cellular Corporation on March 21, 2014 is DENIED.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Secretary

APPENDIX A

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 54 to read as follows:

PART 1 – PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

2. In § 1.21003, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), delete former paragraph (b), and add new paragraphs (b) and (c) as follows:

§ 1.21003 Competitive Bidding Process.

* * * * *

(b) Competitive Bidding Procedures – Design Options. The public notice detailing competitive bidding procedures may establish the design of the competitive bidding utilizing any of the following options, without limitation:

(1) Procedures for Collecting Bids.

(i) Procedures for collecting bids in a single round or in multiple rounds.

(ii) Procedures for collecting bids on an item-by-item basis, or using various aggregation specifications.

(iii) Procedures for collecting bids that specify contingencies linking bids on the same item and/or for multiple items.

(iv) Procedures allowing for bids that specify a support level, indicate demand at a specified support level, or provide other information as specified by the Commission.

(v) Procedures to collect bids in one or more stage or stages, including for transitions between stages.

(2) Procedures for Assigning Winning Bids.

(i) Procedures for scoring bids by factors in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors.

(ii) Procedures to incorporate public interest considerations into the process for assigning winning bids.

(3) Procedures for Determining Payments.

(i) Procedures to determine the amount of any support for which winning bidders may become authorized, consistent with other auction design choices.

(ii) Procedures that provide for support amounts based on the amount as bid or on other pricing rules, either uniform or discriminatory.

(c) Competitive Bidding Procedures – Mechanisms. The public notice detailing competitive bidding procedures may establish any of the following mechanisms, without limitation:

(1) Limits on Available Information. Procedures establishing limits on the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process, as well as procedures for parties to report the receipt of non-public information during such periods.

(2) Sequencing. Procedures establishing one or more groups of eligible areas and if more than one, the sequence of groups for which bids will be accepted.

(3) Reserve Price. Procedures establishing reserve prices, either disclosed or undisclosed, above which bids would not win in the auction. The reserve prices may apply individually, in combination, or in the aggregate.

(4) Timing and Method of Placing Bids. Procedures establishing methods and times for submission of bids, whether remotely, by telephonic or electronic transmission, or in person.

(5) Opening Bids and Bid Increments. Procedures establishing maximum or minimum opening bids and, by announcement before or during the auction, maximum or minimum bid increments in dollar or percentage terms.

(6) Withdrawals. Procedures by which bidders may withdraw bids, if withdrawals are allowed.

(7) Stopping Procedures. Procedures regarding when bidding will stop for a round, a stage, or an entire auction, in order to terminate the auction within a reasonable time and in accordance with public interest considerations and the goals, statutory requirements, rules, and procedures for the auction, including any reserve price or prices.

(8) Activity Rules. Procedures for activity rules that require a minimum amount of bidding activity.

(9) Auction Delay, Suspension, or Cancellation. Procedures for announcing by public notice or by announcement during the reverse auction, delay, suspension, or cancellation of the auction in the event of a natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding, and procedures for resuming the competitive bidding starting from the beginning of the current or some previous round or cancelling the competitive bidding in its entirety.

(d) Apportioning Package Bids. If the public notice establishing detailed competitive bidding procedures adopts procedures for bidding for support on combinations or packages of geographic areas, the public notice also shall establish a methodology for apportioning such bids among the geographic areas within the combination or package for purposes of implementing any Commission rule or procedure that requires

a discrete bid for support in relation to a specific geographic area.

(e) Public Notice of Competitive Bidding Results. After the conclusion of competitive bidding, a public notice shall identify the winning bidders that may apply for the offered universal service support and the amount(s) of support for which they may apply, and shall detail the application procedures.

PART 54 – UNIVERSAL SERVICE

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

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

4. Revise § 54.307(e)(5) and (6) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

(5) *Eligibility for Support after Mobility Fund Phase II Auction*.

(i) A mobile competitive eligible telecommunications carrier that receives monthly baseline support pursuant to this section and is a winning bidder in the Mobility Fund Phase II auction shall receive support at the same level as described in paragraph (e)(2)(iii) of this section for such area until the Wireless Telecommunications and Wireline Competition Bureaus determine whether to authorize the carrier to receive Mobility Fund Phase II support.

(A) Upon the Wireless Telecommunications and Wireline Competition Bureaus' release of a public notice approving a mobile competitive eligible telecommunications carrier's application submitted pursuant to § 54.104(b) and authorizing the carrier to receive Mobility Fund Phase II support, the carrier shall no longer receive support at the level of monthly baseline support pursuant to this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its Mobility Fund Phase II winning bid, provided that USAC shall adjust the amount of the carrier's support to the extent necessary to account for any difference in support the carrier received during the period between the close of the Mobility Fund Phase II auction and the release of the public notice authorizing the carrier to receive Mobility Fund Phase II support.

(B) A mobile competitive eligible telecommunications carrier that is a winning bidder in the Mobility Fund Phase II auction but is not authorized to receive Mobility Fund Phase II support shall receive monthly support as set forth in paragraphs 5(iii) and (iv) for such area, as applicable, provided that USAC shall decrease such amounts to account for (1) support payments received prior to the Wireless Telecommunications and Wireline Competition Bureaus' authorization determination that exceed the amount of support for such area as set forth in paragraphs 5(iii) and (iv), and (2) the monthly support in the mobile competitive eligible telecommunications carrier's winning Mobility Fund Phase II, which USAC shall treat as the carrier's monthly baseline support for purposes of paragraphs 5(iii) and (iv) to the extent the carrier's winning bid is below that amount.

(ii) A mobile competitive eligible telecommunications carrier that receives monthly baseline support pursuant to this section shall receive the following monthly support amounts for areas that are ineligible for Mobility Fund Phase II support, as determined by the Wireless Telecommunications and Wireline Competition Bureaus:

(A) For 12 months starting the first day of the month following the close of the Mobility Fund Phase II auction, each mobile competitive eligible telecommunications carrier shall receive two-thirds (2/3) of the carrier's support pursuant to paragraph (e)(2)(iii) of this section for the ineligible area.

(B) For 12 months starting the month following the period described in paragraph (ii)(A), each mobile competitive eligible telecommunications carrier shall receive one-third (1/3) of the carrier's support pursuant to paragraph (e)(2)(iii) of this section for the ineligible area.

(C) Following the period described in paragraph (ii)(B), no mobile competitive eligible telecommunications carrier shall receive monthly baseline support for the ineligible area pursuant to this section.

(iii) Except as provided in paragraph (e)(3), to the extent Mobility Fund Phase II support is not awarded at auction for an eligible area, as determined by the Wireless Telecommunications and Wireline Competition Bureaus, the mobile competitive eligible telecommunications carrier receiving the minimum level of sustainable support for the eligible area shall continue to receive support at the level described in paragraph (e)(2)(iii) of this section until further Commission action, but such support shall not extend for more than 60 months from the first day of the month following the close of the Mobility Fund Phase II auction. The "minimum level of sustainable support" is the lowest monthly baseline support received by a mobile competitive eligible telecommunications carrier that deploys the highest technology for the eligible area.

(iv) All other mobile competitive eligible telecommunications carriers shall receive the following monthly support amounts for areas that are eligible for Mobility Fund Phase II support, as determined by the Wireless Telecommunications and Wireline Competition Bureaus:

(A) For 12 months starting the first day of the month following the close of the Mobility Fund Phase II auction, each mobile competitive eligible telecommunications carrier shall receive two-thirds (2/3) of the carrier's support pursuant to paragraph (e)(2)(iii) of this section for the eligible area.

(B) For 12 months starting the month following the period described in paragraph (iv)(A), each mobile competitive eligible telecommunications carrier shall receive one-third (1/3) of the carrier's support pursuant to paragraph (e)(2)(iii) of this section for the eligible area.

(C) Following the period described in paragraph (iv)(B), no mobile competitive eligible telecommunications carrier shall receive monthly baseline support for the eligible area pursuant to this section.

(v) Notwithstanding the foregoing schedule, the phase-down of identical support below the level described in paragraph (e)(2)(iii) shall be subject to the restrictions in Consolidated

Appropriations Act, 2016, Pub. L. No. 114-113, Div. E, Title VI, § 631, 129 Stat. 2242, 2470 (2015), unless and until such restrictions are no longer in effect.

(6) Reserved.

5. Revise § 54.313(k) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(k) This section does not apply to recipients that solely receive support from Phase I and Phase II of the Mobility Fund.

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

Subpart L – Mobility Fund

Sec.

54.1011 Mobility Fund – Phase II

54.1012 Geographic Areas Eligible for Support

54.1013 Provider Eligibility

54.1014 Application Process

54.1015 Public Interest Obligations

54.1016 Letter of Credit

54.1017 Compliance for Mobility Fund Phase II

54.1018 Mobility Fund Phase II Disbursements

54.1019 Annual Reports

54.1020 Milestone Reports

54.1021 Record Retention for Mobility Fund Phase II

§ 54.1011 Mobility Fund – Phase II.

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of support available through Phase II of the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.1012 Geographic Areas Eligible for Support.

(a) Mobility Fund Phase II support may be made available for eligible geographic areas as identified by public notice prior to auction.

(b) Coverage units for purposes of conducting competitive bidding and disbursing support based on

designated square miles in a geographic area will be identified by public notice for each area eligible for support prior to auction.

§ 54.1013 Provider Eligibility.

(a) An applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase II support for that area. An applicant may obtain its designation as an Eligible Telecommunications Carrier after the close of the Mobility Fund Phase II auction, provided that the applicant submits proof of its designation within 180 days of the public notice identifying the applicant as a winning bidder. An applicant shall not receive Mobility Fund Phase II support prior to the submission of proof of its designation as an Eligible Telecommunications Carrier. After such submission, the Eligible Telecommunications Carrier shall receive a balloon payment that will consist of the carrier's monthly Mobility Fund Phase II payment amount multiplied by the number of whole months between the first day of the month after the close of the auction and the issuance of the public notice authorizing the carrier to receive Mobility Fund Phase II support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase II support for that area. The applicant shall describe its access to spectrum and certify, in a form acceptable to the Commission, that it has such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for at least ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase II within the specified timeframe in the geographic areas for which it seeks support in order to receive such support.

§ 54.1014 Application Process.

(a) Application to Participate in Competitive Bidding for Mobility Fund Phase II Support. In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase II support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter as well as information on any agreement the applicant may have relating to the support to be sought through the auction;

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1015 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as an entity that will file an application to become an Eligible Telecommunications Carrier in any such area after winning support in Mobility Fund Phase II, and certify that the disclosure is accurate; and

(4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds or leases the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent upon

receiving support in a Mobility Fund Phase II auction, and certify that the description is accurate and that the applicant will retain such access for the entire ten (10) year Mobility Fund Phase II support term.

(b) Application by Winning Bidders for Mobility Fund Phase II Support.

(1) Deadline. Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase II support shall file an application for Mobility Fund Phase II support no later than ten (10) business days after the public notice identifying them as winning bidders.

(2) Application Contents. An application for Mobility Fund Phase II support must contain:

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

(ii) Certification that the applicant is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support;

(iii) Proof of the applicant's status as an Eligible Telecommunications Carrier, or a statement that the applicant will become an Eligible Telecommunications Carrier in any area for which it seeks support within 180 days of the public notice identifying them as winning bidders, and certification that the proof is accurate;

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is winning bidder for support, including whether the applicant currently holds or leases the spectrum, along with any necessary renewal expectancy, and certification that the description is accurate and that the applicant will retain such access for the entire ten (10) year Mobility Fund Phase II support term;

(v) A detailed project description that describes the network to be built or upgraded, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the complete project budget, and discusses each specific phase of the project (e.g., network design, construction, deployment, and maintenance), as well as a complete project schedule, including timelines, milestones, and costs;

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase II and that the applicant will comply with all program requirements, including the public interest obligations set forth in § 54.1015;

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in § 54.1016, or a written commitment from an acceptable bank, as defined in § 54.1016(a)(2), to issue such a letter of credit;

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas during the term of support the applicant seeks;

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

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

(3) Application Processing.

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

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

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

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

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase II support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than ten (10) business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Mobility Fund Phase II support.

§ 54.1015 Public Interest Obligations.

(a) First Interim Deadline for Construction. A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than 42 months from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes, submit to the entities listed in § 54.1020(c) any required data covering all areas for which they receive support in a state demonstrating mobile transmissions supporting voice and data to and from the network covering at least 40 percent of the square miles associated with the eligible areas and meeting or exceeding the following:

(1) Outdoor median data transmission rates of 1 Mbps upload and 10 Mbps download, with at

least 90 percent of the required download speed measurements not less than a certain threshold speed that will be defined prior to the Mobility Fund Phase II auction; and

(2) Transmission latency of 100 ms or less round trip for at least 90 percent of the measurements.

(b) Second Interim Deadline for Construction. A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than 54 months from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes, submit to the entities listed in § 54.1020(c) any required data covering all areas for which they receive support in a state demonstrating mobile transmissions supporting voice and data to and from the network covering at least 60 percent of the square miles associated with the eligible areas and meeting or exceeding the thresholds in (a)(1) and (2).

(c) Third Interim Deadline for Construction. A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than 66 months from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes, submit to the entities listed in § 54.1020(c) any required data covering all areas for which they receive support in a state demonstrating mobile transmissions supporting voice and data to and from the network covering at least 80 percent of the square miles associated with the eligible areas and meeting or exceeding the thresholds in (a)(1) and (2).

(d) Final Deadline for Construction. A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than 78 months from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes, submit to the entities listed in § 54.1020(c) any required data covering all areas for which they receive support in a state demonstrating mobile transmissions supporting voice and data to and from the network covering at least 85 percent of the square miles associated with the eligible areas and meeting or exceeding the thresholds in (a)(1) and (2). A winning bidder shall also submit representative data demonstrating that its network covers at least 75 percent of every census block group or census tract for which it receives support in a state.

(e) Coverage Data. Coverage data submitted in compliance with a recipient's public interest obligations shall demonstrate coverage of the square miles designated in the public notice announcing the final list of eligible areas for the competitive bidding that is the basis of the recipient's support. Any data submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the applicable public notice.

(f) Collocation Obligations. During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on all towers it owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(g) Voice and Data Roaming Obligations. During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall comply with the Commission's voice and data roaming requirements that are currently in effect on networks that are built through Mobility Fund Phase II support.

(h) Reasonably Comparable Rates Obligations. Beginning no later than the deadline set forth in paragraph (a) and continuing throughout the remaining period when a recipient shall file annual reports

pursuant to § 54.1019, the recipient shall offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.

(i) Data Allowance Obligations. Beginning no later than the deadline set forth in paragraph (a) and continuing throughout the remaining period when a recipient shall file annual reports pursuant to § 54.1019, recipient shall offer at least one service plan in supported areas that includes a data allowance comparable to mid-level service plans offered by nationwide providers.

(j) Liability for Failing to Satisfy Public Interest Obligations. A Mobility Fund Phase II support recipient's failure to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase II support constitutes a performance default.

§ 54.1016 Letter of Credit.

(a) Before being authorized to receive Mobility Fund Phase II support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) Value. Each recipient authorized to receive Mobility Fund Phase II support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to at a minimum the amount of Mobility Fund Phase II auction support that has been disbursed and that will be disbursed in the coming year, until the Universal Service Administrative Company has verified that the recipient met the final service milestone as described in § 54.1015(d) of this chapter.

(i) Once the recipient has met its 60 percent service milestone as described in § 54.1015(b) of this chapter, it may, subject to the consent of the Universal Service Administrative Company, obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

(ii) Once the recipient has met its 80 percent service milestone as described in § 54.1015(c) of this chapter, it may, subject to the consent of the Universal Service Administrative Company, obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

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

(i) Any United States Bank

(A) whose deposits are insured by the Federal Deposit Insurance Corporation, and

(B) that has a Weiss bank safety rating of B- or higher, or

(ii) CoBank, ACB

(A) as long as it maintains assets that would place it among the top-100 U.S. banks in terms of the amount of assets, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) its obligations are insured by the Farm Credit System Insurance Corporation, and

(C) it has a long-term unsecured credit rating of BBB- or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation

(A) as long as it maintains assets that would place it among the top-100 U.S. banks in terms of the amount of assets, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit, and

(B) it has a long-term unsecured credit rating of BBB- or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency); or

(iv) Any non-U.S. bank that

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

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

(C) maintains a credit rating of BBB- or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency), and

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

(b) Before being authorized to receive Mobility Fund Phase II support, a winning bidder shall provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code"), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the letter of credit, under section 541 of the Bankruptcy Code.

(c) Authorization to receive Mobility Fund Phase II support is conditioned upon full and timely performance of all the requirements set forth in this section, § 54.1015, and any additional terms and conditions upon which the support was granted.

(1) If a Mobility Fund Phase II recipient has triggered a recovery action by USAC as set out in § 54.1017 and has failed to repay the requisite amount of support within six (6) months, USAC will be entitled to draw the entire amount of the letter of credit and may disqualify the Mobility Fund Phase II recipient from the receipt of Mobility Fund Phase II auction support or additional universal service support.

(2) The default will be evidenced by a letter issued by the Chief of either the Wireless Telecommunications Bureau or Wireline Competition Bureau or their respective designees, which letter, describing the performance default and attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit.

§ 54.1017 Compliance for Mobility Fund Phase II.

(a) Mobile eligible telecommunications carriers subject to defined build-out milestones in § 54.1015 must notify the Commission and USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within ten (10) business days after the applicable deadline if they have failed to meet a build-out milestone.

(1) Interim build-out milestones. Upon notification that a mobile eligible telecommunications carrier has defaulted on an interim build-out milestone after it has begun receiving Mobility Fund Phase II support, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter evidencing the default. For purposes of determining whether a default has occurred, any service a mobile eligible telecommunications carrier offers must meet the performance obligations in § 54.1015(a)(1) and (2). The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the mobile eligible telecommunication carrier's total monthly Mobility Fund Phase II support, if applicable, starting the month following the issuance of the letter:

(i) Tier 1. If a mobile eligible telecommunications carrier has a compliance gap of at least five (5) percent but less than 15 percent of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the relevant interim milestone at the state level, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect. Starting three (3) months after the issuance of this letter, the mobile eligible telecommunications carrier will be required to file a report every three (3) months identifying the eligible square miles to which the mobile eligible telecommunications carrier has newly deployed facilities capable of meeting the requisite Mobility Fund Phase II requirements at the state level in the previous quarter. Mobile eligible telecommunications carriers that do not file these quarterly reports on time will be subject to support reductions as specified in § 54.1019(f). The mobile eligible telecommunications carrier must continue to file quarterly reports until the mobile eligible telecommunications carrier reports that it has reduced the compliance gap to less than five (5) percent of the eligible square miles for that interim milestone at the state level and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect.

(ii) Tier 2. If a mobile eligible telecommunications carrier has a compliance gap of at least 15 percent but less than 25 percent of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the interim milestone at the state level, USAC will withhold 15 percent of the mobile eligible telecommunications carrier's monthly support for that state and the mobile eligible telecommunications carrier will be required to file quarterly reports. Once the mobile eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 15 percent of the eligible square miles for that interim milestone at the state level, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, and the mobile eligible telecommunications carrier will then move to Tier 1 status.

(iii) Tier 3. If a mobile eligible telecommunications carrier has a compliance gap of at least 25 percent but less than 50 percent of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the interim milestone at the state level,

USAC will withhold 25 percent of the mobile eligible telecommunications carrier's monthly support for that state and the mobile eligible telecommunications carrier will be required to file quarterly reports. Once the mobile eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 25 percent of the eligible square miles for that interim milestone at the state level, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, and the mobile eligible telecommunications carrier will move to Tier 2 status.

(iv) Tier 4. If a mobile eligible telecommunications carrier has a compliance gap of 50 percent or more of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the interim milestone at the state level:

(A) USAC will withhold 50 percent of the mobile eligible telecommunications carrier's monthly support for that state, and the mobile eligible telecommunications carrier will be required to file quarterly reports. As with the other tiers, as the mobile eligible telecommunications carrier reports that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone).

(B) If, after having 50 percent of its support withheld for six (6) months, the mobile eligible telecommunications carrier has not reported that it has a compliance gap of less than 50 percent, USAC will withhold 100 percent of the mobile eligible telecommunications carrier's monthly support for the state and will commence a recovery action for a percentage of support that is equal to the mobile eligible telecommunications carrier's compliance gap plus 10 percent of the mobile eligible telecommunications carrier's support that has been disbursed to that date.

(v) If at any point during the support term, the mobile eligible telecommunications carrier reports that it is eligible for Tier 1 status, it will have its support fully restored, USAC will repay any funds that were recovered or withheld, and it will move to Tier 1 status.

(2) Final milestone. Upon notification that the mobile eligible telecommunications carrier has not met a final milestone, the mobile eligible telecommunications carrier will have twelve (12) months from the date of the final milestone deadline to come into full compliance with this milestone.

(i) If the mobile eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve (12) months because it fails to meet the 85 percent benchmark (even if it meets the 75 percent benchmark for some or all the census block group(s) or census tract(s)), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter, and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the mobile eligible telecommunications carrier received per eligible square mile in the state over the six year period multiplied by the number of square miles unserved in the mobile eligible telecommunications carrier's winning areas in the state that would be required to meet the 85 percent benchmark, plus 10 percent of the mobile eligible telecommunications carrier's total Mobility Fund Phase II support received in the state over the six-year period for deployment.

After the mobile eligible telecommunications carrier has paid the calculated recovery amount for failure to comply with the final deployment milestone, the Bureaus will calculate a reduced support payment for the remaining support term based on the percentage of deployment coverage completed. The reduced ongoing annual support amount will be the total of the mobile eligible telecommunications carrier's original winning bid amounts for annual support in the state multiplied by the sum of the actual deployment percentage plus 15 percent (i.e., the difference between 100 percent coverage and the required 85 percent minimum coverage), or (annual support)*(percentage covered + 0.15). If at the end of six months the mobile eligible telecommunications carrier has not fully paid back the support for missing the relevant 85 percent benchmark, the mobile eligible telecommunications carrier shall be liable for repayment of all the support that has been disbursed to the mobile eligible telecommunications carrier for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the letter(s) of credit to recover all the support that has been disbursed to the mobile eligible telecommunications carrier for that state.

(ii) If the mobile eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve (12) months because it fails to meet the 75 percent benchmark(s) for any census block group(s) or census tract(s) in the state at the final milestone (even if it meets the 85 percent statewide benchmark), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter for any such census block group(s) or census tract(s), and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the mobile eligible telecommunications carrier received per eligible square mile in the census block group(s) or census tract(s) in the state over the six-year period multiplied by the number of square miles unserved in each of the mobile eligible telecommunications carrier's winning census block group(s) or census tract(s) in the state that would be required to meet their respective 75 percent benchmarks, plus 10 percent of the mobile eligible telecommunications carrier's total Mobility Fund Phase II support received in the relevant census block group(s) or census tract(s) over the six-year period for deployment. The mobile eligible telecommunications carrier will have six months to repay the support USAC seeks to recover. After the mobile eligible telecommunications carrier has paid the calculated recovery amount, the Bureaus will calculate a reduced support payment for the remaining support term. The reduced ongoing annual support amount will be the mobile eligible telecommunications carrier's original winning bid amount for annual support in any such census block group or census tract, multiplied by the sum of the actual deployment percentage plus 25 percent (i.e., the difference between 100 percent coverage and the required 75 percent minimum coverage), or (annual support)*(percentage covered + 0.25). If at the end of six months the mobile eligible telecommunications carrier has not fully paid back the support for missing the relevant 75 percent benchmark(s), the mobile eligible telecommunications carrier shall be liable for repayment of all the support that has been disbursed to the mobile eligible telecommunications carrier for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the letter(s) of credit to recover all the support that has been disbursed to the mobile eligible telecommunications carrier for that state. In the event that USAC draws on a letter of credit to recover all the support that has been disbursed to the mobile eligible telecommunications carrier

for a state, the mobile eligible telecommunications carrier's participation in Mobility Fund Phase II in that state will immediately end and no further support will be paid.

(3) Compliance reviews. If, subsequent to the mobile eligible telecommunications carrier's final milestone but during the remaining support term, USAC determines in the course of a compliance review that the mobile eligible telecommunications carrier does not have sufficient evidence to demonstrate that it is offering service to the required percentage of square miles by census block group or census tract, or state, USAC shall withhold support for a period not to exceed six months until the mobile eligible telecommunications carrier demonstrates that it is again providing the requisite service to the required percentage of square miles. Once the mobile eligible telecommunications carrier demonstrates that it is providing the requisite service to the required percentage of square miles and USAC has verified the demonstration, USAC will pay any withheld support and resume ongoing disbursements. If the mobile eligible telecommunications carrier does not provide a verifiable demonstration of coverage within the permitted six-month period, USAC shall recover an amount of support that is equal to 1.89 times the average amount of support per square mile received in the winning bid area over the six-year deployment period for the relevant number of square miles for which the mobile eligible telecommunications carrier has failed to produce sufficient evidence, plus 10 percent of the mobile eligible telecommunications carrier's total support received in that winning bid area over the six-year deployment time period, and will calculate a reduced ongoing annual support amount as set out in (a)(2)(i) and (ii) of this rule, as appropriate.

§ 54.1018 Mobility Fund Phase II Disbursements.

(a) A winning bidder for Mobility Fund Phase II support will be advised by public notice whether it has been authorized to receive such support. The public notice will detail how disbursements will be made.

(b) Mobility Fund Phase II support will be available for monthly disbursement to a winning bidder authorized to receive such support for ten years from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes.

§ 54.1019 Annual Reports.

(a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit an annual report no later than July 1 in each year for the ten (10) years after it is so authorized.

(b) The party submitting the annual report must certify that it has been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing the appropriate docket for Mobility Fund Phase II reporting; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate, until such time that the Administrator announces that annual reports shall be filed solely via the Administrator's online portal.

(d) In each annual report, a recipient of Mobility Fund Phase II support shall certify that it is in compliance with all requirements for receipt of such support to continue receiving Mobility Fund Phase II disbursements.

(e) Winning bidders have a continuing obligation to maintain the accuracy and completeness of the information provided in their long-form applications and their annual reports. All winning bidders shall provide information about any substantial change that may be of decisional significance regarding their eligibility for Mobility Fund Phase II support and compliance with Mobility Fund Phase II requirements as an update to their annual report submitted to the entities listed in § 54.1019(c). Such notification of a substantial change, including any reduction in the percentage of eligible square miles being served or any failure to comply with any of the Mobility Fund Phase II requirements, shall be submitted within ten (10) business days after the reportable event occurs.

(f) In order for a recipient of Mobility Fund Phase II support to continue to receive support for the following calendar year, it must submit the annual report required by this section annually by July 1 of each year. Mobile eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule:

(1) A mobile eligible telecommunications carrier that files after the July 1 deadline, but by July 8, will have its support reduced in an amount equivalent to seven (7) days of support;

(2) A mobile eligible telecommunications carrier that files on or after July 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.

(g) A mobile eligible telecommunications carrier that submits the annual reporting information required by this section within three (3) days of the July 1 deadline will not receive a reduction in support if the mobile eligible telecommunications carrier has not missed the July 1 deadline in any prior year.

§ 54.1020 Milestone Reports.

(a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit the reports required in § 54.1015(a), (b), (c) and (d) as well as certifications that it has met the construction requirements in § 54.1015(a), (b), (c) and (d).

(b) The party submitting the report must certify that it has been authorized to do so by the winning bidder.

(c) Each report shall be submitted to the Office of the Secretary of the Commission, clearly referencing the appropriate docket for Mobility Fund Phase II reporting; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate, until such time that the Administrator announces that such reports shall be filed solely via the Administrator's online portal.

(d) Winning bidders have a continuing obligation to maintain the accuracy and completeness of the information provided in their long-form applications and their milestone reports. All winning bidders shall provide information about any substantial change that may be of decisional significance regarding their eligibility for Mobility Fund Phase II support and compliance with Mobility Fund Phase II requirements as an update to their milestone report submitted to the entities listed in § 54.1020(c). Such notification of a substantial change, including any reduction in the percentage of eligible square miles being served or any failure to comply with any of the Mobility Fund Phase II requirements, shall be submitted within ten (10) business days after the reportable event occurs.

(e) In order for a recipient of Mobility Fund Phase II support to continue to receive support for the following calendar year, it must submit the milestone reports required by this section by the deadlines set forth in § 54.1015(a)-(d). Mobile eligible telecommunications carriers that file their reports after the relevant deadlines shall receive a reduction in support pursuant to the following schedule:

(1) A mobile eligible telecommunications carrier that files after the deadline, but within seven days of the deadline, will have its support reduced in an amount equivalent to seven (7) days of support;

(2) A mobile eligible telecommunications carrier that files on or after the eighth day following the deadline will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(f) A mobile eligible telecommunications carrier that submits the milestone reporting information required by this section within three (3) days of the deadline will not receive a reduction in support if the mobile eligible telecommunications carrier has not missed the deadline in any prior year.

§ 54.1021 Record Retention for Mobility Fund Phase II.

A winning bidder authorized to receive Mobility Fund Phase II support and its agents are subject to the record retention requirements in § 54.320.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980,[1] as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in November 2011 (*USF/ICC Transformation FNPRM*) and the *Further Notice of Proposed Rulemaking* adopted in April 2014 (*2014 CAF Further Notice*).[2] The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM* and *2014 CAF Further Notice*, including comment on the IRFAs. The Commission did not receive any comments in response to these IRFAs. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

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

2. Despite the growing expansion of 4G Long Term Evolution (LTE) service, rural and high-cost areas of our country have been left behind. At the same time, the Universal Service Fund spends $25 million a month (a conservative estimate) distributing legacy subsidies to mobile carriers that compete with private capital and millions more distributing duplicative subsidies to multiple carriers in the same area.

3. In this Order, we adopt the framework for moving forward with the Mobility Fund Phase II (MF-II) and Tribal Mobility Fund Phase II, which will allocate up to $4.53 billion over the next decade to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. The funding for this effort will come from the redirection of legacy subsidies and be distributed using a market-based, multi-round reverse auction and will come with defined, concrete compliance requirements so that rural consumers will be adequately served by the mobile carriers receiving universal service support.

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

[2] *USF/ICC Transformation Order*, 26 FCC Rcd at 18364-95, paras. 1-97; *2014 CAF Order*, 29 FCC Rcd at 7216-44, paras. 1-91.

[3] *See* 5 U.S.C. § 604.

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

4. There were no comments filed that specifically addressed the rules and policies proposed in the *USF/ICC Transformation FNPRM* IRFA or the *2014 CAF Further Notice* IRFA.

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

5. Pursuant to the Small Business Jobs Act of 2010,[4] which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

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

D. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[7] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[8]

8. **Small Entities, 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 comprehensive small entity size standards that could be directly affected herein.[9] As of 2014, according to the SBA, there were 28.2 million small businesses in the U.S., which represented 99.7% of all businesses in the United States.[10] Additionally, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[11]

[4] 5 U.S.C. § 604(a)(3).

[5] *See* 5 U.S.C. § 603(a)(3).

[6] *See* 5 U.S.C. § 601(6).

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

[8] *See* 15 U.S.C. § 632.

[9] *See* 5 U.S.C. § 601(3)-(6).

[10] *See* SBA, Office of Advocacy, "Frequently Asked Questions", http://web.sba.gov/faqs/faqindex.cfm?areaID=24 (last visited Mar. 2014).

Nationwide, as of 2007, there were approximately 1,621,215 small organizations.[12] Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[13] Census Bureau data for 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.[14] We estimate that, of this total, as many as 88,761 entities may qualify as "small governmental jurisdictions."[15] Thus, we estimate that most governmental jurisdictions are small.

9. **Wireless Telecommunications Carriers (except Satellite)**. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[16] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[17] For this industry, census data for 2012 show that there were 967 firms that operated for the entire year.[18] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[19] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.[20] Of this total, an

[11] 5 U.S.C. § 601(4).

[12] INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

[13] 5 U.S.C. § 601(5).

[14] U.S. Census Bureau, Statistical Abstract of the United States: 2012 at 267, Table 429 (2011), http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf (citing data from 2007).

[15] The 2012 U.S. Census data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. *See* U.S. Census Bureau, City and Town Totals Vintage: 2011, http://www.census.gov/popest/data/cities/totals/2011/index.html (last visited Oct. 20, 2016). If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

[16] NAICS Code 517210. *See* http://www.census.gov/cgi-bin/ssd/naics/naicsrch.

[17] 13 CFR § 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[18] U.S. Census Bureau, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210" (rel. Jan. 8, 2016).

[19] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "100 employees or more."

[20] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.[21] Thus, using available data, we estimate that the majority of wireless firms can be considered small.

10. **Internet Service Providers**. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[22] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.[23] Census Bureau data for 2012 shows that there were 3,117 firms that operated for the entire year.[24] Of this total, 3,083 firms had employment of 999 or fewer employees, and 34 firms had employment of 1,000 employees or more.[25] Thus, under this size standard, the majority of firms in this industry can be considered small. In addition, while Internet Service Providers (broadband) are a subcategory of the broader category of Wired Telecommunications Carrier, there is Census Bureau data specific to Internet Service Providers (broadband). For 2012, Census Bureau data shows there were a total of 1,180 firms in the subcategory of Internet Service Providers (broadband) that operated for the entire year.[26] Of this total, 1,178 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more.[27] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

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

11. In the Order we adopt today, we adopt the framework for moving forward with the Mobility Fund Phase II (MF-II) and Tribal Mobility Fund Phase II, which will allocate up to $4.53 billion over the next decade to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. The funding for this effort will come from the redirection of legacy subsidies and distributed using a market-based, multi-round reverse auction and will come with defined, concrete compliance requirements so that rural consumers will be adequately served by the mobile carriers receiving universal service support. We

[21] *See id.*

[22] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers", http://www.census.gov/econ/isp/sampler.php?naicscode=517110&naicslevel=6 (last visited Oct. 20, 2016) (partial definition).

[23] 13 CFR § 121.201, NAICS code 517110.

[24] U.S. Census Bureau, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517110" (rel. Jan. 8, 2016).

[25] *See id.*

[26] U.S. Census Bureau, Information, Subject Series: "Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 5171103" (rel. Jan. 8, 2016).

[27] *See id.*

summarize below the recordkeeping and other obligations of MF-II in the accompanying Order. Additional information on each of these requirements can be found in the Order.

12. Recipients of MF-II support will be required to deploy 4G LTE and to offer voice service. Recipients of MF-II funding will be required to meet minimum baseline performance requirements for data speeds, data latency, and data allowances in areas that receive support for at least one plan that they offer. Specifically, the median data speed of the network for the supported area must be 10 Mbps download speed or greater and 1 Mbps upload speed or greater, with at least 90 percent of the required download speed measurements being not less than a certain threshold speed. For latency, at least 90 percent of the required measurements must have a data latency of 100 milliseconds or less round trip. For data allowances, support recipients must offer at least one service plan that includes a data allowance comparable to mid-level service plans offered by nationwide providers – currently at least 2 GB of data per month – and that is at a rate that is within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas. These conditions will be defined more precisely in the pre-auction process.

13. MF-II support recipients will be given a ten-year term of support, which will begin on the first day of the month after the MF-II auction concludes, with no renewal expectancy. We adopt interim benchmarks as well as a final benchmark for deployment of service that meets the performance metrics detailed above. We define the starting point for the interim benchmarks as six months from the first day of the month that follows the month in which the MF-II auction closes. We require a winning bidder to demonstrate coverage of at least 40 percent by three years after the starting point, 60 percent by four years after the starting point, 80 percent by five years after the starting point, and 85 percent by six years after the starting point across all areas for which they receive MF-II support in a state. Support recipients must meet their required benchmarks across all areas for which they receive MF-II support in a state. However, for the final benchmark, every census block group or census tract in a state (depending on minimum bidding unit) must also be at least 75 percent covered. Recipients that fail to meet and maintain the performance obligations within the time provided to submit their representative data and to certify to coverage requirements will be subject to defined measures, and must cure these failures to meet the deployment requirements or they will be in performance default.

14. Entities that are interested in participating in the MF-II auction will be required to file a short-form application in order to establish their eligibility to participate. Each auction applicant will be required to provide information to establish its identity, including disclosure of parties with ownership interests, consistent with the ownership interest disclosure required in Part 1 of the Commission's rules for applicants for spectrum licenses, as well as any agreements the applicant may have relating to the support to be sought through the auction. Each applicant will also be required to disclose and certify its ETC status, although an applicant will not be required to obtain an ETC designation prior to bidding in MF-II. Applicants will be required to disclose and certify the source of the spectrum they plan to use to meet Mobility Fund obligations in the particular area(s) for which they plan to bid. Specifically, applicants will be required to disclose whether they currently hold a license or lease the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent on obtaining support in an MF-II auction. Applicants must have secured any Commission approvals necessary for the required spectrum access prior to submitting an auction application. Moreover, applicants will be required to certify that they will retain their access to the spectrum for at least ten years

from the date support is authorized. The short-form application may also include additional certifications or requirements that are adopted in a public notice.

15. Within a specified number of days of the release of a public notice identifying an entity as a winning bidder, that winning bidder will be required to file a long-form application. In this long-form application, an applicant for MF-II support will be required to fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application. An applicant will also be required to submit with its long-form application appropriate documentation of its ETC designation, including the original designation order and any relevant modifications or name-change orders, in all the areas for which it will receive support or certify that it will do so within 180 days of the public notice identifying winning bidders. An applicant will be required to certify that it is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support.

16. For winning bids, the applicant must submit a project description that describes the network to be built or upgraded; identifies the proposed technology; demonstrates that the project is technically feasible; discloses the complete project budget; and discusses each specific phase of the project (*e.g.*, network design, construction, deployment, and maintenance). A complete project schedule, including timelines, milestones, and costs, must also be provided.

17. In addition, each applicant must provide in its long-form application a description of the spectrum access that it will use to meet its obligations in areas for which it is the winning bidder, including whether it currently holds a license or leases the spectrum, along with any necessary renewal expectancy, and certify that the description is accurate and that the applicant will retain such access for the entire ten-year support term. Each applicant must certify in its long-form application that it has the funds available for all project costs that exceed the amount of support to be received, and that it will comply with all program requirements, which include the public interest obligations contained in the Commission's rules. Each applicant must also certify that it will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas during the term of support the applicant seeks.

18. Applicants must certify that they will meet the applicable deadlines and requirements for demonstrating interim and final performance benchmarks set forth in the rules, and that they will comply with the MF-II collocation, voice and data roaming, and reasonably comparable rate obligations. The long-form application may also include additional certifications or requirements that are adopted in a public notice.

19. Prior to the authorization of support, all winning bidders must provide the Commission with an irrevocable standby letter of credit (LOC) by a bank that is acceptable to the Commission in substantially the same form as the model Letter of Credit set forth in Appendix E. The initial value of the LOC must be set to at least the amount of authorized MF-II support for the first year. Before the winning bidder can receive its next year's MF-II support, it must modify, renew, or obtain a new LOC to ensure that it is valued at a minimum at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year. The LOC must be maintained for 100 percent of the total support amount disbursed plus the amount to be disbursed in the next year until the Universal Service Administrative Company (USAC), in coordination with the Commission, has

determined that the recipient has met its interim benchmark for deployment to 60 percent of the required coverage area; and subject to USAC's consent, the amount of the LOC may decrease to an amount equal to 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. Once USAC, in coordination with the Commission, has determined that the recipient has met its interim benchmark for deployment to 80 percent of the required coverage area; and subject to USAC's consent, the amount of the LOC may decrease to an amount equal to 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. After USAC, in coordination with the Commission, has determined that the recipient has met its final benchmark for deployment to a minimum of 85 percent of the required coverage area by state and at least 75 percent by each census block group or census tract in a state included in the LOC, the recipient may relinquish its LOC. Each winning bidder will be allowed to provide a single LOC covering all its winning bids within a single state.

20. At the time a winning bidder in MF-II submits its LOC, it also will be required to provide an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the LOC, under section 541 of the Bankruptcy Code. If the winning bidder is not prepared to present its LOC at the time of the long-form application filing, it may submit a commitment letter from the bank issuing the LOC in the long-form application filing.

21. An entity will be considered to have an auction default and will be subject to a forfeiture payment if it fails to timely file a long-form application or meet the document submission deadlines, or is found ineligible or unqualified to receive MF-II support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support. All bidders will be subject to the same $3,000 base forfeiture per violation, subject to adjustment based on the criteria set forth in the Commission's forfeiture guidelines. A violation is defined as any form of default with respect to each geographic unit subject to a bid. However, the total base forfeiture that could be owed by a winning bidder is limited to five percent of its total bid amount for the entire ten-year support term.

22. The Wireline Competition Bureau or the Wireless Telecommunications Bureau will authorize USAC to draw on the LOC(s) to recover all the support that has been disbursed in a state in the event that the MF-II recipient does not meet the relevant service milestones and does not cure its compliance gap. USAC will recover support from ETCs associated with their compliance gap in three separate circumstances. First, for interim milestones, if the ETC has a compliance gap of 50 percent or more of the eligible square miles that the ETC is required to have covered by the relevant interim milestone (i.e., Tier 4 status) at the state level, USAC will withhold 50 percent of the ETC's monthly support for that state, and the ETC will be required to file quarterly reports. If, after having 50 percent of support withheld for six months, the ETC has not reported that it has a compliance gap of less than 50 percent at the state level (i.e., the ETC is eligible for Tier 3 or lower or is in compliance), USAC will withhold 100 percent of the ETC's support for the state and will commence recovery action for a percentage of support that is equal to the ETC's compliance gap plus 10 percent of the ETC's support that has been paid to that point. At this point, this ETC will have six months to pay back the amount of support that USAC seeks to recover. If at any point during the six-year period for deployment the ETC reports that it is eligible for

Tier 1 status, and USAC is able to substantiate that report, the ETC will have its support fully restored including any support that had been withheld, USAC will repay any funds that were recovered, and the ETC will move to Tier 1 status. If at the end of six months the ETC has not fully paid back the support, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all the support that has been disbursed to the ETC.

23. Second, if an ETC misses the final milestone(s), it must identify by what percentage the milestone has been missed at the state level and/or any of the census block group(s) or census tract(s) in the state. The ETC will then have 12 months from that date to come into full compliance with both of those milestones. If it does not come into full compliance within 12 months because it fails to meet the 85 percent benchmark (even if it meets the 75 percent benchmark for some or all the census block group(s) or census tract(s)), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter, and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the ETC received per eligible square mile in the state over the six-year period multiplied by the number of square miles unserved in the ETC's winning areas in the state that would be required to meet the 85 percent benchmark, plus 10 percent of the ETC's total MF-II support received in the state over the six-year period for deployment. After the ETC has paid the calculated recovery amount for failure to comply with the final deployment milestone, the Bureaus will calculate a reduced support payment for the remaining support term based on the percentage of deployment coverage completed. If at the end of six months the ETC has not fully paid back the support for missing the relevant 85 percent benchmark, the ETC shall be liable for repayment of all the support that has been disbursed to the ETC for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the LOC(s) to recover all the support that has been disbursed to the ETC for that state. A similar approach will apply if the ETC meets the 85 percent statewide benchmark but misses the 75 percent benchmark(s) for any census block group(s) or census tract(s) in the state at the final milestone and the ETC does not come into full compliance by meeting the 75 percent benchmark within 12 months. At this point, the ETC will have six months to repay the support USAC seeks to recover. After the ETC has paid the calculated recovery amount, the Bureaus will calculate a reduced support payment for the remaining support term. If at the end of six months the ETC has not fully paid back the support for missing the relevant 75 percent benchmark(s), the ETC shall be liable for repayment of all the support that has been disbursed to the ETC for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the LOC(s) to recover all the support that has been disbursed to the ETC for that state. In the event that USAC draws on a letter of credit to recover all the support that has been disbursed to the ETC for a state, the ETC's participation in MF-II in that state will immediately end and no further support will be paid.

24. Third, after compliance with the final build-out milestones has been verified and the ETC closes its letter of credit, if at any point during the remainder of the 10-year term of support it is determined that the ETC does not have sufficient evidence to demonstrate that it is offering the requisite service to the required percentage of square miles by census block group or census tract, or state, USAC will withhold support for a period not to exceed six months until the ETC demonstrates that it is again providing the requisite service to the required percentage of square miles. When the ETC's demonstration of coverage has been verified by USAC, USAC will pay any withheld support and resume ongoing

disbursements. If the ETC cannot provide a verifiable demonstration of coverage within the permitted six-month period, USAC will recover an amount of support that is equal to 1.89 times the average amount of support per square mile received in the winning bid area over the six-year deployment period for the relevant number of square miles for which the ETC has failed to produce sufficient evidence, plus 10 percent of the ETC's total support received in that winning bid over the six-year deployment time period and will reduce ongoing annual support. If the ETC does not repay the Commission after a six-month period permitted for repayment, it may be subject to additional non-compliance measures, including the reduction of support payments for the remaining support term as discussed above, and forfeitures. MF-II recipients may also be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including, but not limited to potential revocation of ETC designation and suspension or debarment.

25. Once an MF-II recipient has been authorized to begin receiving support, it will be required to report certain information so that the Commission and USAC can track the progress of MF-II recipients and monitor their use of the public's funds before and after they meet service milestones. All MF-II recipients will be required to file annual reports. Recipients will be required to file their reports each year following the year in which the auction closes by July 1, including all the certifications required under the MF-II rules, and in which the recipient will update information, as required for the following year.

26. MF-II recipients will be required to file a Milestone Report on or before its third, fourth, fifth, and sixth year performance deadline. The Bureaus will define more precisely the content and format of the information, including substantiation that recipients are required to include in their Milestone Reports, such that it is consistent with the evidence that will be required from challenging parties in the challenge process. Reports should be filed via the portal that USAC is creating to receive filings by universal service support recipients.

27. Support will be reduced for recipients that miss reporting, certification, and milestone filing deadlines. A minimum reduction of support of seven days of total statewide support for a winning bid in any state for which a filing deadline is missed will be imposed. In addition to the reduction of the initial seven days of support, support will be reduced further state-wide on a pro-rata daily basis until the MF-II recipient files the required report or certification. For a late filer, a one-time grace period of three days will be provided so that a recipient that quickly rectifies its error within three days of the deadline will not be subject to the seven-day minimum loss of support. USAC will send a letter to such a recipient notifying it that its filing was late but cured within the grace period. If the recipient again files any filing late, the grace period will not be available.

28. Each recipient will be required to maintain the accuracy and completeness of the information it furnishes in its long-form application and its annual and milestone reports. Recipients must update their annual reports and milestone reports to provide information about any substantial change that may be of decisional significance regarding their eligibility for MF-II support and compliance with MF-II requirements. Such notification of a substantial change, including any reduction in the percentage of eligible square miles being served or any failure to comply with any of the MF-II requirements, must be submitted within 10 business days after the reportable event occurs. If a support recipient drops below the level of service to which it has certified in a milestone report or an annual report during the six-year deployment period, it will be subject to the FCC rules for non-compliance.

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

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."[28]

30. The Commission has considered the economic impact on small entities in reaching its final conclusions and taking action in this proceeding. The rules that we adopt in the Order will provide greater certainty and flexibility for all carriers, including small entities. For example, we conclude that the minimum geographic area for bidding should be census block groups or census tracts containing one or more census blocks with eligible areas for bidding and support for MF-II. We found that adopting a smaller geographic area would allow the Commission to target support more efficiently to specific areas and provide bidders, including small entities, the ability to tailor their bids to their business plans. We expect that the auction design will similarly account for the needs of small entities.

31. To determine coverage levels in individual census blocks and whether MF-II support is being awarded, we have decided to rely on Form 477 and high-cost disbursement data available from USAC. Not only is this information the most reliable data currently available for the purpose of determining the coverage levels of existing mobile services, but it can also provide sufficiently granular information to identify those areas of the country that lack 4G LTE service or where such service is only provided by a subsidized provider. Moreover, we will utilize a streamlined challenge process to provide interested parties, including small entities, with an opportunity to challenge the coverage analysis and improve its accuracy. The Bureaus will make an initial determination of eligible areas by census block as part of the pre-auction process. Subsequently, the Bureaus will implement a process consistent with the decisions we will make after review of the record received in response to the Further Notice of Proposed Rulemaking included with this Order. We anticipate that this challenge process will be more streamlined for all parties, including small entities, as it will be based on Form 477 data, which use a uniform filing format.

32. We amend our rules for the phase-down of identical support to account for the relative costs of deploying a coverage-based network given the differing terrain throughout the United States. Wireless providers, including smaller providers, incur additional costs to deploy service in more difficult terrain. Accordingly, the Bureaus will apply a more-refined methodology that uses a terrain factor as a proxy for determining higher cost areas. In census blocks determined (after the completion of the challenge process) not to be eligible for MF-II support, legacy support will be phased down starting the first day of the month following release of a public notice announcing the close of the MF-II auction. On that same date, legacy support for current recipients in eligible census blocks shall either be converted to MF-II support (for the winning bidder), maintained (for one CETC in areas without a winning bidder), or subject to phase down (for all other CETCs). More specifically, in census blocks determined (after the completion of the challenge process) not to be eligible for MF-II, legacy support will be phased down starting the first day of the month following the close of the MF-II auction. For the first 12 months thereafter, phase-down support shall be 2/3 of the legacy support for each CETC associated with that area.

[28] 5 U.S.C. § 603(c)(1)-(c)(4).

For the next 12 months, phase-down support shall be 1/3 of the legacy support for each CETC associated with that area. All legacy support shall end thereafter. For a winning bidder that is a CETC receiving legacy support in the area of its bid, MF-II support shall commence on the first day of the month after the auction concludes. To ensure a smooth transition to MF-II support, and to the extent the Commission authorizes a winning bidder to receive MF-II support after that date, a winning bidder will receive support payments at the current legacy support level until such Commission action. A non-CETC winning bidder will receive MF-II support once the Commission issues a public notice authorizing MF-II support to the bidder. In eligible areas where there is no winning bidder in MF-II, the CETC receiving the minimum level of sustainable support will continue to receive such support until further Commission action, but for no more than five years from the first day of the month following the close of the MF-II auction. For CETCs receiving support in areas eligible for MF-II that do not either win MF-II support or receive the minimum level of sustainable support, the phase-down of support shall commence on the first day of the month after the auction concludes. For the first 12 months, phase-down support shall be 2/3 of the legacy support for each CETC associated with that area. For the next 12 months thereafter, phase-down support shall be 1/3 of the legacy support for each CETC associated with that area. All legacy support shall end thereafter. We conclude that this two-year phase-down schedule will ensure that affected CETCs, including smaller providers, will have a smooth transition in areas that are too costly to serve absent universal service subsidies.

33. We have taken a number of steps to ensure that small entities have the opportunity to participate in the MF-II auction. For example, we adopt more flexible eligibility requirements by permitting a winning bidder in the MF-II auction to obtain its ETC designation *after* the close of the auction, provided that it submits proof of its ETC designation within 180 days of the public notice identifying winning bidders. We found that the benefits of encouraging greater participation in the competitive bidding process by all interested parties, including small entities, outweigh the possible risk that a winning bidder will not meet the necessary requirements to be designated as an ETC. We also recognized that some qualified bidders, including small entities, may be hesitant to invest resources to apply for an ETC designation prior to the competitive bidding process without any sense of whether they are likely to be awarded MF-II support.

34. While we requested comment on whether to adopt a bidding credit preference for Tribally-owned-and-controlled entities, we find that such a bidding credit preference is unnecessary for the MF-II auction. Setting aside funds specifically to serve Tribal lands is likely to accomplish our goal of ensuring greater coverage on Tribal lands, and layering an additional bidding credit for Tribal carriers on top of the funding exclusively available for service to Tribal lands could deter other entities from bidding to serve Tribal lands, reducing both the competitiveness of the auction and the potential reach of our finite funds for MF-II.

35. The Commission requested comment on the adoption of a small business bidding preference and the small business definition that should apply if it adopts such a bidding preference for MF- II. We, however, decline to adopt a bidding preference for small businesses for MF-II. We agree with commenters that oppose a bidding preference for small businesses, concluding that such credits are unnecessary for an MF-II auction and would not further the objective of MF-II of encouraging the efficient use of universal support funds because a bidding credit for small businesses could potentially reduce the reach of our finite funds.

36. We adopt requirements for the short-form and long-form applications that will maximize the number and types of entities that can participate. For example, we adopt a two-stage application process for an applicant seeking to participate in the MF-II auction under which interested parties will submit a pre-auction "short-form" application, providing basic information and certifications regarding their eligibility to receive support, and then a long-form application, fully disclosing its ownership structure, information and certifications regarding applicant eligibility, and plans to meet performance requirements. This process is similar to that used in spectrum license auctions and for Mobility Fund Phase I. Since we anticipate that many interested parties, including small entities, will already be familiar with these requirements, we expect that the application procedures will minimize burdens on applicants and encourage a wide variety of parties to participate.

37. In light of concerns expressed by commenters, including small entities, we adopt more flexible provisions for MF-II LOCs to help ease the administrative burden for support recipients. For example, we adopt LOC provisions that closely align with the CAF-II LOC process and the MF-II performance requirements, allowing the LOC to decrease over time as a support recipient satisfies its minimum coverage and service requirements. We also allow winning bidders to provide a single LOC covering all its winning bids within a single state, reducing the number of LOCs that a winning bidder may need. Moreover, we amend and expand the definition of an "acceptable bank" for the purposes of MF-II LOC requirements, which will lower barriers for entities, particularly small and rural businesses that might otherwise face obstacles in obtaining an LOC from a smaller pool of banks. We also allow the submission of a commitment letter from the bank issuing the LOC in the long-form application filing, if the winning bidder is not prepared to present its LOC at the time of the long-form application filing.

38. Similarly, we adopt more flexible measures for non-compliance that will better enable support recipients, including small entities, to meet our MF-II goals of preserving and expanding service. For example, we adopt a more measured approach to recouping payment in the event of default than the Commission employed in the MF-I auction. We also limit when USAC will be permitted to recover support from ETCs associated with their compliance gap and conclude that only if the ETC fails to repay in full after six months, USAC will be authorized to draw on the letter of credit to recover 100 percent of the support that has been disbursed to the ETC within the state.

39. We note that the reporting requirements we adopt are tailored to ensuring that support is used for its intended purposes and so that we and USAC can monitor the ongoing progress and performance of all MF-II recipients. We find the benefits in establishing annual and milestone reporting obligations outweigh any potential burdens on the recipients in filing these reports because the targeted information required will be the type of data that MF-II recipients will be already collecting for their own business purposes and will help to ensure that program goals are met. Nevertheless, to help minimize the burden of reporting requirements, including the burden on small businesses, we have adopted annual and milestone reporting requirements that are consistent with the reporting requirements for MF-I and CAF-II support recipients, including grace periods for missed filing deadlines.

G. Report to Congress

40. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[29] In

[29] 5 U.S.C. § 801(a)(1)(A).

addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.[30]

[30] *See id*. § 604(b).

APPENDIX C

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980,[0] as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rules proposed in this Further Notice of Proposed Rulemaking (Further Notice). The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided on this Report and Order (Order). The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[0] In addition, the Further Notice and IRFA (or summaries thereof) will be published in the Federal Register.[0]

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

2. In the Order, we adopt the framework for moving forward with the Mobility Fund Phase II (MF-II) and Tribal Mobility Fund Phase II, which will allocate up to $4.53 billion over the next decade to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. The funding for this effort will come from the redirection of legacy subsidies and distributed using a market-based, multi-round reverse auction and will come with defined, concrete compliance requirements so that rural consumers will be adequately served by the mobile carriers receiving universal service support.

3. In the Further Notice, we propose a robust challenge process to supplement our own coverage maps and to ensure that we are targeting support where it is most needed. Specifically, because record filings have become more specific the past several months, including detailed, technical proposals regarding the challenge process in the past few weeks, we seek further comment on the parameters for the challenge process for MF-II. We are committed to a robust, targeted challenge process that efficiently resolves disputes about areas eligible for MF-II support. Our overarching objective is to quickly transition away from the legacy CETC support system, where support was never awarded based on the need to support the deployment of mobile broadband, to a system directed to that policy goal. The challenge process is an integral part of that determination, to build upon and improve provider-filed and -certified Form 477 data, which remain the best available data source. We, therefore, seek general comment on a couple of potential structures for the challenge process. While we are presenting them in this Further Notice as separate options, we want to be clear that we are not proposing to adopt either option wholesale. Rather, we intend to take the most effective parameters from these various options, as well as possible additional alternatives, to assemble a "best in class" structure for the challenge process.

[0] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12 has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Public Law No. 104-121, 110 Stat. 857 (1996).

[0] *See* 5 U.S.C. § 603(a).

[0] *Id.*

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 1302, and sections 1.1, 1.3, 1.421, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.3, 1.421, 1.427, and 1.429.

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

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[0] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[0] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[0] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[0]

6. **Small Entities, Small Organizations, Small Governmental Jurisdictions**. Our proposed actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.[0] As of 2014, according to the SBA, there were 28.2 million small businesses in the U.S., which represented 99.7% of all businesses in the United States.[0] Additionally, a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[0] Nationwide, as of 2007, there were approximately 1,621,215 small organizations.[0] Finally, the term "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[0]

[0] *See* 5 U.S.C. § 603(b)(3).

[0] *See* 5 U.S.C. § 601(6).

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

[0] *See* 15 U.S.C. § 632.

[0] *See* 5 U.S.C. § 601(3)-(6).

[0] *See* SBA, Office of Advocacy, "Frequently Asked Questions", http://web.sba.gov/faqs/faqindex.cfm?areaID=24 (last visited Mar. 2014).

[0] 5 U.S.C. § 601(4).

[0] INDEPENDENT SECTOR, THE NEW NONPROFIT ALMANAC & DESK REFERENCE (2010).

[0] 5 U.S.C. § 601(5).

Census Bureau data for 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.[0] We estimate that, of this total, as many as 88,761 entities may qualify as "small governmental jurisdictions."[0] Thus, we estimate that most governmental jurisdictions are small.

7. **Wireless Telecommunications Carriers (except Satellite)**. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[0] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[0] For this industry, census data for 2012 show that there were 967 firms that operated for the entire year.[0] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[0] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.[0] Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.[0] Thus, using available data, we estimate that the majority of wireless firms can be considered small.

8. **Internet Service Providers**. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to

[0] U.S. Census Bureau, Statistical Abstract of the United States: 2012 at 267, Table 429 (2011), http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf (citing data from 2007).

[0] The 2012 U.S. Census data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. *See* U.S. Census Bureau, City and Town Totals Vintage: 2011, http://www.census.gov/popest/data/cities/totals/2011/index.html (last visited Oct. 20, 2016). If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

[0] NAICS Code 517210. *See* http://www.census.gov/cgi-bin/ssd/naics/naicsrch.

[0] 13 CFR § 121.201, NAICS code 517210. The now-superseded, pre-2007 CFR citations were 13 CFR § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[0] U.S. Census Bureau, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210" (rel. Jan. 8, 2016).

[0] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "100 employees or more."

[0] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[0] *See id*.

transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies."[0] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.[0] Census Bureau data for 2012 shows that there were 3,117 firms that operated for the entire year.[0] Of this total, 3,083 firms had employment of 999 or fewer employees, and 34 firms had employment of 1,000 employees or more.[0] Thus, under this size standard, the majority of firms in this industry can be considered small. In addition, while Internet Service Providers (broadband) are a subcategory of the broader category of Wired Telecommunications Carrier, there is Census Bureau data specific to Internet Service Providers (broadband). For 2012, Census Bureau data shows there were a total of 1,180 firms in the subcategory of Internet Service Providers (broadband) that operated for the entire year.[0] Of this total, 1,178 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more.[0] Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

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

9. In the Further Notice, we seek further comment on the parameters for the challenge process for MF-II. We seek general comment on a couple of potential structures for the challenge process: (1) a proposal by U.S. Cellular; and (2) a joint proposal by AT&T, ATN, and Blue Wireless. We seek comment as well on any additional options that parties may wish to propose, such as, for instance, NTCA's recent proposal that would require all Form 477 filers whose filings represent a basis for declaring certain areas not eligible for MF-II support to supplement those filings within 60 days of the release of a preliminary list of areas not eligible for MF-II support. We urge commenters to come up with additional proposals, including consensus proposals that accommodate the interests of multiple parties.

10. Under U.S. Cellular's proposal (Option A), the challenge would consist of a certification by the challenging party that in a specific area, the party has a good faith belief, based on actual knowledge or past data collection, that there is not 4G LTE with at least 5 Mbps download speed coverage as depicted on Form 477. In support of such a challenge, the party would need to file a shapefile in a standard format of the challenged area. Challengers could be either a carrier that is submitting a challenge within its license area or a state or local government that is submitting a challenge within its jurisdiction, potentially through a state PUC. A challenged carrier may respond by submitting an

[0] U.S. Census Bureau, 2012 NAICS Definitions, "517110 Wired Telecommunications Carriers", http://www.census.gov/econ/isp/sampler.php?naicscode=517110&naicslevel=6 (last visited Oct. 20, 2016) (partial definition).

[0] 13 CFR § 121.201, NAICS code 517110.

[0] U.S. Census Bureau, Subject Series: Information, Table 5, "Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517110" (rel. Jan. 8, 2016).

[0] *See id.*

[0] U.S. Census Bureau, Information, Subject Series: "Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 5171103" (rel. Jan. 8, 2016).

[0] *See id.*

engineering (propagation) map that demonstrates expected coverage for the challenged area. The submission must be substantiated by the certification of a qualified engineer, under penalty of perjury. Once the challenged carrier has timely submitted a map that shows the challenged area to be within the contour of coverage, the original challenger may submit actual speed data (potentially with supporting signal strength data) from hardware- or software-based drive tests or app-based tests (e.g., such as those from established companies such as Ookla, Rootmetrics, Nielsen, and Mosaik) that spatially cover the challenged area. This submission must also be substantiated by the certification of a qualified engineer, under penalty of perjury. A party seeking to challenge the Bureaus' initial determination of eligibility for MF-II support would have the burden of proving its claims by a preponderance of the evidence.

11. Under the joint proposal by AT&T, ATN, and Blue Wireless (Option B), challenging parties would have 60 days following the Commission's release of a list of eligible areas to submit evidence, which would be filed in the public record. Service providers and governmental entities located in or near the relevant areas would be only parties eligible to participate. The evidence submitted in a challenge must include a map(s) in shapefile format, of the challenged area. In addition, challenging parties must report actual download speed test data using either actual speed tests or transmitter monitoring data. For the actual speed tests, data from app-based tests (many of which are freely available on consumer devices), and both hardware- and software-based drive tests would be permitted, so long as they met certain standards. The challenge evidence must be certified under penalty of perjury. Challenged parties would have 30 days to file their certified responses. The responses must meet the same requirements as those for challenging parties – i.e., coverage shapefiles and speed test data. The Commission would reach decisions based on the weight of the evidence and determine whether any changes to its initial list of eligible areas is warranted.

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

12. 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 or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities."[0] We expect to consider all these factors when we have received substantive comment from the public and potentially affected entities.

13. The Commission has made an effort to anticipate the challenges faced by small entities in complying with its rules. For example, the Commission specifically notes that smaller providers will have fewer resources available, and we therefore specifically seek comment on ways in which we can reduce the burden of the challenge process on smaller providers. The Commission also seeks comment on specific principles of the challenge proposals and ways to make them as efficient as possible for all interested parties, including small entities.

14. *Option A.* In order to further administrative efficiency, the Further Notice seeks comment on whether we should require that the challenged area be at least a minimum size and whether we should

[0] 5 U.S.C. § 603(c)(1)-(c)(4).

automatically dismiss *de minimis* challenges (e.g., challenges that address a very small percentage of the square miles in a given census block group or census tract). The Further Notice also seeks comment regarding whether we should permit challenges for areas that the Bureaus identify as eligible (i.e., areas where the Form 477 data show no qualified 4G LTE coverage from an unsubsidized carrier), which could further promote efficiencies for all parties, including small entities. The Commission emphasizes that there would be far fewer such challenges than for ineligible areas since the challenging party would likely be the same carrier that submitted – and certified – the Form 477 data that allegedly shows too small a coverage area. Recognizing the burden that may be placed on parties responding to challenges and rebuttals, including small entities, the Further Notice requests comment on the specific technical parameters that must be provided and how much time challenged carriers, or original challengers, would require to respond.

15. *Option B.* In addition to seeking comment on the proposals of Option B, the Commission asks what requirements we should adopt for speed tests to ensure that they will be representative of coverage in a disputed area, including those pertaining to time and distance between tests. The Commission notes that we will need to balance the accuracy of any challenge with the burdens on affected parties, including small entities, and the timeliness of resolution. The Commission also seeks comment on whether the burden of proof should be the same or reduced for challenged parties, including small entities, recognizing that efficiency gains could be outweighed by the burden placed on the challenged party.

16. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Further Notice and this IRFA, in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the Further Notice were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

17. None.

APPENDIX D

Commenter Short Names

Short Name	Name of Filer
ACA	American Cable Association
ACS	Alaska Communications Systems
ADTRAN	ADTRAN, Inc.
ARC	Alliance of Rural CMRS Carriers
AEM	Association of Equipment Manufacturers
AT&T	AT&T Services, Inc.
ATN	Atlantic Tele-Network
Blooston	Blooston Rural Carriers
Blue Wireless	Buffalo-Lake Erie Wireless
C Spire	Cellular South, Inc. d/b/a C Spire
Carolina West	Carolina West Wireless, Inc.
CCA	Competitive Carriers Association
Cellular One	MTPCS, LLC d/b/a Cellular One
CenturyLink	CenturyLink
Clearwire	Clearwire Corporation
CoBank	CoBank, ACB
CPUC	California Public Utilities Commission
CTIA	CTIA−The Wireless Association®
Deere	Deere & Company
Delcambre	Delcambre Cellular LLC
Frontier	Frontier Communications
GCI	General Communication, Inc.

GRTI	Gila River Telecommunications, Inc.
HTI	Hopi Telecommunications Inc.
INCOMPAS	INCOMPAS
IURC	Indiana Utility Regulatory Commission
ITI	Information Technology Industry Council
ITTA	Independent Telephone & Telecommunications Alliance
John Deere	John Deere
LCI	Louisiana Cellular, Inc.
MDTC	Massachusetts Department of Telecommunications and Cable
Mescalero	Mescalero Apache Telecom, Inc.
MPSC	Mississippi Public Service Commission
MITS	Montana Independent Telecommunications Systems
NASUCA	National Association of State Utility Consumer Advocates
CFC	National Rural Utilities Cooperative Finance Corporation
NPM and NCAI	Native Public Media and National Congress of American Indians
NNTRC	Navajo Nation Telecommunications Regulatory Commission
NECA	National Exchange Carrier Association, Inc.
NPSC	Nebraska Public Service Commission
NTCA	NTCA-The Rural Broadband Association
NTCH	NTCH, Inc.
NTELOS	NTELOS Holdings Corp.
NTTA	National Tribal Telecommunications Association
PTCI	Panhandle Telephone Cooperative, Inc.
PCIA	PCIA—The Wireless Infrastructure Association

Ohio PUC	Public Utilities Commission of Ohio
RCA	RCA–The Competitive Carriers Association
Senator Roger F. Wicker et al.	Senators Roger F. Wicker, Joe Manchin, III, Tammy Baldwin, Roy Blunt, Richard Burr, Shelley Moore Capito, Steve Daines, Joni Ernst, Deb Fischer, Cory Gardner, Heidi Heitkamp, Ron Johnson, Angus S. King, Jr., Amy Klobuchar, Claire McCaskill, Jerry Moran, Gary Peters, Pat Roberts, Marco Rubio, Thomas Tillis, David Vitter, Mark Warner, Roy Wyden, Thad Cochran, John Boozman, and Mark Kirk
RTG	Rural Telecommunications Group
RWA	Rural Wireless Association
RWC	Rural Wireless Carriers
Satellite Providers	DISH Network L.L.C., EchoStar Technologies L.L.C., Hughes Network Systems, LLC, and ViaSat, Inc.
SDPUC	South Dakota Public Utilities Commission
SBI	Smith Bagley, Inc.
State of Alaska Dep’t of Admin.	State of Alaska Department of Administration
T-Mobile	T-Mobile USA, Inc.
TCC	Tanana Chiefs Conference
TTI	Townes Telecommunications, Inc.
Union Wireless	Union Wireless
U.S. Cellular	United States Cellular Corporation
USA Coalition	Universal Service for America Coalition
Verizon	Verizon and Verizon Wireless
Windstream	Windstream Communications, Inc.

APPENDIX E

Illustrative Form of Letter of Credit

[Subject to Issuing Bank Requirements]

No. _____

[Name and Address of Issuing Bank]

[Date of Issuance]

[AMOUNT]

[EXPIRATION DATE]

BENEFICIARY

[USAC]

[Address]

LETTER OF CREDIT PROVIDER

[Winning Bidder Name]

[Address]

Ladies and Gentlemen:

We hereby establish, at the request and for the account of [Winning Bidder], in your favor, as required under the Report and Order and Further Notice of Proposed Rulemaking, adopted on February 23, 2017 issued by the Federal Communications Commission ("FCC") in the matter of Connect America Fund, WC Docket 10-90 and Universal Service Reform – Mobility Fund WT Docket No. 10-208 (the "Order"), our Irrevocable Standby Letter of Credit No. _____, in the amount of [State amount of Letter of Credit in words and figures], expiring at the close of banking business at our office described in the following paragraph, on [the date which is seven years and nine months from the date of issuance/ or the date which is one year from the date of issuance, provided the Issuing Bank includes an evergreen clause that provides for automatic renewal unless the Issuing Bank gives notice of non-renewal to USAC by a nationally recognized overnight delivery service, with a copy to the FCC, at least sixty days but not more than ninety days prior to the expiry thereof], or such earlier date as the Letter of Credit is terminated by USAC (the "Expiration Date"). Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the Order.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring thereon to the number of this Letter of Credit, accompanied by your written and completed certificate signed by you substantially in the form of Annex B attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at [BANK ADDRESS] and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the Expiration Date, we will honor the same not later than the first banking day after presentation thereof in accordance with your payment instructions. Payment under this Letter of Credit shall be made by [check/wire transfer of Federal Reserve Bank of New York funds] to the payee and for the account you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall be subject to automatic amendment by a decrease in the amount available hereunder to the amount specified in USAC's certificate purportedly signed by two authorized representatives of USAC and purportedly countersigned by a representative of the Federal Communications Commission in the form attached as Annex C, which amendment shall automatically become effective upon receipt of such certificate.

This Letter of Credit shall be canceled and terminated upon receipt by us of USAC's certificate purportedly signed by two authorized representatives of USAC and purportedly countersigned by a representative of the Federal Communications Commission in the form attached as Annex D.

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

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

[NAME OF BANK]

[BANK SIGNATURE]

ANNEX A

Form of Draft

To: [Issuing Bank]

DRAWN ON LETTER OF CREDIT No: _____

AT SIGHT

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

FUNDS TO: _____

_____

_____

Account (_____)

AS [MOBILITY FUND REPAYMENT]

[AMOUNT IN WORDS] DOLLARS AND NO/CENTS

$[AMOUNT IN NUMBERS]

Universal Service Administrative Company

By:_____
Name:
Title:

ANNEX B

Draw Certificate

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the Universal Service Administrative Company ("USAC") and (b) Report and Order and Further Notice of Proposed Rulemaking, adopted on February 23, 2017, issued by the Federal Communications Commission ("FCC") in the matter of Connect America Fund, WC Docket 10-90 and Universal Service Reform – Mobility Fund, WT Docket No. 10-208 (the "Order"), pursuant to which [Name of Winning Bidder] (the "LC Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meanings stated in the Order), that:

The [Name of Winning Bidder] has [defaulted in its build-out obligation/or state other performance default], that is evidenced by a letter signed by the Chief of the [Wireless Telecommunications Bureau/Wireline Competition Bureau] or [his/her] designee, dated _ , 20__ , a true copy of which is attached hereto. Accordingly, a draw of the entire amount of the Letter of Credit No. _____ is authorized.

OR

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

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

Universal Service Administrative Company

By: _____

Name:

Title:

ANNEX C

Certificate Regarding Reduction of Letter of Credit

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the Universal Service Administrative Company ("USAC"), and (b) the Report and Order and Further Notice of Proposed Rulemaking, adopted on February 23, 2017, issued by the Federal Communications Commission ("FCC") in the matter of Connect America Fund, WC Docket 10-90 and Universal Service Reform – Mobility Fund, WT Docket No. 10-208 (the "Order"), (all capitalized terms used herein but not defined herein having the meaning stated or described in the Order), that:

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

(a) The Winning Bidder has met one of its interim benchmarks;

(b) or

The Winning Bidder has sold study area number(s) [state study area numbers] and has paid USAC all amounts due with respect to any default resulting from such sale.

(2) By reason of the event or circumstance described in paragraph (1) of this certificate and effective upon the receipt by the Bank of this certificate (countersigned as set forth below), the amount of the Letter of Credit shall be reduced to the amount equal to [state new amount of Letter of Credit in words and figures].

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

Universal Service Administrative Company

By:_____

Name:
Title:

By:_____

Name:

Title:

COUNTERSIGNED:

FEDERAL COMMUNICATIONS COMMISSION

By: _____

Name:

Its Authorized Signatory]

ANNEX D

Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the Universal Service Administrative Company ("USAC"), and (b) the Report and Order and Further Notice of Proposed Rulemaking, adopted on February 23, 2017, issued by the Federal Communications Commission ("FCC") in the matter of Connect America Fund, WC Docket 10-90 and Universal Service Reform – Mobility Fund, WT Docket No. 10-208 (the "Order"), (all capitalized terms used herein but not defined herein having the meaning stated or described in the Order), that:

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

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

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

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

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

Universal Service Administrative Company

By:_____

Name:
Title:

By:_____

Name:

Title:

COUNTERSIGNED:

FEDERAL COMMUNICATIONS COMMISSION

By: _____

Name:

Its Authorized Signatory

STATEMENT OF

CHAIRMAN AJIT PAI

Re: *Connect America Fund*, WC Docket No. 10-90; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208.

Last October, I found myself on the road from Wichita, Kansas to Des Moines, Iowa. I'm from that part of the world, but even I had never been through some of the small towns we drove through, like Allen, Kansas, Bethany, Missouri, and Osceola, Iowa. More often than I would have liked, I found that the signal on my mobile phone was either weak or nonexistent. And that was even on relatively major roads such as Interstate 35.

That experience brought home to me the need to expand the availability of mobile broadband in rural areas. And it underscored the importance of a key part of the Digital Empowerment Agenda I had proposed one month before. Specifically, in September 2016, I called for moving forward quickly with Phase II of the Mobility Fund (MF-II). For far too long now, the Commission has not kept its promise to rural America to hold an MF-II auction. While urban and suburban America continue to see improvements in mobile service, many rural areas continue to be dead zones. We cannot leave these areas behind. From precision agriculture to the sharing economy, mobile broadband is critical to rural America.

With this order, the Commission begins to deliver for this part of the country. First, we make available $4.53 billion in new funding over ten years for building mobile networks where the market would not otherwise do so. Second, where the market already provides LTE service without a subsidy, we re-direct legacy subsidies to areas that need the help. Simply put, we are going to spend money in the areas that are most in need so that 4G LTE coverage knows no geographic limitations in our nation.

A few key features of MF-II warrant mention. *First*, we will use a reverse auction to ensure funds are distributed efficiently. This will help see that taxpayers get the most bang for their universal service buck. *Second*, we will use geographic area as the bidding unit. We do this because mobile networks are increasingly important for services like precision agriculture or remote monitoring which don't necessarily take place along roadways or in population centers. *Third*, we seek public comment on establishing a robust challenge process for determining the set of areas eligible for bidding. This will allow parties to help ensure that our data about what's covered and what's not is accurate so we can target funding to the areas that lack service. I appreciate the stakeholders who have come forward in recent days with specific and constructive suggestions for how we should structure the challenge process. And I look forward to reviewing the record that will be compiled in response to those proposals. *Fourth*, we follow through on the Commission's commitment to conduct Tribal Mobility Fund Phase II, in order to advance wireless service on tribal lands. *Fifth*, whenever possible we align MF-II with the Connect America Fund Phase II (CAF-II) framework which the Commission unanimously adopted last year. In this way, both MF-II and CAF-II will have considerable similarities in terms of their support terms, compliance rules, and buildout requirements.

In conclusion, let me thank the staffs of both the Wireless Telecommunications Bureau and the Wireline Competition Bureau. Thank you, specifically, to Rita Cookmeyer, Melvin Del Rosario, Judith

Dempsey, Charles Eberle, Ben Freeman, Nese Guendelsberger, Audra Hale-Maddox, Katie King, Angela Kung, Heidi Lankau, Eliot Maenner, Carol Mattey, Sue McNeil, Aalok Mehta, Gary Michaels, Chris Miller, Alex Minard, Mark Montano, Kris Monteith, Murtaza Nasafi, Ryan Palmer, Kelly Quinn, Alex Ryback, Paroma Sanyal, Jim Schlichting, Patrick Sun, Tom Tran, Margie Wiener, and Joseph Wyer. (It would have been quicker to list everyone who didn't work on it.) I am keenly aware of the incredible amount of work you have done on this issue in the last month. And I know we'll be asking you to do even more as we seek to move to an auction as quickly as possible. Your efforts are essential in the battle to close the digital divide, and I'm grateful that you're on the front lines.

STATEMENT OF

COMMISSIONER MIGNON L. CLYBURN

Re: *Connect America Fund*, WT Docket No. 10-90; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-28

If the ultimate goal, once and for all, is to bridge the broadband divide, then a Mobility Fund, must be among the regulatory elements we erect. Ever since the FCC adopted its comprehensive universal service reforms in 2011, I have pushed for a long-term solution that a Mobility Fund Phase II auction could bring. And as recently as last month, I reiterated this view in an op-ed penned and published with Senator Joe Manchin of West Virginia.

Mobility is one of our country's greatest gifts. This untethered means of being connected has unlocked new markets for commerce, been a public safety lifeline for millions and to sum it up most succinctly, has improved and transformed all of our lives. Mobile health monitoring options are bringing about better patient outcomes, and mobile hotspots are helping children who are not so privileged complete their homework.

Then, there is the promise of 5G.

It has been projected, that the proposed next generation of mobile standards, will add about $2.7 trillion to U.S. GDP by 2030. But as we peer into a 5G future, we cannot lose sight of the fact that too many remain stuck in a 3G, 2G, or no-G world. When I visited Navajo Nation as part of my #ConnectingCommunities tour last year, I met Lucienda, a young lady who said that without the FCC's Lifeline Program, her community "would really be living back in the 1800s." Even 3G mobile broadband is a game-changer for Lucienda and many others, because low-income communities in this day and age, are disproportionately smart-phone dependent. Ensuring consistent mobile coverage for those who can barely afford that mobile handset—much less both a fixed and mobile connection—is a priority for me, as it should be for us all.

Solving these challenges will require a delicate mix of public and private dollars, along with many, many years of careful planning. We do right by rural America today, with the creation of a framework that will bring reasonably comparable mobile service to those who have been without.

And we do so through a multi-billion dollar effort, efficiently targeted via a reverse auction mechanism, that is carefully calibrated to preserve existing support where it is necessary, and expressly designed to build mobile broadband networks, where they are missing.

I am grateful to my colleagues for supporting my request to institute a challenge process that is not unduly burdensome on small providers. And, while we may not have all the elements in place today, we seek further comment on how best to structure a process that is both fair and balanced. While this will mean more work for the Commission staff, it is the right call and will yield the best results in the most expeditious way. I am likewise grateful, that one of the options my office suggested for the challenge process is contained in the Further Notice, but of course we remain open to further refinements and

welcome other ideas, to ensure an optimal result.

I must again express how grateful I am to my colleagues for endorsing a slower phasedown of support for providers relying on legacy funding. It is only fair that we take rational business planning into account, and that we do nothing to run the risk of leaving any consumer without cell phone service.

Chairman Pai, I want to especially thank you and your staff, for working closely with my office, to address outstanding concerns and for accommodating our many edits.

Last, but certainly not least, to the staff of the Wireline Competition Bureau and Wireless Telecommunications Bureau, your work on this item and your commitment to bringing mobile broadband to rural and Tribal communities across the nation deserves to be commended over and over again. Thank you.

STATEMENT OF

COMMISSIONER MICHAEL O'RIELLY

Re: Connect America Fund, WC Docket No. 10-90; Universal Service Reform – Mobility Fund, WT Docket No. 10-208

Through Mobility Fund Phase II, the Commission seeks to expand 4G LTE coverage to areas that are unserved or would be uneconomic to serve absent a subsidy. While I raised concerns in the past regarding whether a separate technology-specific fund was the best way to go, some of the decisions made in the 2011 Connect America Fund item have proven too difficult to revisit, even if more logical outcomes and greater efficiencies were possible. For that reason, I approached this item with the best intentions and the goal of making the fund as functional and economical as I could.

Accordingly, I generally support this order and further notice, which contains a number of improvements I requested to the order that had circulated last year. Among other things, this item commits to conduct a nationwide, multi-round reverse auction, shifts from road miles to a better though not perfect metric of geographic areas, ensures that there is no duplication between Mobility Fund Phase II and the Remote Areas Fund (RAF), and provides for greater input from the full Commission on future decisions.

I also appreciate the willingness of my colleagues to make additional changes to help promote the success of the program. First, a critical component of any subsidy program is determining which areas should be eligible for funding. Decisions premised on inaccurate data or faulty assumptions could result in either wasteful overbuilding or a loss of service for consumers. For this reason, as we have reformed each of the high-cost universal service programs, we have included a challenge process to ensure that these vital decisions are based on the best possible data while not unduly burdening participants or staff. Moreover, in order for a challenge process to be successful, the standards and acceptable forms of evidence must be clearly spelled out with enough time for participants to be able to assemble the data or evidence to support their filings. Therefore, I am pleased that we will now seek further comment on the challenge process. I, too, want to move forward quickly with the auction, but I expect that by taking time to resolve these questions now, we will avoid mistakes and delays at the back end. Second, I sought to ensure that the order contained sensible buildout requirements, recognizing the limitations of our overall funding capabilities and the territory to be covered. While I certainly want to maximize the areas and consumers that will receive service, if the requirements are unrealistic, we run the risk that potential bidders will decide not to participate or that providers will have to return funding several years from now. Third, the Commission commits to adopt performance goals and measures so that we can evaluate the effectiveness of the program. Finally, I support Commissioner Clyburn's focus on setting reasonable phase downs, which also complements my request that they not be too long.

This notwithstanding, I continue to have significant reservations about certain aspects of the order, such as locking in a 10-year term before we have made other key decisions. Moreover, the tribal provisions would have benefitted from more thought regarding how they interact with other universal service programs and decisions, such as the RAF. These decisions are likely to lead to greater inefficiencies than had we taken the time to find appropriate compromises based on hard data and facts.

On balance, however, this order and further notice is a relative step in the right direction. I am hopeful that with additional input from interested parties on the remaining decisions, and further collaboration with my colleagues, the Commission will complete Mobility Fund Phase II in a manner that maximizes this funding to the benefit of rural consumers.