



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 19-126, 10-90; FCC 20-5; FRS 16498]

Rural Digital Opportunity Fund, Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts the framework for the Rural Digital Opportunity Fund. The Rural Digital Opportunity Fund builds on the Connect America Fund (CAF) Phase II auction, which allocated funds to deploy networks serving more than 700,000 unserved rural homes and businesses across 45 states. The Rural Digital Opportunity Fund represents the Commission's single biggest step to close the digital divide and connect millions more rural homes and small businesses to high-speed broadband networks.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], except of §§ 54.313(e), 54.316(a)(8), (b)(5), (c)(1), 54.804 (a) through (c), and 54.806. The Commission will publish a document in the *Federal Register* announcing the effective date of those rules.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in WC Docket Nos. 19-126, 10-90; FCC 20-5, adopted on January 30, 2020 and released on February 7, 2020. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW, Washington, DC 20554 or at the following Internet address: <https://www.fcc.gov/document/fcc-launches-20-billion-rural-digital-opportunity-fund-0>.

I. INTRODUCTION

1. Bringing digital opportunity to Americans living on the wrong side of the digital divide

continues to be the Federal Communication Commission's top priority. It is imperative that the Commission take prompt and expeditious action to deliver on its goal of connecting all Americans, no matter where they live and work. Without access to broadband, rural communities cannot connect to the digital economy and the opportunities for better education, employment, healthcare, and civic and social engagement it provides.

2. In recent years, the Commission has made tremendous strides toward its goal of making broadband available to all Americans. But while the digital divide is closing, more work remains to be done. Therefore, in the Order, the Commission adopts the framework for the Rural Digital Opportunity Fund. It builds on the successful model from 2018's CAF Phase II auction, which allocated \$1.488 billion to deploy networks serving more than 700,000 unserved rural homes and businesses across 45 states. The Rural Digital Opportunity Fund represents the Commission's single biggest step to close the digital divide by providing up to \$20.4 billion to connect millions more rural homes and small businesses to high-speed broadband networks. It will ensure that networks stand the test of time by prioritizing higher network speeds and lower latency, so that those benefitting from these networks will be able to use tomorrow's Internet applications as well as today's.

II. DISCUSSION

3. To ensure continued and rapid deployment of broadband networks to unserved Americans, the Commission establishes the Rural Digital Opportunity Fund, which will commit up to \$20.4 billion over the next decade to support up to gigabit speed broadband networks in rural America. The Commission opts to allocate this funding through a multi-round, reverse, descending clock auction that favors faster services with lower latency and encourages intermodal competition in order to ensure that the greatest possible number of Americans will be connected to the best possible networks, all at a competitive cost. In light of the need to bring service both to consumers in areas wholly unserved by 25/3 Mbps, as well as those living in areas partially served, the Commission will assign funding in two phases: Phase I will target those areas that current data confirm are wholly unserved; and, Phase II will target unserved locations within areas that data demonstrates are only partially served, as well as any areas not won in Phase I. By relying on a two-phase process, the Commission can move expeditiously to

commence an auction in 2020 for those areas it already knows with certainty are currently unserved, while also ensuring that other areas are not left behind by holding a second auction once the Commission has identified any additional unserved locations through improvements to its broadband deployment data collection.

4. The Rural Digital Opportunity Fund Phase I auction will make use of many of the rules that made the CAF Phase II auction a success, with some exceptions to account for the passage of time and other changed circumstances. Most importantly, in addition to the weighting of performance tiers and latency, the Commission will assign support in the auction's clearing round to the bidder with the lowest weight. After the auction, the Commission will require Phase I support recipients to offer the required voice and broadband service to all eligible homes and small businesses within the awarded areas, without regard to the number of locations identified by the Connect America Cost Model (CAM), and instead as determined subsequently by the Wireline Competition Bureau (the Bureau). This approach differs from that used in the CAF Phase II auction, which tied the deployment and service obligations to a specific number of locations within awarded areas but allowed the recipients to demonstrate that their obligations should be reduced (along with a corresponding reduction in support) where there were fewer locations than the CAM specified. As discussed in the following, the Commission will use its cost model and current data to establish initial service milestones and to monitor interim progress, but the Commission emphasizes that Phase I bidders will be competing for support amounts to offer service to *all* locations ultimately identified in an area, not just to the specific number of locations in that area identified prior to the auction, without adjusting awarded support amounts.

5. The Commission adopts a term of support of 10 years for the Rural Digital Opportunity Fund. The Commission believes that the stability of a 10-year term of support was partially responsible for the robust participation that occurred in the CAF Phase II auction. The Commission expects that the same principles regarding encouraging long-term investments and auction participation will also apply to the Rural Digital Opportunity Fund. Most commenters addressing this issue agree that a 10-year term of support will provide the certainty and stability needed to encourage broadband deployment in unserved and underserved locations and attract participation from a wide variety of participants. Moreover,

disbursing support over a 10-year term minimizes the impact on the contribution factor. The Commission does not agree that adopting a 10-year term risks funding unsustainable projects, as one commenter suggests, because it expects bidders to seek sufficient support to build and maintain their network without an expectation of ongoing support after the 10-year support term expires. Nor does the Commission agree that bidders proposing 25/3 Mbps deployments should be offered only a five-year term. First, given that bids will be weighted to prioritize faster services, the Commission expects bidders seeking support for the 25/3 Mbps tier will win support only in areas where higher speeds are not economical, and that a five-year term may simply increase the amount sought in order to recover the same amount of costs in a shorter timeframe. The Commission also more generally finds no benefit to having multiple terms of support within the same program.

6. The Commission adopts its proposal to establish a budget of \$20.4 billion for the Rural Digital Opportunity Fund. The Commission also adopts its proposal to make available \$16 billion for Phase I, and to make available for Phase II a budget based on the remaining \$4.4 billion, along with any unawarded funds from Phase I. The Commission sought comment on whether it should reassess the adequacy of the budget after the Phase I auction. Although commenters generally supported the proposed budget, several commenters suggested that the size of the budget may be insufficient to serve all the unserved locations and supported reassessing the adequacy of the budget after Phase I. The Commission expects \$16 billion to be sufficient, given the areas eligible for Phase I, to balance its objectives of encouraging robust competition for support below the reserve price and closing the digital divide. The Commission agrees that it may be appropriate after the Phase I auction, when it knows the areas eligible for Phase II and how many unserved locations will be eligible for Phase II within those areas, to reassess the total amount of funds available for Phase II and expect to revisit this issue at that time.

7. The Rural Digital Opportunity Fund will target support to areas that lack access to both fixed voice and 25/3 Mbps broadband services in two stages. For Phase I, the Commission targets census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps. For Phase II, the Commission targets census blocks that it later determined through the Digital Opportunity Data Collection, or suitable alternative data source, are only partially served, as well as census blocks unawarded in the Phase I

auction. Because the Commission will have an additional opportunity to seek comment on how best to target Phase II support as it gathers more granular data on where broadband has been actually deployed, the Commission focused here on the areas eligible for Phase I of the auction.

8. A number of commenters support moving forward to the extent the Commission can identify unserved areas using existing data. The Commission agrees. The Commission currently has the tools and the data to identify census blocks that are wholly unserved, and directs the Bureau to use the CAM with updated coverage data using the most recent publicly available FCC Form 477 data to identify census blocks that are unserved with broadband at speeds of at least 25/3 Mbps for the auction. The FCC Form 477 data have been criticized for identifying partially served blocks as “served,” but the Commission is not aware of cases in which the data has identified as “unserved” a census block that is in fact served.

9. The Commission disagrees with commenters who argue that it should delay the auction until it has more granular data. The primary shortcomings of FCC Form 477 data do not come into play under the two-phased framework the Commission adopts here. Thus, the Commission sees no value in denying the benefits of broadband to those rural Americans it knows lacks service because there may be other unserved Americans living in other areas that it has not yet identified. Waiting for the availability of more granular data before moving forward would only further disadvantage those millions of Americans that the Commission knows does not currently have access to digital opportunity.

10. The Commission directs the Bureau to compile a preliminary list of eligible areas for Phase I of the Rural Digital Opportunity Fund auction using the following methodology. First, the Commission will include: (1) the census blocks for which price cap carriers currently receive CAF Phase II model-based support; (2) any census blocks that were eligible for, but did not receive, winning bids in the CAF Phase II auction; (3) any census blocks where a CAF Phase II auction winning bidder has defaulted; (4) the census blocks excluded from the offers of model-based support and the CAF Phase II auction because they were served with voice and broadband of at least 10/1 Mbps; (5) census blocks served by both price cap carriers and rate-of-return carriers to the extent that the census block is in the price cap carrier’s territory, using the most recent study area boundary data filed by the rate-of-return

carriers to identify their service areas and determine the portion of each census block that is outside this service area; (6) any unserved census blocks that are outside of price cap carriers' service areas where there is no certified high-cost eligible telecommunications carrier (ETC) providing service, such as the Hawaiian Homelands, and any other populated areas unserved by either a rate-of-return or price cap carrier; and (7) any census blocks identified by rate-of-return carriers in their service areas as ones where they do not expect to extend broadband (as the Commission did with the CAF Phase II auction). Not included in these categories for Phase I eligibility are census blocks where a winning bidder in the CAF Phase II auction is obligated to deploy broadband service, and census blocks where a Rural Broadband Experiment support recipient is obligated to offer at least 25/5 Mbps service over networks capable of delivering 100/25 Mbps.

11. Second, the Commission will exclude those census blocks where a terrestrial provider offers voice and 25/3 Mbps broadband service according to the most recent publicly available FCC Form 477 data. In addition, the Commission will exclude those census blocks which have been identified as having been awarded funding through the U.S. Department of Agriculture's ReConnect Program, or awarded funding through other similar federal or state broadband subsidy programs to provide 25/3 Mbps or better service. This is consistent with the Commission's overarching goal of ensuring that finite universal service support is awarded in an efficient and cost-effective manner and does not go toward overbuilding areas that already have service. Although the Commission sought comment on whether there are any other areas that it should include in the initial list of eligible areas, such as areas in legacy rate-of-return areas that are almost entirely overlapped by an unsubsidized competitor, it declines to expand the list of eligible areas at this time and instead focus Phase I on the known wholly unserved census blocks.

12. After compiling the preliminary list of eligible areas, the Bureau will conduct a limited challenge process for the Rural Digital Opportunity Fund Phase I auction consistent with the process the Bureau used for the CAF Phase II auction. Because there is an inevitable lag between the time when areas are served and the time that service is reflected in publicly available FCC Form 477 data, parties will be given an opportunity to identify areas that have subsequently become served, and the Bureau will

have the opportunity to compare the preliminary list of eligible areas with the final list to identify any obvious reporting errors. As discussed in this document, good policy requires the Commission to avoid making limited federal funding available in areas where broadband providers already are receiving support to deploy 25/3 Mbps broadband service. Thus, in order to identify which areas to exclude, the Commission directs the Bureau to provide an opportunity to identify census blocks that have been awarded support by a federal or state broadband subsidy program to provide 25/3 Mbps or better service. The Commission does this to ensure that its auction does not award duplicative or unnecessary support. The Commission does not agree with commenters who argue that a limited challenge process is insufficient and that it should provide a “robust” challenge process to identify census blocks that are not actually served, and thus should be eligible for Phase I. The Commission finds that such a challenge process would be administratively burdensome, time-consuming, and unnecessary. In a previous challenge process, the Commission found that it was very difficult to prove a negative – that is, that an area was not served. The Commission also notes that in Phase II, any areas that are reported as served based on its current data but are ultimately deemed unserved will be eligible, and expect that Phase II will occur sooner if Phase I is not delayed by a more burdensome challenge process. The Commission directs the Bureau to release a list and map of initially eligible census blocks based on the most recent publicly available FCC Form 477 data. If more recent FCC Form 477 data is available when the Commission adopts the specific procedures for the Phase I auction, the Bureau should use the more recent data and publish a final list.

13. CAF Phase II support was targeted to “census blocks where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone” by using a cost benchmark that reflected the expected amount of revenue that could reasonably be recovered from end users. In the CAF Phase II auction, the Commission included high-cost areas where the CAM estimated the cost per location to exceed \$52.50 per month. The Commission departs from that decision here in the Rural Digital Opportunity Fund auction and it will also include some census blocks where the CAM suggests the costs of deployment are below that \$52.50 high-cost threshold, but deployment has nonetheless not yet occurred. When the Commission proposed including at least some low-cost blocks, then-current data

indicated that 6.3 million locations with costs below a \$52.50 per month benchmark still lacked 25/3 Mbps broadband (including 3.4 million locations that lacked even 10/1 Mbps broadband based on staff analysis of current FCC Form 477 data), suggesting that potential end-user revenue alone had not incentivized deployment despite the model's predictions. Therefore, to encourage deployment of high-speed broadband in rural census blocks that are wholly unserved, the Commission will use a lower funding threshold to include blocks where the CAM estimates the cost per location equals or exceeds \$40 per month, rather than \$52.50. Although some commenters do not agree with providing support in such lower cost areas, the Commission finds that a modest reduction in the funding threshold is warranted given the number of census blocks where market forces alone have been insufficient to bring broadband to these areas.

14. To account for the unique challenges of deploying broadband to rural Tribal communities, the Commission will use a funding threshold of \$30 per month. This approach is consistent with the Tribal Broadband Factor established for Tribal areas for carriers that elected model-based rate-of-return support, which used a 25% decrease compared to the \$52.50 benchmark. Because the Commission will use a \$40 benchmark for the Phase I auction, the \$30 benchmark for Tribal areas reflects a 25% decrease compared to the \$40 funding threshold. Using a \$30 funding threshold for census blocks in Tribal areas, in addition to including blocks below the \$40 threshold, has the effect of increasing the reserve price in all Tribal areas by \$10 per location. Finally, to provide additional incentives in wholly unserved areas that even lack 10/1 Mbps, the Commission will also use a \$30 per month funding threshold in these areas. A number of commenters agree that the Commission should prioritize these areas, and it finds that an increased reserve price could encourage deployment in areas where rural consumers have been left behind.

15. Consistent with the approach the Commission took in the CAF Phase II auction, it adopts a general auction framework and eligibility criteria in the Order and leaves the specific procedures to 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 the Order.

16. *Auction Framework.* For Phase I, the Commission adopts a single nationwide, multi-round reverse auction with competition within and across eligible geographic areas to identify areas that will receive support and determine support amounts, as it did for the CAF Phase II auction. The Commission's experience in the CAF II auction demonstrates that reverse auctions allow for market forces to maximize the impact of finite universal service resources while awarding support to those providers that will make the most efficient use of the budgeted funds. Utilizing an auction mechanism will allow the Commission to distribute support consistent with its policy goals and priorities in a transparent manner. An auction provides a straightforward means of identifying those providers that are willing to provide voice and broadband at a competitive cost to the Fund, targeting support to prioritized areas, and determining support levels that awardees are willing to accept in exchange for the obligations the Commission imposes. Moreover, a reverse auction is consistent with the Commission's decision to provide support to at most one provider per area.

17. Commenters broadly support the use of a reverse auction to distribute Rural Digital Opportunity Fund support. For example, commenters state that based on the success of the CAF Phase II auction, reverse auctions can be expected to produce robust deployment cost-effectively. The Nebraska Public Service Commission, on the other hand, raised concerns that a reverse auction focuses on "the cheapest way to get to the minimum speed of a given speed tier to a coverage area" rather than "focusing on robust and scalable technology." The Commission disagrees. As demonstrated in CAF Phase II, reverse auctions are the best available tool to achieve the Commission's overall goal of closing the digital divide in a transparent and efficient manner while maintaining fiscal responsibility and cost-effectiveness. Moreover, in most instances, CAF Phase II winning bidders agreed to provide a higher speed than the minimum; thus, the Commission was able to push finite universal service support to many more locations at a much lower cost and higher speeds. The Commission therefore maintains that a reverse auction is the most efficient means of awarding Rural Digital Opportunity Fund support, consistent with its goal of supporting the buildout of the best possible networks in the most cost-effective manner possible.

18. Similar to the CAF Phase II auction, the Commission adopts an auction design in which

bidders committing to different performance levels will have their bids weighted to reflect its preference for higher speeds, greater usage allowances, and lower latency. However, in addition to the weights for each performance tier and latency combination adopted in the following, the Commission adopts bid processing procedures specific to the “clearing round” of the Rural Digital Opportunity Fund Phase I auction. In the clearing round, the bidding system will take into account the combined performance tier and latency weight when assigning support to bidders competing for support in the same area at the base clock percentage. Among other modifications to the procedures used in the CAF II auction, the bidding system will assign support in the clearing round to the bidder with the lowest performance tier and latency weight instead of, as was done in the CAF II auction, carrying forward all bids at the base clock percentage for the same area for bidding in additional clock rounds. If two or more bids were submitted with the same lowest performance tier and latency weight in the clearing round, bidding for an area will continue in additional clock rounds.

19. In the CAF II auction, the Commission adopted an auction that considered all bids simultaneously, “so that bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards.” In the Rural Digital Opportunity Fund auction, the Commission will continue to accept bids committing to different performance levels. In Phase I, however, once the budget has cleared, the Commission will prioritize bids with lower tier and latency weights, thereby encouraging the deployment of networks that will be sustainable even as new advancements are made and which will be capable of delivering the best level of broadband access for many years to come, all while keeping funding within the Phase I budget. Although this approach could result in less intra-area competition after the clearing round in some areas, the auction will have selected the best possible service, at a competitive level of support, for the same number of consumers living in those areas, and this will result in more rapid and efficient funding for such deployment. In other words, the Commission’s goal to close the digital divide is balanced against its goal to support the deployment of future-proof networks by this auction. Overall, the Commission does not expect this approach to adversely impact competition. The Commission will still accept competitive bids proposing to offer performance that meets or exceeds the minimums at each performance tier and latency,

but for those areas where there is still competition as of the clearing round, the Commission will prioritize selection of bidders that propose to offer the highest speeds, most usage, and lowest latency for each area.

20. The Commission also adopts the same general competitive bidding rules, which allow for the subsequent determination of additional, specific final auction procedures based on additional public input during the pre-auction process, and the Commission will apply as appropriate any modifications to those rules that it may adopt. Those competitive bidding rules, together with the additional rules the Commission adopts in this document, will establish Rural Digital Opportunity Fund winning bidders' performance obligations, eligible areas, and post-auction obligations and oversight. As it typically does for Commission auctions, the Commission will seek further comment on auction procedures at a future date, so it does not address the comments in the Order that speak to those issues. A number of commenters propose specific changes to the auction that would be better evaluated during the process to develop detailed auction procedures.

21. *Reserve Prices.* Consistent with the CAF Phase II auction procedures, the Commission will use the CAM to establish area-specific reserve prices. The Commission makes several adjustments to its approach in the CAF II auction to include some unserved areas that were excluded from the CAF Phase II auction and to potentially provide additional funding to extremely high-cost areas. Specifically, the Commission concludes it is appropriate to reduce the high-cost support threshold to \$40 per location. The Commission also increases the per-location support cap to \$212.50. This approach will add additional locations above the new threshold and increase inter-area bidding. Finally, the Commission will prioritize areas entirely lacking 10/1 Mbps and Tribal areas by further lowering the funding threshold for such areas by 25% to \$30.

22. The reserve price in each wholly-unserved, eligible census block will be equal to the average per-location cost of deploying and operating a network (as calculated by the CAM) above the \$40 support threshold and up to the per-location support cap of \$212.50, multiplied by the number of locations in the block. Lowering the support threshold from \$52.50 to \$40 per locations will provide support to unserved areas in which the CAM may be understating costs, while still being cognizant about not offering support in areas market forces alone are likely to extend broadband. The Commission

previously determined that a CAM-calculated average per-location cost of \$52.50 reflected an appropriate line between areas requiring support and those where market forces would be sufficient. Where some areas have not yet seen unsubsidized deployment of broadband networks, it could be an indication that the assumptions underlying the CAM do not always reflect the reality facing service providers, and the Commission now concludes it is appropriate to revisit the high-cost threshold. Likewise, the Commission increases the per-location support cap to ensure that the highest-cost areas, many of which did not receive winning bids in the CAF II auction, will see sufficient interest from bidders in the Rural Digital Opportunity Fund. Thus, the Commission will set the reserve price based on a lower support threshold of \$40 for all areas and raise the per-location support cap from \$146.10 to \$212.50, ultimately helping promote participation and competition in the Rural Digital Opportunity Fund Phase I auction.

23. The Commission's goal with this auction is to target support and provide incentives to serve areas that are known to currently lack service at speeds of at least 25/3 Mbps. Whereas the CAF Phase II auction targeted support to high-cost areas where the incumbent price cap carrier declined the offer of model-based support and extremely high-cost areas nationwide, here the Commission expands its focus to include certain areas that remain unserved despite being identified by the CAM as lower cost. As the Commission stated in the *Rural Digital Opportunity Fund NPRM*, 84 FR 43543, August 21, 2019, the new lower support threshold of \$40 will ensure that only census blocks above the new support threshold will be eligible for the auction. Buckeye Hills Regional Council asserts that the Commission should lower the cost threshold to \$20 or \$30 for difficult to serve parts of the country such as Appalachia. However, lowering the threshold any further than \$40 would provide more support than needed and many locations could be included that are more likely to be served without universal service support.

24. Certain commenters oppose including unserved low-cost census blocks in Phase I of the auction, raising concerns that the auction would shift funding to more densely populated areas at the expense of more rural consumers and census blocks. The Commission notes that these areas remain unserved, despite being identified as low cost by CAM more than five years ago. Moreover, the Commission is lowering the support threshold in all eligible census blocks, thereby increasing reserve prices (and potentially available support) throughout. The Commission declines to adopt NCTA's

proposal to reduce the cost threshold only to account for the costs of upgrading an already deployed network capable of providing 10/1 Mbps to one capable of providing 25/3 Mbps,” to “ensure the . . . fund does not . . . pay more than necessary to serve these areas.” The Commission disagrees. NCTA’s approach focuses on areas that already have 10/1 Mbps but not 25/3 Mbps and presumes that the existing provider would be the auction winner. While an existing provider should in many cases be able to seek less support from the auction in order to upgrade existing facilities, it may ultimately be more efficient for a new provider to serve that same biddable unit with new facilities, in addition to serving neighboring areas that lack 10/1 Mbps broadband services.

25. The Commission also adopts its proposal in the *Rural Digital Opportunity Fund NPRM* to prioritize census blocks that lack 10/1 Mbps over eligible census blocks that have 10/1 Mbps service, but lack service at 25/3 Mbps based on Form 477 data. Specifically, the Commission accomplishes this by reducing the support threshold for such census blocks by an additional 25% to \$30, which will have the effect of raising the support cap for these blocks to \$222.50. Some commenters support prioritizing areas that lack 10/1 Mbps and some suggest the reserve prices in such areas should be increased to incentivize bidders in those areas. USTelecom opposes focusing first on areas that lack 10/1 Mbps stating that it would be difficult to implement “absent mapping” and due to ongoing CAF Phase II deployment. Pacific Dataport objects to a 10/1 Mbps prioritization and argues it is a “desperate attempt to force-fit a terrestrial solution whether or not the economics make sense.” The Commission disagrees with both commenters. As stated in this document, the Commission has the data to identify census blocks that are wholly unserved by broadband speeds of at least 10/1 Mbps and are not aware of cases where Form 477 data have identified as “unserved” a census block that is in fact served. One of the Commission’s goals in this proceeding is to provide incentives to serve locations that lack any terrestrial option. Prioritizing areas that lack 10/1 entirely is consistent with the Commission’s statutory mandate that such services are deployed to areas lacking broadband and makes sure this auction does not leave on the wrong side of the digital divide those areas lacking even basic broadband access.

26. For Tribal areas, the Commission similarly adopts the Tribal Broadband Factor as a 25% decrease, to \$30, of the support threshold applied to Tribal areas. More specifically, with regard to census

blocks located within the geographic area defined by the boundaries of the Tribal land, all eligible census blocks for which the CAM-derived cost is more than \$30 will be included in the auction, and the reserve price for such blocks will be the CAM-derived cost minus \$30, up to a per-location support cap of \$222.50. The Commission recognizes the difficulty Tribal lands have faced in obtaining broadband deployment, and by incorporating this Tribal Broadband Factor, the Commission seeks to incentivize network buildout to ensure that Tribal Nations and their members obtain access to advanced communications services. The record before the Commission provides ample support for adopting a 25% decrease of the cost benchmark to incentivize Rural Digital Opportunity Fund participants to bid on and serve rural Tribal census blocks. A Tribal Broadband Factor will attach to the eligible Tribal areas, and thus reflect the additional cost of serving Tribal lands. While the Commission remains committed to promoting deployment on Tribal lands, it declines to extend a Tribal-specific preference to Tribal entities or to require a nontribal entity to “prove an established partnership” prior to the auction. The Commission concludes that it serves the public interest to maximize participation, and to award support to the most cost-effective bids, subject to the performance and latency weights it adopts in the following.

27. *Bidding Credits.* The Commission declines to adopt bidding credits for offsetting bidding weights or committing to certain buildout requirements, as proposed by some bidders. Adopting bidding credits to reward bidders for simply having met prior regulatory obligations, for example, would be contrary to the competitive nature of the auction, and, could ultimately reduce the potential reach of the Rural Digital Opportunity Fund. While the Commission declines to adopt a Tribal bidding credit, in this document, it has incorporated into the reserve prices for Tribal lands a Tribal Broadband Factor, similar to what the Commission previously incorporated into the recent offer of model-based support to rate-of-return carriers serving Tribal lands, which will reflect the higher costs unique to deploying service on Tribal lands that may not otherwise already be included in the CAM, and satisfy the Commission’s goal of bridging the digital divide.

28. *Minimum Geographic Area for Bidding.* The Commission concludes that the minimum geographic area for bidding will be no smaller than a census block group, as identified by the U.S. Census Bureau, containing one or more eligible census blocks. As the Commission determined in the *CAF*

Phase II Procedures PN, using census block groups ensures that all interested bidders, including small entities, have flexibility to design a network that matches their business model and the technologies they intend to use. Nevertheless, as the Commission did in the CAF Phase II auction, it reserves the right to select census tracts, or other groupings of areas, when it finalizes the auction design if necessary to limit the number of discrete biddable units. While some commenters support bidding based on eligible census blocks, the Commission declines to adopt individual census blocks as the minimum geographic area for bidding because of the significantly larger number of eligible census blocks, increasing the complexity of the bidding process both for bidders and the bidding system and minimizing the potential for broad coverage by winning bidders. Furthermore, using census blocks as the minimum geographic area could create more challenges for providers in putting together a bidding strategy that aligns with their intended network construction or expansion.

29. The Commission adopts technology-neutral standards for voice and broadband services supported by the Rural Digital Opportunity Fund, based on its experience in the CAF Phase II auction and its success in awarding support to a variety of service providers to deploy broadband in unserved rural areas, and consistent with long-standing Commission policy. Specifically, the Commission will permit bids in four performance tiers, and for each tier will differentiate between bids that would offer either low- or high-latency service. The Minimum performance tier means 25/3 Mbps with a usage allowance that is the greater of 250 GB per month or the average usage of a majority of fixed broadband customers as announced by the Bureau on an annual basis; the Baseline performance tier means 50/5 Mbps speeds with a 250 GB monthly usage allowance or a monthly usage allowance that reflects the average usage of a majority of fixed broadband customers as announced by the Bureau on an annual basis, whichever is higher; the Above-Baseline performance tier means 100/20 Mbps speeds with 2 TB of monthly usage; and the Gigabit performance tier means 1 Gbps/500 Mbps speeds with a 2 TB monthly usage allowance. The Commission adopts 250 GB as the minimum monthly usage allowance for the Baseline performance tier rather than the 150 GB as proposed because based on Measuring Broadband America October 2018-September 2019 usage data, the average monthly usage for fixed broadband customers is 251.45 GBs per month.

30. Low- or high-latency bids will be required to meet the same latency requirements as the CAF Phase II auction high- and low-latency bidders. Low latency means 95% or more of all peak period measurements of network round trip latency are at or below 100 milliseconds, and high latency means 95% or more of all peak period measurements of network round trip latency are at or below 750 milliseconds and a demonstration of a score of 4 or higher using the Mean Opinion Score with respect to voice performance.

31. The Commission maintains a Minimum performance tier for the Rural Digital Opportunity Fund but increase the speed from 10/1 Mbps to 25/3 Mbps. In the CAF Phase II auction, winning bids in a Minimum performance tier, which required only 10/1 Mbps broadband, covered less than 1% of locations awarded support. The record generally supports eliminating the 10/1 Mbps performance tier. Although the Navajo Nation and the Navajo Nation Telecommunications Regulatory Commission (NNTRC) request that the Commission establish a 10/1 Mbps bidding tier for Indian Country because costs of deploying 25/3 Mbps on reservations may discourage bidders, they provided no specific, detailed information about differences in cost. Moreover, allowing another performance tier only in certain areas would complicate the bidding system and the Commission believes the Tribal Broadband Factor will be sufficient to increase support on Tribal lands and incent providers to bid on Tribal lands.

32. Some commenters argue that a Baseline tier of 25/3 Mbps is too low and the Commission should establish a higher speed tier as the minimum eligible for the auction, or that bidders proposing 25/3 Mbps should be required to deploy to all locations in three years and receive only five years of support. Although the Commission has a preference for higher speeds, it recognizes that some sparsely populated areas of the country are extremely costly to serve and providers offering only 25/3 Mbps may be the only viable alternative in the near term. Accordingly, the Commission declines to raise the required speeds in the Minimum tier and it is not persuaded that bidders proposing 25/3 Mbps should be required to build out more quickly or have their support term reduced by half.

33. Several others argue that the Commission should include a fourth performance tier between the Minimum and Gigabit tiers, some suggesting a tier between 25/3 Mbps and 100/20 Mbps,

and others suggesting a tier between 100/20 Mbps and the Gigabit tier. The Commission agrees, and accordingly, add an additional performance tier. The Commission finds that allowing bidders to offer 50/5 Mbps service is “critical to reaching the truly high-cost areas in a cost effective way” while meeting the “immediate broadband needs” of consumers today. Adding a performance tier at 50/5 Mbps furthers the Commission’s goal of incentivizing providers to deploy networks that will deliver services that consumers need today as well as in the future, but also ensures Minimum speed service will be available in the hardest to serve areas.

34. The Commission declines to make any modifications to its two latency tiers. Some commenters propose a third, very low-latency tier. Commenters have provided no persuasive evidence that suggests technologies meeting latency standards below 100 milliseconds would have such a material benefit for consumers when compared to services meeting the Commission’s existing long-standing low-latency requirements that it should potentially divert support to those lower-latency technologies and would not expect consumers to notice the lower latency that would make it worth weighting the auction differently. The Commission notes that providers are encouraged to offer service that improves upon the Commission’s minimum tier thresholds.

35. Satellite providers argue that the Commission’s existing latency tiers do not account for certain satellites capable of providing lower latency, and that the high-latency weight discourages hybrid networks. SES Americom, which offers middle-mile capacity on its satellites to telecommunications carriers, argues its medium earth orbit satellites can provide broadband service with a latency between 120 milliseconds and 150 milliseconds. Viasat and Hughes ask that the Commission permits a provider to qualify at the low-latency weight if it demonstrates a mean opinion score of 4 or more for VoIP service and routes latency-sensitive traffic over links in which 95% or more of all peak period measurements of network round trip latency are at or below 100 milliseconds. Although medium earth orbit satellites and hybrid satellite technologies have the potential to deliver high-speed broadband to previously unserved rural areas, these technologies have not been deployed widely to deliver service to residential consumers; therefore, it would be premature to modify the Commission’s latency standards based on the record to qualify these technologies in the Phase I auction to bid with a lower-latency weight, or add an additional

interim latency weight. This decision does not preclude the Commission from reconsidering the feasibility of modifying latency standards to accommodate medium earth orbit satellite and hybrid satellite technologies for Phase II of the Rural Digital Opportunity Fund.

36. As in the CAF Phase II auction, the Commission adopts weights that reflect its preference for higher speeds, higher usage allowances, and low latency. The Commission also anticipates that terrestrial fixed networks will likely result in significant fiber deployment that can serve as a backhaul for rural 5G networks. Accordingly, the Commission chooses performance tier and latency weights to encourage the deployment of higher speed, low-latency services. Specifically, the Commission adopts weights of 50 for the Minimum performance tier, 35 for the Baseline performance tier, 20 for the Above Baseline performance tier, and 0 for the Gigabit performance tier, as well as a weight of 40 for high-latency bids and 0 for low-latency bids to favor higher-than Baseline speeds and low-latency services. Under the descending clock auction format the Commission will use the weights, when subtracted from the clock percentage for the round, to indicate the percentage of an area's reserve price that a winning bidder would receive in per-location support for serving the locations in that area.

37. The following charts summarize the Commission's approach:

Performance Tiers, Latency, and Weights

Minimum	$\geq 25/3$ Mbps	≥ 250 GB or U.S. average, whichever is higher	50
Baseline	$\geq 50/5$ Mbps	≥ 250 GB or U.S. average, whichever is higher	35
Above Baseline	$\geq 100/20$ Mbps	≥ 2 TB	20
Gigabit	≥ 1 Gbps/500 Mbps	≥ 2 TB	0

Low Latency	≤ 100 ms	0
High Latency	≤ 750 ms & MOS ≥ 4	40

38. The Commission declines to modify the 90-point maximum spread between the tiers that the Commission used in the CAF II auction. Many commenters argued that the Commission should increase the 90-point spread between the highest and lowest tiers to favor higher speeds even more. Others argue that the Commission should narrow the weighting spread. Although the Commission does value higher speed services, it also recognizes that different technologies may be better suited for different areas. Based on the Commission's experience with the CAF Phase II auction and its weights, the Commission believes the weights it adopts will provide an opportunity for providers using various technologies to participate in the auction and to compete for appropriate levels of support while providing a minimum level of service to consumers in all awarded areas.

39. The Commission adopts its proposal to establish a weight of 40 points as the weight for high-latency services, which is an increase from the CAF Phase II weight of 25. Satellite providers oppose increasing the weight for high latency. Viasat claims that substantially increasing the latency

weight would effectively preclude meaningful participation by geostationary orbit (GSO) satellite providers in the auction and would give Viasat and other GSO satellite providers virtually no chance of participating successfully. Moreover, Viasat argues that increasing the latency weight would significantly reduce the number of supported locations, leaving behind areas where no terrestrial provider bids, and substantially increase the average per-location subsidies in areas where terrestrial providers do bid. On the other side, several commenters argue the Commission should assign an even greater weight to high-latency bids. USTelecom argues that satellite broadband service is not a bridge to next-generation 5G broadband services and suggests that the Commission exclude satellite from bidding in the Phase I auction, or at a minimum, increase the high-latency weighting to 60. The Commission's decision to introduce a more moderate increase to the high-latency weight reflects the importance of latency to interactive, real-time applications and voice services, as well as the secondary benefits of terrestrial facilities, but also recognizes the importance of allowing all technologies the ability to participate in the auction and offer service to unserved areas. Moreover, adopting a fourth performance tier will moderate some of the effects of the *Rural Digital Opportunity Fund NPRM's* proposed weights. The 90-point spread the Commission adopts in this document will allow high-latency bidders to compete for appropriate levels of support in a much larger auction.

40. All Rural Digital Opportunity Fund support recipients, like all other high-cost ETCs, will be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas. Some commenters urge the Commission to eliminate the standalone voice requirement. WISPA argues that RDOF recipients should not be required to offer standalone voice service, because, consumers increasingly are subscribing to voice as a component of their broadband connections. SpaceX claims the standalone voice requirement is no longer useful for nearly all consumers because Americans no longer choose to buy standalone voice, and the requirement adds costs to develop and make available voice equipment and provide voice-specific customer support. GeoLinks urges the Commission to simply require that auction winners offer a voice service option, which can be available via a service bundle. The National Association of Counties states that “unfortunately, the unintended consequence of this requirement would prevent willing and able

entities from providing high-speed broadband internet services solely because they do not provide voice services in addition to broadband.”

41. Section 254 of the Communications Act of 1934, as amended, gives the Commission the authority to support telecommunications services, which the Commission has defined as “voice telephony service.” The Commission made clear when it adopted the standalone voice requirement as a condition of receiving Connect America Fund support in 2011 that the definition of the supported service, voice telephony service, is technologically neutral, allowing ETCs to provision voice service over many platforms. When it adopted the broadband reasonable rate comparability requirement in 2014, the Commission explained that “high-cost recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets the Commission’s requirements.” In 2018, the Commission dismissed requests to eliminate the standalone voice requirement. The Commission reasoned that auction funding recipients, unlike funding recipients of other USF mechanisms, “may be the only ETC offering voice in some areas and not all consumers may want to subscribe to broadband service.” The record does not show that these facts have changed, and voice telephony is still the supported service. Therefore, the Commission requires all ETCs receiving Rural Digital Opportunity Fund support to provide standalone voice service meeting the reasonable comparability requirements in the areas in which they receive support.

42. Some commenters suggest that the Commission adopts additional public interest obligations. For example, the Schools, Health & Libraries Broadband Coalition argues that the Commission should specifically require recipients of Rural Digital Opportunity Fund support to deploy high-quality broadband to anchor institutions in their service territories. The California Emerging Technology Fund argues that the Commission should require every provider to propose a low-income package with a rate not to exceed \$20. The Commission notes that support recipients, like all high-cost ETCs, will be required to report annually the number of anchor institutions to which they newly began providing service and to comply with all relevant Lifeline rules. Additional obligations regarding anchor institutions and low-income subscribers are more properly addressed in the Commission’s other universal

service programs.

43. The Commission adopts interim service milestones for the Rural Digital Opportunity Fund that are based on those the Commission adopted for the CAF Phase II auction for monitoring progress in meeting deployment obligations. The Commission will require support recipients to commercially offer voice and broadband service to 40% of the CAM-calculated number of locations in a state by the end of the third full calendar year following funding authorization, and 20% each year thereafter. The Commission modifies that approach, however, in the way it accounts for possible disparities between the CAM location counts and the actual number of locations in a winning bidder's service territory in a state. Although initial service milestones will be based on the number of locations identified by the CAM, the Commission is confident that it will have access to more accurate location data in the next few years, whether as a result of the Digital Opportunity Data Collection, the development of a broadband serviceable location database, the 2020 Census and/or some other data source. The Commission concludes that winning bidders will be required to serve the number of locations subsequently identified in each respective area. The Commission is persuaded by commenters who argue that the costs of building and operating broadband networks are predominantly governed by the size and characteristics of the areas served rather than the precise number of locations. The Commission accordingly directs the Bureau to seek comment on the updated location data and publish revised location counts no later than the end of service milestone year six, which the Commission expects to be 2027. The Commission will then use the new location counts to determine whether a Rural Digital Opportunity Fund support recipient offers the required voice and broadband service throughout the designated area by the end of milestone year eight.

44. The Commission takes this approach because the record reflects considerable concern about the proposed pro rata reductions in a winning bidder's support if, ultimately, there are fewer locations than originally identified by the Commission. For the CAF Phase II auction, the Commission created a process to facilitate appropriate adjustments to the defined deployment obligations, with associated support reductions, and delegated the implementation of this process to the Bureau. Most commenters in this proceeding oppose the pro rata support reductions, and argue that the Commission

should not penalize support recipients when the location data used to establish milestones overstates the number of locations in an area. The Commission agrees and will not reduce support if the Bureau's updated location counts indicate fewer actual locations in the awarded areas in most circumstances.

45. Location counts in the CAM are based on 2011 Census data and the Commission recognizes that there may be some disparity between the number of locations identified before the auction occurs and the "facts on the ground." Moreover, circumstances may change before the end of the 10-year support term. Some rural areas may experience a decrease in population, and in other areas new housing developments may be built. By requiring build-out to the entire designated area even in light of the possibility that location numbers could change, the Commission seeks to ensure the availability of broadband and voice services to as many rural consumers and small businesses within the Phase I auction areas by the end of the ten-year term as possible.

46. Until the Bureau adopts new location counts, the Commission will measure compliance with service milestones against the CAM location counts across the awarded areas for each Phase I support recipient. The Commission will require support recipients to commercially offer voice and broadband service to 40% of the CAM-calculated number of locations in a state by the end of the third full calendar year following funding authorization, and 20% each year thereafter, consistent with the CAF Phase II deployment obligations. In the following, the Commission explains how service milestones will be revised in various circumstances after the Bureau gathers more accurate location counts.

47. *More Locations.* After the Bureau adopts updated location counts, in areas where there are more locations than the number of CAM locations, the Commission will not require a support recipient to commercially offer voice and qualifying broadband to 100% of the new number of locations until year eight. The Commission will continue to use the CAM location counts to measure compliance with interim service milestones up to 100% of the CAM locations by the end of the sixth calendar year. If there are more new locations than CAM locations, recipients should be able to meet those milestones, and measuring compliance against the new number of locations later in the term will give carriers the opportunity to revise and update deployment plans after the Bureau announces the new number of locations. The Commission does not adopt an interim milestone for the end of year seven, although

carriers will be required to report to Universal Service Administrative Company (USAC), consistent with current high-cost rules, any locations deployed in that calendar year. Support recipients will be required to offer service to 100% of the new location count by the end of year eight. Carriers for which the new location count exceeds the CAM locations within their area in each state by more than 35% will have the opportunity to seek additional support or relief from the Commission.

48. Any such ETC with increased deployment obligations may also seek to have its new location count adjusted to exclude additional locations, beyond the number identified by CAM, that it determines before the end of year eight are ineligible (e.g., are not habitable), unreasonable to deploy to (e.g., if it would require a carrier to install new backhaul facilities or other major network upgrades solely to provide broadband to that location), or part of a development newly built after year six for which the cost and/or time to deploy before the end of the support term would be unreasonable.

49. *Fewer Locations.* In areas where there are fewer locations than CAM locations, a support recipient must notify the Bureau no later than the March 1 following the fifth year of deployment. Upon confirmation by the Bureau, the Commission will require support recipients to reach 100% of the new number by the end of the sixth calendar year. While planning and deploying its network, a support recipient that discovers there are not enough locations to even meet its service milestones in years three and four, which are based on the number of CAM locations, should seek a waiver from the Bureau. Carriers for which the new location count is less than 65% of the CAM locations within their area in each state shall have their support amount reduced on a pro rata basis by the number of reduced locations.

50. *Newly Built Locations.* In addition to offering voice and broadband service to the updated number of locations identified by the Bureau, the Commission requires support recipients to offer service on reasonable request to locations built subsequently. Support recipients are not obligated to offer service to these newly built locations that do not request service, or to those with exclusive arrangements with other providers. Assuming a two-year deployment cycle, support recipients similarly are not required to deploy to any locations built after milestone year eight.

51. The Commission aligns the service milestones and related reporting deadlines with those of other high-cost programs to minimize the administrative burdens on the Commission, USAC, and

support recipients. Regardless of when a Rural Digital Opportunity Fund recipient is authorized to begin receiving support, each service milestone will occur on December 31. The Commission acknowledges that, by aligning the service milestones, some Rural Digital Opportunity Fund support recipients likely will have more than three years to complete their 40% milestone. CenturyLink suggests that the Commission authorize funding for all winning bidders to begin on January 1, 2022 to align all Rural Digital Opportunity Fund support recipients on calendar year basis for receipt of support and corresponding obligations. The Commission finds that its method of aligning service milestones is preferable because it establishes December 31 as the service milestone date for all participants regardless of authorization date but still allows the Commission to authorize support for a participant and thus to begin broadband deployment in unserved areas as soon as possible.

52. The Commission concludes that a support recipient will be deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it within 10 business days upon request. All ETCs must advertise the availability of their voice services through their service areas, and the Commission requires support recipients also to advertise the availability of their broadband services within their service area. Compliance with service milestone requirements will be determined on a state-level basis, so that a support recipient would be in compliance with a service milestone if it offers service meeting the relevant performance requirements to the required percentage of locations across all of the awarded areas included in its winning bids in a state.

53. The Commission also sought comment on whether it should require support recipients to build out more quickly earlier in their support terms by offering voice and broadband to 50% of the requisite number of locations in a state by the end of the third year. A few commenters supported an accelerated buildout schedule, while the Navajo Nation and NNTRC asked the Commission to extend build-out milestones on Tribal Lands to recognize the difficulty in deploying infrastructure in Indian Country. Upon consideration, the Commission finds that using the same interim milestones as in the CAF II auction strikes the appropriate balance and, thus, adopts the identical first service milestone that it used there. Recipients have ample incentive to reach their buildout milestones as quickly as possible to increase their subscribership and revenues. However, the Commission also recognizes that deploying

broadband in some areas will be more challenging than in others and may require all the time allowed by the deployment milestones.

54. To ensure that support recipients are meeting their deployment obligations, the Commission adopts essentially the same reporting requirements for the Rural Opportunity Digital Fund that it adopted for the CAF Phase II auction. Consistent with the Commission's decision in this document to align the interim service milestones, it requires Rural Digital Opportunity Fund support recipients to file annually location and technology data in the HUBB at the same time and to make the same certifications when they have met their service milestones. The Commission also amends section 54.316 of its rules to require all Rural Digital Opportunity Fund support recipients, as all high-cost support recipients currently do, to file their annual location data in the HUBB by March 1, and the Commission encourages them to file such data on a rolling basis.

55. The Commission also requires Rural Digital Opportunity Fund support recipients to file the same information in their annual FCC Form 481s that it requires of the CAF Phase II auction support recipients. Specifically, in addition to the certifications and information required of all high-cost ETCs in the FCC Form 481, Rural Digital Opportunity Fund support recipients will be required to certify each year after they have met their final service milestone that the network they operated in the prior year meets the Commission's performance requirements. In addition, they will be required to identify the number, names, and addresses of community anchor institutions to which they newly began providing access to broadband service in the preceding calendar year as well as identify the total amount of support that they used for capital expenditures in the previous calendar year. Moreover, support recipients will need to certify that they have available funds for all project costs that will exceed the amount of support they will receive in the next calendar year. Finally, Rural Digital Opportunity Fund support recipients will be subject to the same annual section 54.314 certifications, the same record retention and audit requirements, and the same support reductions for untimely filings as all other high-cost ETCs.

56. In the event a support recipient does not meet a service milestone, the Commission adopts the same non-compliance measures that are applicable to all high-cost ETCs, the same framework for support reductions applicable to high-cost ETCs that are required to meet defined service milestones,

and the same process the Commission adopted for drawing on letters of credit for the CAF Phase II auction. The Commission also adopts additional non-compliance measures for a support recipient that fails to meet its third-year service milestone by more than 50%. Specifically, the Commission relies on the following non-compliance tiers (which are described in more detail in section 54.320 of the Commission’s rules):

Non-Compliance Framework

Tier 1: 5% to less than 15% of the required number of locations	Quarterly reporting
Tier 2: 15% to less than 25% of the required number of locations	Quarterly reporting + withhold 15% of monthly support
Tier 3: 25% to less than 50% of the required number of locations	Quarterly reporting + withhold 25% of monthly support
Tier 4: 50% or more of the required number of locations	Quarterly reporting + withhold 50% of monthly support for six months; after six months withhold 100% of monthly support and recover percentage of support equal to compliance gap plus 10% of support disbursed to date

57. A support recipient will have the opportunity to move tiers as it comes into compliance and will receive any withheld support as it increases build-out and moves from one of the higher tiers (i.e., Tiers 2-4) to Tier 1 status during the build-out period. If a support recipient misses the six year or

eight year service milestone as applicable, it will have 12 months from the date of the service milestone deadline to come into full compliance.

58. Given that the Commission is modifying the service deployment milestones to account for the Bureau's updated location counts, the Commission makes commensurate modifications to the consequences if an ETC does not come into full compliance after the grace period for its sixth-year service milestone or, for an ETC with a new location count that is greater than its CAM location count, its eighth-year service milestone. At the sixth-year service milestone, support will be recovered as follows: (1) if an ETC has deployed to 95% or more of the CAM location count, or of the adjusted CAM location count if there are fewer locations, but less than 100%, USAC will recover an amount of support that is equal to 1.25 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations; (2) if an ETC has deployed to 90% or more of the CAM location count, or of the adjusted CAM location count if there are fewer locations, but less than 95%, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 5% of the support recipient's total Rural Digital Opportunity Fund support authorized over the ten-year support term for that state; and (3) if an ETC has deployed to fewer than 90% of the CAM location count, or of the adjusted CAM location count if there are fewer locations, USAC will recover an amount of support that is equal to 1.75 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10% of the support recipient's total Rural Digital Opportunity Fund support authorized over the ten-year support term for that state.

59. If the ETC's new location count is greater than its CAM location count, and recognizing the increased obligations of such ETCs, support will be recovered as follows if the ETC does not meet the eighth year service milestone: (1) if an ETC has deployed to 95% or more of its new location count, but less than 100%, USAC will recover an amount of support that is equal to the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations; (2) if an ETC has deployed to 90% or more of its new location count, but less than 95%, USAC will recover an amount of support that is equal to 1.25 times the average amount of support per location

received in the state for that ETC over the support term for the relevant number of locations; (3) if an ETC has deployed to 85% or more of its new location count, but less than 90%, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 5% of the support recipient's total Rural Digital Opportunity Fund support authorized over the ten-year support term for that state; and (4) if an ETC has deployed to less than 85% of its new location count, USAC will recover an amount of support that is equal to 1.75 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10% of the support recipient's total Rural Digital Opportunity Fund support authorized over the ten-year support term for that state.

60. The same support reductions will apply if USAC later determines in the course of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it was offering service to all of the locations required by the sixth or eighth service milestones.

61. As in the CAF Phase II auction, USAC will be authorized to draw on an ETC's letter of credit to recover all of the support that is covered by the letter of credit in the event that a support recipient does not meet the relevant service milestones, does not come into compliance during the cure period, and does not timely repay the Commission the support associated with the non-compliance gap. If a support recipient is in Tier 4 status during the build-out period or has not deployed to 100% of CAM locations by the end of year six (or the adjusted location total if there are fewer locations), and USAC has initiated support recovery as described in this document, the support recipient will have six months to pay back the support that USAC seeks to recover. If the support recipient does not repay USAC by the deadline, the Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all of the support that is covered by the letter of credit. If a support recipient has closed its letter of credit and it is later determined that the support recipient does not have sufficient evidence to demonstrate that it was offering service to the total number of required locations, that support recipient will be subject to additional non-compliance measures if it does not repay the Commission after six months. And like other high-cost ETCs, support recipients will be subject to other sanctions for non-compliance with the terms

and conditions of high-cost funding, including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment.

62. The Commission sought comment on whether there are additional measures it could adopt that would help ensure that Rural Digital Opportunity Fund support recipients will meet their third-year service milestones, and on what steps it should take if it appears support recipients will not be able to meet their service milestones. The National Rural Electric Cooperative Association (NRECA) suggested the Commission make more detailed inquiries of a support recipient to the extent it substantially misses the 40% service obligation at the three-year benchmark and possibly terminate support payments. The Commission agrees with NRECA that it is unlikely that a recipient that substantially misses its third-year milestone would be able to come into compliance in the following year. The Commission therefore directs any support recipient that believes it cannot meet its year three milestone to notify the Bureau and provide information explaining this expected deficiency. If a support recipient has not made such notification by March 1 following the third-year service milestone and has deployed by the end of the third-year milestone to fewer than 20% of its required locations in that state, the Commission will find the recipient to be in default, rather than withholding support and providing an additional six months to come into compliance.

63. The Commission declines to adopt additional performance targets to provide greater incentives for Rural Digital Opportunity Fund support recipients to enroll customers in the eligible areas. The Commission specifically sought comment on a proposal to adopt subscribership milestones set at 70% of the yearly deployment benchmarks and reduce support accordingly for failure to meet the subscription target. Most commenters opposed a subscription requirement and argued that a 70% subscription requirement was too high and unrealistic in rural areas. Even some commenters supporting the concept of a subscription requirement thought 70% was too high and suggested any subscribership requirement should be as low as 35%. Commenters argued that a subscribership requirement with reductions in support for failure to meet those targets would discourage participation in the auction, and change the focus of the Rural Digital Opportunity Fund program from a deployment program to an

adoption program.

64. The Commission agrees that requiring specific subscription milestones is likely to discourage many bidders from participating in the auction because they would risk losing funding when they likely need it most to complete the buildout of their networks. Commenters pointed out that support recipients have a statutory obligation to advertise the availability of their services throughout their service areas and argue that they have the incentive to attract customers to increase their revenues. Commenters also argued that subscription rates of 70% in some rural, low-income areas would be almost impossible to attain. In addition, support recipients must be prepared to provide service meeting the relevant public interest obligations within 10 business days to any locations they report in the HUBB for purposes of meeting the service milestones, which will give support recipients added incentive to ensure their networks have sufficient capacity to serve the required number of locations. Given these requirements, the risk of discouraging participation in the auction, and the administrative complexity of monitoring subscribership, the Commission declines to require a certain level of subscription as a condition of Rural Digital Opportunity Fund support.

65. Consistent with prior Commission auctions and based on its recent experience with the CAF Phase II auction, the Commission adopts the two-stage application process that will govern the auction process for the Rural Digital Opportunity Fund, including pre-auction and post-auction requirements.

66. The Commission concludes that participants in the Rural Digital Opportunity Fund Phase I auction process will be required to comply with the same short-form and long-form application process. Specifically, in the pre-auction short-form application, a potential bidder will be required to establish its eligibility to participate in the auction by providing, among other things, basic ownership information and certifying to its qualifications to receive support. Once approved as qualified to bid by the Bureau, the company may participate in the auction. After the auction, winning bidders must file more extensive information for the long-form application, demonstrating to the Commission that they are legally, technically and financially qualified to receive support. As in CAF Phase II, the Commission stresses that each potential bidder has the sole responsibility to perform its due diligence research and analysis before

proceeding to participate in the Rural Digital Opportunity Fund auction. The Commission directs the Bureau, the Office of Economics and Analytics, and the Rural Broadband Auctions Task Force, to adopt the format and deadlines for the submission of documentation for the short-form and long-form applications.

67. Consistent with the approach in the CAF Phase II auction and proposed in the *Rural Digital Opportunity Fund NPRM*, the Commission adopts its existing universal service competitive bidding rules so that applicants will be required to provide information that will establish their identity, including disclosing parties with ownership interests and any agreements the applicants may have relating to the support to be sought through the Rural Digital Opportunity Fund auction. Interested parties will submit a pre-auction short-form application, providing basic information and certifications regarding their eligibility to receive support. Commission staff will then review the short-form applications, determining whether the applicants are eligible to participate in the auction. Thereafter, Commission staff will release a public notice indicating which short-form applications are deemed complete and which are deemed incomplete. Consistent with CAF Phase II, applicants whose short-form applications are deemed incomplete will be given a limited opportunity to cure defects and to resubmit correct applications, excluding major modifications. As in CAF Phase II, a second public notice will be released designating the applicants that are qualified to participate in the Rural Digital Opportunity Fund auction.

68. *Ownership.* The Commission will require that each auction applicant provide information in its short-form application to establish its identity, including information concerning its real parties in interest and its ownership, and to identify all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding. The Commission will also require an applicant to provide in its short-form application a brief description of any such agreements, including any joint bidding arrangements. Commission staff would use such information to identify relationships among applicants, including those that might be commonly controlled or members of a joint bidding arrangement. The Commission will also require every applicant to certify in its short-form application that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind related to the support to be sought through the Rural Digital Opportunity Fund auction, other than

those disclosed in the short-form application.

69. *Types of Technologies.* The Commission will also require all applicants to indicate the type of bids that they plan to make and describe the technology or technologies they will use to provide service for each bid. This information is imperative to establishing bidders' eligibility for the bidding weights the Commission adopts. Consistent with CAF Phase II, the Commission will allow an applicant to use different technologies within a state as well as hybrid networks to meet its public interest obligations.

70. *Technical and Financial Qualifications Certifications.* Likewise, applicants will be required to certify that they are financially and technically qualified to meet the public interest obligations in each area for which they seek Rural Digital Opportunity Fund support. Based on the Commission's experience with CAF Phase II, this approach is an appropriate screening process to ensure serious participation, without being overly burdensome to applicants and recipients.

71. *Operational History.* Applicants will be required to provide additional assurances to the Commission that the entities that intend to bid in the auction have experience operating networks. The Commission adopts a requirement that applicants certify in their short-form application that they have provided voice, broadband, and/or electric distribution or transmission services for at least two years and that they specify the number of years they have been operating, or that they are the wholly-owned subsidiary of an entity that meets these requirements. Applicants that have provided voice or broadband services must also certify that they have filed FCC Form 477s as required during that time period. As the Commission determined in CAF Phase II, it also will accept certifications from entities that have provided electric distribution or transmission services for at least two years (or their wholly owned subsidiaries).

72. An applicant that can certify it has provided voice, broadband, and/or electric distribution or transmission services for at least two years, or that it is a wholly-owned subsidiary of such an entity, will provide the Commission with sufficient assurance before the auction that it has the ability to build and maintain a network.

73. The Commission will require each applicant that does not have two years of operational

experience, to submit with its short-form application its (or its parent company's) financial statements that have been audited by an independent certified public accountant from the three prior fiscal years, including the balance sheets, incomes, and cash flow statements, along with a qualified opinion letter. The Commission's interest in having a level of insight into the financial health of a potential Rural Digital Opportunity Fund auction bidder over a longer period of time is a necessary prequalification to bid, particularly because this subset of bidders will not be able to demonstrate that they have operated and maintained a voice, broadband and/or electric distribution or transmission network for at least two years. Likewise, such applicants will also be required to submit a letter of interest from a bank meeting the Commission's eligibility requirements stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder and is awarded support of a certain dollar magnitude. A letter of interest from the bank will provide the Commission with an independent basis for some additional assurance regarding the financial status of the entity.

74. The Commission declines to adopt a suggestion from USTelecom and Windstream to limit the total bid based on the bidder's annual revenues, while Verizon proposes further pre-auction scrutiny "on applicants that are seeking authority to bid for a large number of locations, relative to the size of their existing customer base, or are planning to bid for performance tiers in which they currently provide little or no commercial service." The Commission is not persuaded that either of these proposals are an effective method to guarantee the financial qualifications of bidders to perform; instead, they would more likely limit competition by arbitrarily excluding bidders with more limited revenues or existing customer bases. The Commission is generally reluctant to adopt additional measures that limit competition from bidders and any concerns with financial qualifications will be resolved during the short-form applications.

75. The Commission declines to collect less financial and technical information from existing USF support recipients on the short-form than it did in CAF Phase II as suggested by some commenters. It is important for Commission staff to review the same specific information from each carrier when evaluating carriers' qualifications to bid. However, CAF Phase II auction participants that subsequently defaulted on their entire award will be barred from participating in the Rural Digital Opportunity Fund.

The Commission declines to bar participants that defaulted in other universal service programs as well as decline to subject participants to additional scrutiny that subsequently defaulted in CAF Phase II, as suggested by other commenters, or that have filed for bankruptcy or that have been bankrupt in the recent past. The Commission is capable of evaluating the circumstances of a prior default and the outcome of any subsequent enforcement action without collecting additional information in the short-form application. All applicants will be subject to a thorough financial and technical review in both the short-form application stage and the long-form application stage prior to bidding and ultimately receiving support.

76. Conversely, some commenters stated that the Commission should increase the short-form requirements. For instance, NTCA asserted that the Commission should require that a prospective bidder demonstrate “more thorough qualifications at the short-form stage” focusing on technical and operational qualifications. NRECA proposes shifting to the short-form review more of the detailed technical and financial showings conducted at the long-form review. USTelecom states that the Commission should require an applicant to provide information about subscribership trends and employee expertise to show that it has the expertise and experience “to scale its network.” Subscribership and employee expertise do not necessarily suggest that the entity is unqualified to bid in the Rural Digital Opportunity Fund auction. The Commission’s interest in maximizing participation in the Rural Digital Opportunity Fund auction outweighs the potential risk of qualifying a less experienced entity to participate in the auction without reviewing that bidder’s subscribership and employee counts, particularly given that it adopts the requirement that bidders will be required to submit their audited financial statements. This will allow the Commission to scrutinize the bidder’s audited financial statements at the long-form application stage before authorizing that entity to begin receiving support. The Commission believes that requiring more technical and operational information before the auction begins will provide significant barriers to entry for some participants and unnecessarily extend the short-form review period and delay the auction. Moreover, additional technical information at the short-form stage would be speculative based on a presumption of what a winning area would look like.

77. Similarly, the Commission declines NTCA’s proposal to require applicants to submit

propagation maps to show where they intend to bid, as it would be burdensome on applicants “particularly given the maps may not be relevant if an applicant does not become qualified or does become qualified but does not win support in that area.” The Commission concludes on balance that its short-form process provides significant assurances for serious participation and its long-form post-auction process, as discussed in the following, will provide an in-depth extensive review of the winning bidders’ qualifications.

78. *Audited Financials.* The Commission will require each applicant that has certified that it has at least two years of operational experience to submit financial statements that have been audited by an independent certified public accountant from the prior fiscal year, including balance sheets, net income and cash flow, along with a qualified opinion letter with its short-form application. If such an applicant (or its parent company) is not audited in the ordinary course of business, the Commission will require the applicant to submit unaudited financial statements from the prior fiscal year with its short-form application and to certify that it will submit audited financials during the long-form application process. The Commission will require winning bidders that take advantage of this option to submit their audited financials no later than the deadline for submitting their proof of ETC designation (which is within 180 days of the public notice announcing winning bidders). If the audit process is expected to exceed 180 days, a winning bidder will have the option of seeking a waiver of this deadline. In considering such waiver requests, the Commission directs the Bureau to determine whether the entity demonstrated in its waiver petition that it took steps to prepare for an audit prior to being named a winning bidder and that it took immediate steps to obtain an audit after being announced as a winning bidder. Applicants that certify that they have at least two years of operational experience and fail to submit audited financial statements as required, will be subject to the same base forfeiture of \$50,000 that the Commission adopted for the CAF Phase II auction. The Commission notes that most CAF Phase II auction support recipients were able to obtain audited financial statements by the required deadlines. As with the CAF Phase II auction, the Commission does not extend to applicants that lack two years of operational history the option of submitting audited financial statements during the long-form application stage. They must submit audited financial statements from the three prior fiscal years with their short-form application, as

described in this document.

79. *Eligible Telecommunications Carrier Designation.* The Commission adopts the same CAF Phase II flexibility with respect to ETC designations and do not require an applicant to obtain its designation as an ETC in the areas where it seeks support prior to bidding in the Rural Digital Opportunity Fund auction. The Commission does, however, require an applicant to disclose in its short-form application its status as an ETC in any area for which it will seek support or if it will become an ETC in any area where it wins support. The Commission is not persuaded that it should require an applicant to secure its ETC designation prior to the auction. As the Commission determined in CAF Phase II, permitting entities to obtain ETC designation *after* the announcement of winning bidders for support, encourages broader participation in the competitive process by a wider range of entities. Additionally, the Commission's experience with CAF Phase II indicates that most applicants were ultimately designated within the long form review period, even if it took them longer than the ETC designation proof deadline. The Commission will continue to presume that an entity acted in good faith if it files its ETC application within 30 days of the release of the public notice announcing that it is a winning bidder, but as with both the rural broadband experiments and the CAF Phase II auction, the Commission discovered there were various circumstances impacting the ability of individual bidders to file their ETC applications and that when an application was filed did not always determine whether an applicant was designated within the 150 remaining days.

80. *Spectrum Access.* Additionally, 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 Rural Digital Opportunity 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 the auction. Consistent with CAF Phase II, the Commission will require applicants intending to use spectrum to indicate the spectrum band(s) they will use for the last mile, backhaul, and any other parts of the network; and the total amount of uplink and downlink bandwidth (in megahertz) that they have access to in each spectrum band for last mile. Applicants must also describe

the authorizations they have obtained to operate in the spectrum and list the call signs and/or application file numbers associated with their spectrum authorizations, if applicable. Applicants must have secured any Commission approvals necessary for the required spectrum access prior to submitting an auction application, if applicable. 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. NTCA argues that applicants who do not have access to spectrum should be required to show how they would acquire it. The Commission agrees and, consistent with its treatment of this situation in CAF Phase II, it will find a recipient in default if it is unable to meet its obligations, including if the authorization is not renewed during the support term.”

81. Also, any applicant that intends to provide service using satellite technology will be required to identify in its short-form application its expected timing for applying for any earth station licenses it intends to use in the areas where it intends to bid, if it has not already obtained these licenses. The Commission does not require satellite providers to obtain all necessary earth station licenses by the short-form application deadline. An earth station license requires that a satellite provider bring the station into operation within one year of obtaining a license and a satellite provider may not be ready to meet this requirement by the short-form filing deadline. Moreover, because an applicant can apply to obtain a microwave license at any time, the Commission will permit an applicant that intends to obtain microwave license(s) for backhaul to meet its public interest obligations for the Rural Digital Opportunity Fund by describing in its short-form application its expected timing for applying for such license(s), if it has not already obtained them.

82. *Due Diligence Certification.* Consistent with the procedures adopted for the CAF Phase II auction, the Commission adopts the requirement that an applicant certify that it has performed due diligence concerning its potential participation in the Rural Digital Opportunity Fund auction so the applicant understands its obligations. Specifically, the Commission adopts the requirement that each applicant make the following certification in its short-form application under penalty of perjury:

The applicant acknowledges that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of

Rural Digital Opportunity Fund support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the Rural Digital Opportunity Fund obligations and the Commission's rules generally.

83. This proposed certification will help ensure that each applicant acknowledges and accepts responsibility for its bids and any forfeitures imposed in the event of default, and that the applicant will not attempt to place responsibility for the consequences of its bidding activity on either the Commission or third parties.

84. Winning bidders for the Rural Digital Opportunity Fund support will be required to comply with the same long-form application process the Commission adopted for CAF Phase II. The rules the Commission adopts in the following provide the basic framework and requirements for winning bidders to demonstrate their qualifications for support. After the close of the auction, the Bureau will release a public notice declaring the auction closed, identifying the winning bidders, and establishing details and deadlines for next steps. Winning bidders will then be required to submit extensive information detailing their respective qualifications in their long-form applications, allowing for a further in-depth review of their qualifications prior to authorization of support. Any additional information that is required to establish whether an applicant is eligible for Rural Digital Opportunity Fund support will be announced by public notice. The Commission notes that very few commenters addressed the Commission's proposed post-auction long-form application processes and none of those commenters raised significant concerns. The Commission therefore concludes the rules it adopts in this document will best serve the Commission's ability to determine whether the applicants are ultimately eligible for Rural Digital Opportunity Support authorization funding, providing a fair and efficient review process.

85. *Ownership Disclosure.* The Commission adopts the ownership disclosure requirements proposed in the *Rural Digital Opportunity Fund NPRM*. Specifically, an applicant for Rural Digital Opportunity Fund support must fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application. Ownership disclosure reports from the short-form process must be updated if any information reported in the short-form has changed.

86. *Financial and Technical Capability Certification.* Consistent with CAF Phase II, the

Commission will require a long-form applicant 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.

87. *Public Interest Obligations Certifications.* The Commission next adopts proposed rule 54.804(b)(2)(iii), concluding that a long-form applicant must certify in its long-form application that it will meet the relevant public interest obligations for each performance tier and latency combination for which it was deemed a winning bidder, including the requirement that it will offer service at rates that are equal to or lower than the Commission's reasonable comparability benchmarks for fixed services offered in urban areas.

88. *Description of Technology and System Design.* Due to the varying types of technologies that entities may use to fulfill their Rural Digital Opportunity Fund competitive bidding process obligations, the Commission finds that it is also reasonable to require each winning bidder to submit a description of the technology and system design it intends to use to deliver voice and broadband service, including a network diagram, which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95% percent of CAM locations in each relevant state, voice and broadband service that meets the requisite performance requirements. There must be sufficient capacity to meet customer demand at or above the prescribed levels during peak usage periods. Entities proposing to use wireless technologies also must provide a description of their spectrum access in the areas for which they seek support and demonstrate that they have the required licenses to use that spectrum if applicable. This documentation will enable Commission staff to have assurance from an engineer that the proposed network will be able to fulfill the service obligations to which the bidders will have to commit. Filing deadlines will be strictly enforced, and bidders should not presume that they may obtain a waiver absent extraordinary circumstances.

89. *Available Funds Certification.* Next the Commission adopts proposed rule 54.804(b)(2)(v), concluding that an applicant must certify in its long-form application that it will have 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. Simultaneously, the Commission will also require that winning

bidders describe in their long-form application how the required construction will be funded and include financial projections that demonstrate that they can cover the necessary debt service payments over the life of the loan. Additionally, these requirements include the public interest obligations contained in the Commission's rules.

90. *ETC Eligibility and Documentation.* Consistent with the CAF Phase II auction rules, a winning bidder in the Rural Digital Opportunity Fund auction will be permitted to obtain its ETC designation after the close of the auction, submitting proof within 180 days of the public notice identifying winning bidders. The Commission declines to forbear from the ETC requirement. The Commission recognizes the statutory role that Congress created for state commissions and the FCC with respect to ETC designations, and the Commission does not disturb that framework. Nothing in the record addresses the standards necessary to find forbearance in the public interest, even if some interested parties may prefer not to become ETCs with all of the associated obligations. Therefore, the Commission will continue to require service providers to obtain ETC status to qualify for universal service support. A winning bidder must demonstrate with appropriate documentation that it has been designated as an ETC covering each of the geographic areas for which it seeks to be authorized for support. For example, in addition to providing the relevant state or Commission orders, each winning bidder will need to demonstrate that its ETC designation covers the areas of its winning bid(s) (*e.g.*, census blocks, wire centers, etc.). Such documentation could include map overlays of the winning bid areas, or charts listing designated areas. Furthermore, each winning bidder will be required to submit a letter with its documentation from an officer of the company certifying that its ETC designation for each state covers the relevant areas where the winning bidders will receive support. As the Commission experienced with CAF Phase II, these requirements will help them verify that each winning bidder is permitted to operate in the areas where it will be receiving support.

91. *Forbearance from Service Area Redefinition Process.* The Commission adopts its proposal to forbear from the statutory requirement that the ETC service area of a Rural Digital Opportunity Fund participant conform to the service area of the rural telephone company serving the same area. As in the CAF Phase II auction, the Commission will be maximizing the use of Rural Digital

Opportunity Fund support by making it available for only one provider per geographic area. Moreover, the Commission expects that the incumbent rural telephone company's service area will no longer be relevant because the incumbent service provider may be replaced by another Rural Digital Opportunity Fund recipient in portions of its service area. Thus, forbearance is appropriate and in the public interest.

92. Accordingly, for those entities that obtain ETC designations as a result of being selected as winning bidders for the Rural Digital Opportunity Fund, the Commission forbears from applying section 214(e)(5) of the Act, insofar as this section requires that the service area of such an ETC conform to the service area of any rural telephone company serving an area eligible for Rural Digital Opportunity Fund support. The Commission notes 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 Rural Digital Opportunity Fund competitive bidding process. However, if an existing ETC seeks support through the Rural Digital Opportunity Fund competitive bidding process 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. Likewise, as in CAF Phase II, some of the price cap carrier study areas that may become eligible for the Rural Digital Opportunity Fund competitive bidding process meet the statutory definition so that the carrier serving those study areas would be classified as a rural telephone company.

93. Thus, the Commission concludes that forbearance is warranted in these limited circumstances. The Commission's objective is to distribute support to winning bidders as soon as possible so that they can begin the process of deploying new broadband to consumers in those areas. Case-by-case forbearance would likely delay the Commission's post-selection review of entities once they are announced as winning bidders. The Act requires the Commission to forbear from applying any requirement of the Act or its regulations to a telecommunications carrier if the Commission determines 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. For the same reasons set forth in the *CAF Phase II Auction Order*, 81 FR 44414, July 7, 2016, the Commission concludes each of these statutory criteria is met for winning bidders of the Rural Digital Opportunity Fund competitive bidding process.

94. *Letters of Credit.* The Commission next adopts letter of credit rules that provide appropriate protection for Rural Digital Opportunity Fund support, with reduced burdens on participants. In CAF Phase II, the Commission found that requiring bidders to obtain an irrevocable standby letter of credit, covering the first year of support of a recipient's winning bid, was an effective means to safeguard the universal service funds. Moreover, the letter of credit was subject to a phase-down schedule, reducing the burdens on the recipients. The letter of credit requirement did not deter broad participation in the CAF Phase II auction where the Commission awarded \$1.488 billion in support to 103 winning bidders and, as of December 2019, nearly 90 percent of carriers have been authorized after securing valid letters of credit. Thus, the Commission is not persuaded to adopt suggestions from commenters that it removes the letter of credit requirement entirely, either for all winning bidders or for certain groups of winning bidders such as Tribally owned and controlled carriers or established rural carriers.

95. The Commission finds appropriate, however, certain modifications to the letter of credit requirements proposed in the *Rural Digital Opportunity Fund NPRM*. The Commission makes these changes after hearing from commenters concerned about the fees associated with maintaining the larger letters of credit required because of the size of the Rural Digital Opportunity Fund. The Commission concludes that the modified letter of credit requirements it adopts in the following, which establishes a mechanism to easily recover disbursed funding in the event of non-compliance, fulfills its responsibility to protect program funds while also reducing for applicants the costs of participating in the Rural Digital Opportunity Fund.

96. *First*, the Commission's revised approach allows a support recipient to reduce the amount of its letter of credit as it meets—and USAC verifies that a support recipient has completed—service milestones. Specifically, the Commission requires support recipients to report their deployed locations in the HUBB by March 1 following each support year. Upon verification of the buildout by USAC, the

Commission will then allow the recipient to reduce its letter of credit to an amount equal to only one year of total support. And once a support recipient reduces its letter of credit obligation to one year of total support, it will be able to maintain its letter of credit at that level for the remainder of the deployment term, as long as USAC verifies that the support recipient successfully and timely meets its remaining service milestones.

97. *Second*, the Commission creates an optional 20% service milestone in year two. Doing so allows a support recipient to demonstrate concrete progress in building its network earlier than existing milestones (40% in year three), thus allowing it to reduce its letter of credit earlier than it could otherwise. The Commission reiterates that this 20% buildout benchmark is optional; if a support recipient does not meet this milestone, it will not be able to reduce its letter of credit, but it will not face any reductions in support.

98. *Third*, the Commission finds that support recipients do not need to wait for the specific support years to end to meet their deployment milestones. For example, if a support recipient is able to deploy to 20% of its locations by the end of year one, it may report those locations and request that USAC complete the verification process for those locations in order to allow it to reduce its letter of credit to one year of support. In those instances, the Commission requires that these support recipients be able to immediately produce the necessary documentation to minimize the time required for USAC to verify its milestone.

99. *Fourth*, the Commission adopts a modified letter of credit requirement for the time periods before any required service milestones must be met and verified by USAC. Specifically, at the beginning of the first year of its support term, a support recipient must obtain a letter of credit equal to one year of the total support it will receive. In year two, it will be required to obtain a letter of credit equal to eighteen months of its total support. In year three, it will be required to obtain a letter of credit equal to two years of its total support. And in year four, it will be required to obtain a letter of credit equal to three years of its total support. This schedule balances the need to protect federal funds against the costs of a letter of credit for those that decline to meet the optional 20% deployment milestone.

100. *Fifth*, the Commission finds it necessary to maintain larger letters of credit for support

recipients that fail to meet service milestones. If the support recipient misses a required service milestone, it will be required to obtain a letter of credit covering an additional year of total support for the next applicable support year, up to a letter of credit covering a total of three years of support. Likewise, any support recipient failing to meet two or more service milestones will be required to maintain a letter of credit in the amount of three years of support and will be subject to additional non-compliance penalties as outlined in this document. The Commission finds these increased letter of credit requirements will both protect federal funds from potential default and serve as an incentive to timely deployment.

101. *Sixth*, consistent with CAF Phase II, the Commission will require that the letter of credit only remain open until the recipient has certified that it has deployed broadband and voice service meeting the Commission's requirements to 100% of the CAM locations by the end of year six, and USAC has verified that the recipient has fully deployed its network. The Commission does not expect new additional locations in years seven and eight to be significant enough that it would be necessary to secure that additional deployment with a letter of credit, but recipients will be subject to other sanctions for non-compliance with the terms and conditions of Rural Digital Opportunity Fund support, including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment.

102. In short, the Commission provides a letter of credit trajectory that recognizes that once support recipients have demonstrated significant and verifiable steps toward meeting their deployment obligations, they should have the opportunity to avoid some of the more significant credit requirements, consistent with their proven performance in the Rural Digital Opportunity Fund. For those support recipients that elect to deploy quickly and meet the 20% optional milestone early in the support term, and continue to meet all milestones, their letters of credit may never exceed 18 months' support at any time during the support term. At the same time, the more gradual increase in the letter of credit requirements the Commission adopts for support recipients that do not elect to make use of the optional 20% milestone will reduce potential financial strain on support recipients, and still allow those support recipients to maintain a smaller letter of credit once their first mandatory deployment milestone is met in year three.

103. The Commission declines to adopt the specific parameters of the letter of credit proposals advanced and supported by several parties. After thorough review of these constructive proposals, the Commission determines that they fail to sufficiently account for the Commission's interests in ensuring that universal service dollars are being used efficiently and for their intended purposes, as well as protecting against the potential for those carriers that may fail to fulfill their broadband deployment obligations. However, the approach the Commission adopts here is consistent with the proposals advocated by parties in that it recognizes that the letter of credit rules, as originally proposed, would impose a disproportionate financial burden on support recipients and result in less funding going directly to broadband deployment. Moreover, given that the Rural Digital Opportunity Fund will award up to almost 15 times the amount of funding as the CAF Phase II auction, the Commission acknowledges that a one-size-fits-all approach to letter of credit requirements may not properly reflect the realities of a particular auction. Thus, the Commission's revised approach strives to carefully balance the interest of potential support recipients in minimizing their financial cost over the course of the deployment term with the Commission's interest in ensuring that universal funding is protected as the Rural Digital Opportunity Fund progresses.

104. Consistent with CAF Phase II, the Commission will only authorize USAC to draw on the letter of credit for the entire amount of the letter of credit if the entity does not repay them for the support associated with its compliance gap. Additionally, as stated in CAF Phase II, "if the entity fails to pay this support amount, the Commission concludes that the risk that the entity will be unable to continue to serve its customers or may go into bankruptcy is more likely, and thus it is necessary to ensure that the Commission can recover the entire amount of support that it has disbursed." The Commission also requires each winning bidder to submit a commitment letter from a bank no later than the number of days provided by public notice. A long-form applicant must submit a letter from a bank acceptable to the Commission, committing to issue an irrevocable stand-by letter of credit, to the long-form applicant. The letter must, at a minimum, provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit provided in Appendix C of the Order.

105. Once a winning bidder has been authorized, the Commission will require an irrevocable standby letter of credit from a bank that is acceptable to them in substantially the same form as the model letter of credit provided in Appendix C of the Order. The letters of credit for winning bidders must be obtained from a domestic or foreign bank meeting the requirements adopted herein. For U.S. banks, the bank must be insured by the Federal Deposit Insurance Corporation and have a Weiss bank safety rating of B- or higher committing to issue a letter of credit. Similarly, for non-U.S. banks, the Commission requires 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). Winning bidders also have the option of obtaining a letter of credit from CoBank or the National Rural Utilities Cooperative Finance Corporation so long as they continue to meet the Commission's requirements. When a winning applicant obtains a letter of credit, it must be at least equal to the amount of the first year of authorized support. Before the winning applicant can receive its next year's support, it must modify, renew, or obtain a new letter of credit. The Commission concludes that requiring recipients to obtain a letter of credit on at least an annual basis will help minimize administrative costs for USAC and the recipient rather than having to negotiate a new letter of credit for each monthly disbursement.

106. However, the Commission will require all winning bidders to provide a single letter of credit covering all of their winning bids within a single state. The Commission declines to allow multiple letters of credit that cover all bids in a state as it did for CAF Phase II, as this option was not used and is administratively burdensome on the Commission and USAC. Thus, a default in one census block could result in a draw on the entire letter of credit.

107. As the Commission has previously recognized, it will again allow for the option of greater flexibility regarding letter of credit for Tribally owned and controlled winning bidders. Consistent with CAF Phase II, if any Tribally owned and controlled Rural Digital Opportunity Fund winning bidder is unable to obtain a letter of credit, it may file a petition for a waiver of the letter of credit requirement. Consistent with the Commission's precedent, waiver applicants must show, with evidence acceptable to them, that the Tribally owned and controlled winning bidder is unable to obtain a letter of credit.

108. The determinations the Commission reaches in this document take into consideration the comments submitted on the burdens associated with the letter of credit requirement. The Commission concludes, however, that the letter of credit requirement best protects the Fund. While the Commission understands that there are costs associated with the letter of credit, it continues to believe bidders can incorporate these costs when determining their strategies prior to the auction. The universal service program provides significant benefits when weighed against the costs of the letter of credits, which in turn provide significant security of public funding. As the Commission has previously stated, letters of credit have “the added advantage of minimizing the possibility that the support becomes property of a recipient’s bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish the Commission’s goals.”

109. Commenters renewed requests for other safeguard measures, yet none of the measures fully guarantee that the Commission will be able to recover past support disbursements from a defaulting recipient. Several commenters suggested performance bonds or sureties. For example, WISPA and WTA assert the Commission should require auction winners to obtain performance bonds as an alternative to obtaining letters of credit, costing participants substantially less than a letter of credit. USTelecom agrees, commenting that the Commission should reconsider its proposals requiring Rural Digital Opportunity Fund winners to obtain a letter of credit as it is a substantial barrier to participation. Letters of credit, unlike performance bonds, allow for an immediate reclamation of support in the event the recipient is not properly using those funds. Performance bonds, on the other hand, would not provide the same level of protection and would require the involvement of a third party to adjudicate any disputes that arise, which would complicate the Commission processes and unnecessarily limit the authority of the Commission to allocate funds. A letter of credit, unlike a performance bond, has the benefit of the “independence principle” in that the letter of credit is independent of the underlying transaction. The bank’s obligation to pay under the letter of credit does not depend on the auction winner’s default but on the presentation of documents evidencing the default. Being independent in this way assures that USAC can collect monies due to it promptly without engaging in disputes with the winning bidder, the performance bond guarantor or the winning bidder’s trustee in bankruptcy over whether the funds should

be paid or even whether the funds are available to the Fund due to competing claims of creditors.

110. Similarly, Frontier and Windstream recommend placing money in escrow prior to bidding because they claim letters of credit are too expensive. The record also includes several comments opposing letter of credits or suggesting other means of protecting the Commission's interests. However, the Commission is not persuaded that escrow agreements, or other alternatives, would provide protection equal to the letters of credit that it now requires. Escrow agreements would put an amount of money with a third party who releases it when a contingency is satisfied. The auction winner would be a party to the escrow agreement, with the possibility that the support becomes the property of an auction winner's bankruptcy. Additionally, the auction winner would be required to place the same amount of funds in escrow as were disbursed by USAC, which could cause "administrative burdens" on the Commission and "could potentially delay the auction." The Commission itself would need to create an escrow account, attain the money of all recipients, and manage and ensure proper payment to all recipients, an unnecessary and inefficient duplication of a system banks already have in place with letters of credit, with none of the advantages. Instead, the Commission can rely on the expertise of banks' experience in managing letters of credit, guaranteeing payment, and ensuring security for the Commission and ultimately the Fund. Therefore, the Commission declines to implement escrow accounts and maintain the letter of credit requirement.

111. Finally, consistent with CAF Phase II, the Commission will require each winning bidder to submit a bankruptcy opinion letter from outside legal counsel. That opinion letter must clearly state, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the account party's bankruptcy estate, or the bankruptcy estate of any other competitive bidding process recipient-related entity requesting issuance of the letter of credit under section 541 of the Bankruptcy Code. The West Virginia Council argues that the bankruptcy opinion letter requirement is unduly burdensome and should be eliminated "to accommodate non-traditional service providers like co-ops, non-profits, and government entities" However, it is important to receive confirmation from each winning bidder that its letter of credit would not be consolidated in the estate.

Therefore, the Commission declines to eliminate this requirement and concludes that the limited burden imposed on winning bidders to obtain this letter is outweighed by its policy goal to be fiscally responsible with finite universal service funds.

112. The Commission next adopts rules that establish the framework under which a Rural Digital Opportunity Fund winning bidder will be subject to a forfeiture under section 503 of the Act if it defaults on its winning bid(s) before it is authorized to begin receiving support. A recipient will be considered in default and will be subject to forfeiture if it fails to timely file a long-form application, fails to meet the document submission deadlines outlined in this document, is found ineligible or unqualified to receive support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support. Consistent with CAF Phase II, a winning bidder will be subject to the base forfeiture for each separate violation of the Commission's rules.

113. For Rural Digital Opportunity Fund competitive bidding purposes, the Commission defines a violation as any form of default with respect to each geographic unit subject to a bid. The Commission maintains that each violation should not be unduly punitive and expect the forfeiture to be proportionate to the overall scope of the winning bidder's bid. The Commission concludes 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 its forfeiture guidelines. To determine the final forfeiture amount, the Commission's Enforcement Bureau will consider the "nature, circumstances, extent and gravity of the violations."

114. No commenter specifically opposed the Commission's original proposal to establish the forfeiture owed for an auction default. However, Windstream characterized the CAF Phase II forfeiture as "modest" and "apparently insufficient to prevent [defaulters] from bidding." Windstream further noted that "the forfeiture penalties proposed against [defaulters], which range from \$1,242 to \$30,000 did not deter these entities from bidding." USTelecom suggested that the Commission raise the base forfeitures, as the CAF Phase II base amounts were "not substantial enough to dissuade" uncommitted applicants from participating.

115. The Commission agrees with commenters. Thus, to ensure that the amount of the base

forfeiture is not disproportionate to the amount of an entity's bid, the Commission also limits the total base forfeiture to 15% of the bidder's total bid amount for the support term, which is an increase from the CAF Phase II auction limit of 5%. The Commission expects this will further ensure serious participation, without being overly burdensome and punitive to defaulters. As a condition of participating in the Rural Digital Opportunity Fund auction, entities will acknowledge that they are subject to a forfeiture in the event of an auction default. Thus, the Commission maintains that by adopting rules governing forfeitures for defaults, "the Commission will impress upon recipients the importance of being prepared to meet all its 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 . . . competitive bidding process and meet its terms and conditions."

III. Rural Digital Opportunity Fund Transitions

116. In this section, the Commission addresses several issues relating to the implementation of the Rural Digital Opportunity Fund in areas currently served by price cap carriers receiving either legacy high-cost or CAF Phase II model-based support. To ensure continuity of service for consumers, the Commission adopts specific support transition paths for census blocks served by these price cap carriers. The Commission also considers additional issues related to the transition from CAF Phase II model-based support to Rural Digital Opportunity Fund support, including the continuing responsibilities of incumbent price cap carriers no longer receiving support to serve specific areas.

117. In the *Rural Digital Opportunity Fund NPRM*, the Commission sought comment on adopting a transition period methodology for incumbent price cap carriers receiving disaggregated legacy support similar to the approach employed following the CAF Phase II auction. Specifically, the Commission proposed that, in areas where an incumbent price cap carrier receives disaggregated legacy support and subsequently it or another provider becomes the authorized Rural Digital Opportunity Fund support recipient, the incumbent will cease receiving disaggregated legacy support on the first day of the month after it is authorized to receive Rural Digital Opportunity Fund support. In legacy high-cost support areas where no Rural Digital Opportunity Fund support is authorized, the Commission proposed allowing the incumbent to continue receiving disaggregated support until further Commission action.

Finally, the Commission proposed ceasing disaggregated legacy support payments to incumbent carriers in any census block deemed ineligible for the Rural Digital Opportunity Fund on the first day of the month after the final Rural Digital Opportunity Fund eligible areas list is released.

118. Likewise, the Commission sought comment on transitioning support in areas served by CAF Phase II model-based support recipients. In particular, the Commission asked whether these carriers should receive an additional seventh year of model-based support, given the potential timing of a Rural Digital Opportunity Fund auction, and, if so, whether that additional support should be made available to all carriers receiving model-based support or only a certain subset of those carriers. The Commission also sought comment on whether the seventh year of support should be modified in any way, including whether it should cover all of 2021 or just a portion of the year, as well as whether any additional obligations should be tied to this support. Finally, the Commission asked parties to highlight any additional issues related to the transition of support.

119. Commenters broadly supported ensuring appropriate transitions to Rural Digital Opportunity Fund auction support and encouraged the Commission to affirm that all CAF Phase II model-based support recipients are entitled to a full seventh year of funding. In areas won by bidders in the Rural Digital Opportunity Fund auction, CenturyLink proposed that the Commission authorize all auction winners on January 1, 2022, with legacy transition support and CAF Phase II model-based support continuing through that time. Frontier argued that, in areas where the Rural Digital Opportunity Fund auction winner is not the incumbent price cap carrier, the Commission must provide continued support to existing CAF Phase II providers to ensure continued voice and broadband services, proposing a six-year phase out of this support at periods equal to the inverse of the new provider's deployment milestones. ITTA also argued for continued support for the incumbent price cap carriers in these areas, but instead proposed that the incumbent receive support at the level of the winning bidder in the respective service area until the winning bidder is able to serve all the locations currently served by the incumbent. In areas where there is no Rural Digital Opportunity Fund auction winner, Frontier and ITTA encouraged the Commission to provide existing price cap carriers with sufficient support to continue providing broadband and voice service. USTelecom, Windstream, and ITTA further advocated for continued

support to incumbent price cap carriers in areas where auction winners are not authorized by the end of 2021. Additionally, CenturyLink and NTCA proposed extending ongoing support in areas deemed ineligible for the Rural Digital Opportunity Fund. Other commenters highlighted the need for transitional support and encouraged the Commission to tie specific metrics or obligations to this support.

120. For incumbent price cap carriers currently receiving support through the disaggregated legacy high-cost support mechanism, the Commission determines that adopting a transition to Rural Digital Opportunity Fund auction support that builds on the approach employed following the CAF Phase II auction will provide necessary clarity as it implements a new support mechanism. As the Commission noted when it adopted the transitions to CAF Phase II auction support, such an approach will “protect customers of current support recipients from a potential loss of service, and minimize the disruption to recipients of frozen legacy support from a loss of funding” while at the same time ensuring that finite universal service funds are used responsibly.

121. First, in areas currently funded by disaggregated legacy support that are subsequently won in the Rural Digital Opportunity Fund auction by the incumbent price cap carrier, the incumbent will cease receiving disaggregated legacy support on the first day of the month following its authorization to receive Rural Digital Opportunity Fund support. Likewise, in legacy high-cost support areas won in the Rural Digital Opportunity Fund auction by new providers, the incumbent will cease receiving disaggregated legacy support the first day of the month after the new ETC is authorized to receive such support. In these instances, the Commission believes it is appropriate to transition to the new support mechanism as soon as possible to ensure that finite support dollars are used most efficiently.

122. The Commission recognizes that there may be eligible areas in the Rural Digital Opportunity Fund auction that see significant interest, but do not receive a winning bid. For these areas, the Commission revisits its prior approach of extending disaggregated legacy support on an interim basis until further Commission action. As the Commission previously noted, continued legacy support in auction-eligible, high-cost areas was provided on an interim basis pending further Commission action. Thus, carriers receiving legacy support have been on notice that this support would not be provided in perpetuity. The Commission now concludes that price cap carriers receiving legacy support in areas that

do not receive a winning bid will cease receiving such support on the first day of the month following the close of Phase I of the auction. These support amounts will instead be included as part of the budget for Phase II of the auction. The Commission also declines to extend additional support to these carriers to maintain fixed voice services in these areas. As the Commission's most recent data indicate, mobile voice subscriptions constitute almost 75% of the overall consumer voice subscriptions in the United States. Given the increasing ubiquity of fixed and mobile voice services, dedicating continued support for fixed voice services would be an inefficient use of the Commission's finite universal service dollars. Instead, the Commission concludes that directing support toward deploying more robust broadband services, rather than continuing to maintain current minimum service levels, is the best use of this funding. The Commission notes, however, that these areas will be included in Phase II of the Rural Digital Opportunity Fund auction and thus price cap carriers currently serving these areas will have the opportunity to bid on and again receive support to provide voice and broadband services in these areas.

123. In all census blocks deemed ineligible for the Rural Digital Opportunity Fund auction, incumbent price cap carriers will no longer receive legacy support beginning the first day of the month following release of the final Rural Digital Opportunity Fund eligible areas list for Phase I of the auction. Because these areas will be excluded from Phase I of this auction, the Commission has determined that continued legacy support for these areas is no longer necessary. Thus, the Commission will cease distributing legacy support as soon as possible in order to preserve its finite universal service funds, instead focusing support to areas in the greatest need of broadband deployment.

Transition of Price Cap Carriers' Legacy Support

Won at auction by the incumbent price cap carrier	Receives legacy support until the first day of the month following its authorization, then transitions to Rural Digital Opportunity Fund support
Won at auction by a new provider	Receives legacy support until the first day of the month following the new provider's authorization; new provider then receives Rural Digital Opportunity Fund support
Not won at auction	Receives legacy support until the first day of the month following close of the auction
Not eligible for auction	Receives legacy support until the first day of the month following release of the final eligible areas list

124. Next, the Commission addresses support transitions in areas where incumbent price cap carriers currently receive CAF Phase II model-based support. As with the Commission's approach for legacy support transitions, it has attempted to strike a balance between properly allocating its finite resources and ensuring that consumers across the country have access to uninterrupted services. The Commission notes at the outset that it, in establishing the six-year term of support for model-based

support recipients that would extend through 2020, intended to conduct a competitive bidding process in areas served by these carriers “no later than the end of 2019 to ensure there is continuity and a transition path” to the next support mechanism. Though the Commission did not meet this initial goal, it intends to conduct Phase I of the Rural Digital Opportunity Fund before the end of 2020. However, the Commission has learned from its experience with the CAF Phase II competitive bidding process that additional work will remain post-auction before winning bidders will be authorized to receive Rural Digital Opportunity Fund support and provide the required voice and broadband service. Because this work likely will stretch into 2021, the Commission revisits the previously established term of support for incumbent price cap carriers.

125. In the *December 2014 CAF Phase II Order*, 80 FR 4446, January 27, 2015, the Commission recognized the importance of providing a transition path between recipients of CAF Phase II model-based support and recipients of funding under a new support mechanism. Specifically, the Commission determined that it would offer incumbent price cap carriers the option of electing an additional year of support—through calendar year 2021—if they did not win at, or chose not to participate in, the subsequent competitive bidding process. Because of the timing considerations regarding Phase I of Rural Digital Opportunity Fund explained in this document, the Commission now determines that an additional seventh year for carriers receiving model-based support is necessary to ensure continuity in service for consumers and to provide a reasonable support glide path as it transitions from one support mechanism to another. This additional seventh year will not be limited to carriers that do not win in Phase I of the Rural Digital Opportunity Fund auction or carriers that do not participate in the auction; instead it will be available to all price cap carriers that elected the offer of model-based support in exchange for meeting defined service obligations. The Commission directs the Bureau to determine and implement a mechanism that will enable these price cap carriers to elect whether to receive an additional seventh year of support.

126. The Commission clarifies that in census blocks where a price cap carrier elects not to receive a seventh year of model-based support, it is indicating that ongoing model-based support is not necessary to maintain voice and broadband services in these areas. Thus, the carrier will receive no

further support after the conclusion of its six-year term (i.e., December 31, 2020), even if these areas are eligible for the Rural Digital Opportunity Fund auction. Following Phase I of the auction, the provider authorized to receive funding in these areas—whether the incumbent price cap carrier or a new provider—will begin receiving Rural Digital Opportunity Fund support the first day of the month after it is authorized. For areas where no qualifying bid is received in Phase I of the Rural Digital Opportunity Fund auction, as well as for areas deemed ineligible for Phase I of the Rural Digital Opportunity Fund auction, the incumbent price cap carrier’s model-based support will cease on December 31, 2020 and no further support will be provided in these areas.

**Transition for Price Cap Carriers in Areas Where a Carrier
Declines a Seventh Year of Model-Based Support**

Won at auction by the incumbent price cap carrier	Receives model-based support through 2020; begins receiving Rural Digital Opportunity Fund support the first day of the month after it is authorized
Won at auction by a new provider	Receives model-based support through 2020; new provider begins receiving Rural Digital Opportunity Fund support the first day of the month after it is authorized
Not won at auction	Receives model-based support through 2020
Not eligible for auction	Receives model-based support through 2020

127. In census blocks where a price cap carrier elects to receive a seventh year of model-based support, the Commission clarifies that the carrier will receive a full seventh calendar year of support—from January 2021 through December 2021—regardless of whether Rural Digital Opportunity Fund

support is authorized in these areas in 2021. Thus, in areas where a price cap carrier currently receives model-based support that are subsequently won in the Rural Digital Opportunity Fund auction by a new provider, the incumbent price cap carrier will continue to receive model-based support through 2021, even if the new provider is authorized to receive Rural Digital Opportunity Fund support in 2021. The Commission concludes providing support to both the incumbent price cap carrier and the new Rural Digital Opportunity Fund provider in these areas for the limited duration of 2021 will help facilitate an appropriate transition to a new ETC. The Commission notes that price cap carriers receiving the seventh year of model-based support will “be required to continue providing broadband with performance characteristics that remain reasonably comparable to the performance characteristics of terrestrial fixed broadband service in urban America, in exchange for ongoing CAF Phase II support.”

128. Similarly, in census blocks where a price cap carrier elects to receive a seventh year of model-based support and ultimately becomes the authorized Rural Digital Opportunity Fund support recipient, the price cap carrier will continue to receive support at its model-based levels through 2021, with Rural Digital Opportunity Fund support levels commencing in January 2022. The Commission declines to adopt USTelecom’s proposal that incumbent price cap carriers be allowed to choose the greater of their model-based support or RDOF support amount to receive during the remainder of 2021. The Commission observes that the reserve price for the RDOF auction is based on the support amounts calculated by the model and likely will be bid down by participants in the auction. Thus, in most, if not all, cases a price cap carrier’s model-based support amount will be greater than its Rural Digital Opportunity Fund support amount. Relatedly, in some instances, the incumbent price cap carrier may wish to expand its service area from its current CAF Phase II model-based supported areas and may bid on and be authorized to receive support in census blocks eligible for the Rural Digital Opportunity Fund that are adjacent to areas in which the carrier receives model-based support. Because the Commission expects the amount of model-based support that a carrier is receiving in a certain area to be higher than the amount of Rural Digital Opportunity Fund support it will receive, it expects these carriers to use the additional model-based support they receive in 2021 to begin the process of planning their buildouts for any adjacent, non-model-based support census blocks they may win.

129. In auction-eligible census blocks where a price cap carrier elects to receive a seventh year of model-based support and no qualifying bid is received in Phase I of the Rural Digital Opportunity Fund auction, the incumbent price cap carrier will continue to receive model-based support until the end of 2021. At that point, no further support will be provided to carriers serving these areas. As the Commission previously noted, the state-level commitment procedure for incumbent price cap carriers was intended to be limited in scope and duration. Though the Commission is providing carriers with a potential seventh year of support, this option is limited in duration and, as previously contemplated by the Commission, is a “a gradual transition to the elimination of support.” The Commission therefore concludes that extending support in these areas beyond the seven-year term simply to maintain substandard broadband levels would be an inefficient use of its limited universal service funds. Moreover, providing additional support simply to maintain fixed voice services in these areas is an inefficient use of funding given the ubiquity of mobile voice services. Instead, the Commission determines that these funds should be aimed at deploying high-speed broadband networks in rural communities across the country.

130. Likewise, census blocks where a price cap carrier elects to receive a seventh year of model-based support that are deemed ineligible for the Rural Digital Opportunity Fund auction will cease receiving model-based support at the end of 2021. Because the Commission, by excluding these blocks from Phase I of this auction, has determined that ongoing model-based support for these areas is no longer necessary, no further support will be provided to carriers serving these blocks after 2021. This approach is consistent with the Commission’s decision to stop providing legacy support in areas deemed ineligible for both the CAF Phase II auction and the Rural Digital Opportunity Fund auction and allows funding to flow to areas in the greatest need of broadband deployment.

**Transition for Price Cap Carriers in Areas Where a Carrier
Elects to Receive a Seventh Year of Model-Based Support**

Won at auction by the incumbent price cap carrier	Receives model-based support through 2021; transitions to Rural Digital Opportunity Fund support on January 1, 2022
Won at auction by a new provider	Receives model-based support through 2021; new provider receives RDOF support the first day of the month following authorization
Not won at auction	Receives model-based support through 2021
Not eligible for auction	Receives model-based support through 2021

131. Several commenters sought clarification from the Commission on the responsibilities of an incumbent price cap carrier once a new provider is authorized to receive Rural Digital Opportunity Fund support in an area previously served by the incumbent. Frontier contended that price cap carriers must be released from incumbent obligations, including the obligation to provide voice services, in areas where they cease to receive Rural Digital Opportunity Fund support. USTelecom proposed requiring Rural Digital Opportunity Fund auction winners to offer voice services beginning in the first month after they receive Rural Digital Opportunity Fund support. Likewise, Windstream and INCOMPAS stated that new providers should be able to provide voice service on day one of their support term. Commenters also encouraged the Commission to address additional issues regarding the responsibilities of price cap carriers no longer receiving support to serve specific areas. Conversely, some opposed commenters' requests to eliminate ETC obligations and preempt state and discontinuance requirements.

132. The Commission previously addressed the issue of ETC obligations as funding transitions to new mechanisms. In the *December 2014 CAF Phase II Order*, the Commission concluded

that it was in the public interest to forbear, pursuant to section 10 of the Communications Act of 1934, as amended, from enforcing a federal high-cost requirement that price cap carriers offer voice telephony service throughout their service areas pursuant to section 214(e)(1)(A) in three types of geographic areas: (1) low-cost census blocks, (2) census blocks served by an unsubsidized competitor, as defined in the Commission's rules, offering voice and broadband at speeds of 10/1 Mbps to all eligible locations, and (3) census blocks where another ETC is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations. At that time, the Commission also noted that price cap carriers would remain obligated to maintain existing voice service "unless and until they receive authority under section 214(a) to discontinue that service."

133. The same limited circumstances that required the Commission to grant forbearance to price cap carriers from the federal high-cost requirement to offer voice services in certain areas also exist here. As a result, in areas where a new provider is granted ETC status and is authorized to receive Rural Digital Opportunity Fund support, the incumbent price cap carrier will be relieved of its federal high-cost ETC obligation to offer voice telephony services in that area. As the Commission explained when it initially granted such forbearance, because there is another ETC in these areas required to offer voice and broadband services to fixed locations that meet the Commission's public service obligations, it concludes that enforcement of the requirement that price cap carriers offer voice telephony in these areas "is not necessary to ensure that the charges, practices, or classifications of price cap carriers are just and reasonable and not unjustly or unreasonably discriminatory in specific geographic areas." The Commission also clarifies that this forbearance applies to census blocks deemed ineligible for the Rural Digital Opportunity Fund by virtue of being served by an unsubsidized competitor.

134. The Commission's decision to extend this limited forbearance to the Rural Digital Opportunity Fund context does not redefine price cap carriers' service areas or revoke price cap carriers' ETC designations in these areas. Thus, the Commission's action does not relieve ETCs of their other "incumbent-specific obligations" like interconnection and negotiating unbundled network elements pursuant to sections 251 and 252 of the Act. Moreover, these price cap carriers must continue to satisfy all Lifeline ETC obligations by offering voice telephony service to qualifying low-income households in

areas in which they are subject to this limited forbearance. Finally, price cap carriers in these areas remain subject to other Title II requirements, including ensuring that voice telephony rates remain just and reasonable and the nondiscrimination obligations of sections 201 and 202 of the Act. Additionally, the Commission declines to preempt any state regulations or obligations to which these carriers may be subject. Commenters make only vague, unsubstantiated claims about burdensome state obligations in support of these requests. Price cap carriers must continue to comply with state requirements, including carrier of last resort obligations, to the extent applicable. The Commission similarly defers to the states' judgment in assuring that the local rates that price cap carriers offer in the areas from which the Commission forbears remain just and reasonable. Price cap carriers will remain subject to ETC obligations other than those covered by the Commission's forbearance unless or until they relinquish their ETC designations in those areas pursuant to section 214(e)(4). As the Commission transitions to a new funding mechanism to further its goal of supporting the deployment of both voice and broadband-capable networks, the existing service areas and corresponding obligations will help preserve existing voice service for consumers until the Rural Digital Opportunity Fund is fully implemented, and ensure that even the most remote, extremely high-cost areas are served, consistent with the Commission's universal service goals and principles.

135. More generally, price cap carriers must continue to maintain existing voice service until they receive discontinuance authority under section 214(a) of the Act and section 63.71 of the Commission's rules. As noted in this document, several commenters have requested that the Commission adopt a streamlined section 214 discontinuance process for price cap carriers that are replaced by a new provider receiving high-cost support. The Commission is not persuaded that such a process would benefit consumers in these areas. The Commission's discontinuance rules are designed to ensure that customers are fully informed of any proposed change that will reduce or end service, ensure appropriate oversight by the Commission of such changes, and provide an orderly transition of service, as appropriate. This process allows the Commission to minimize harm to customers and to satisfy its obligation under the Act to protect the public interest.

136. In evaluating a section 214 discontinuance application, the Commission generally

considers a number of factors, including the existence, availability, and adequacy of alternatives. By examining these factors, the Commission can ensure that the removal of a voice service option from the marketplace occurs in a manner that respects consumer expectations and needs. Thus, the Commission will deny a discontinuance application if it would leave customers or other end users in the proposed area without the ability to receive voice service or a reasonable alternative, or if the public convenience and necessity would be otherwise adversely affected. In such circumstances, the Commission will require price cap carriers to continue offering voice telephony services in those areas in those instances where there is no reasonable alternative. The Commission notes that an authorization to receive Rural Digital Opportunity Fund support includes an expectation that the provider will offer a reasonable voice service alternative satisfying section 63.602(b) of the Commission's rules, but it will retain the discontinuance process to confirm that it is doing so. Adopting a streamlined process for areas in which the Commission grants limited forbearance would prevent them from conducting the thorough review process necessary to ensure whether appropriate alternatives are available to consumers or the present or future public convenience and necessity would be adversely affected by such a discontinuance.

137. Finally, the Commission clarifies the specific timing to the grant of limited forbearance to incumbent price cap carriers that are replaced by a new provider. First, the Commission finds that these carriers will be relieved of their federal high-cost ETC obligation to offer voice telephony in specific census blocks on the first day of the month after a new ETC is authorized to receive Rural Digital Opportunity Fund support in those blocks. Thus, the new provider receiving Rural Digital Opportunity Fund support should be prepared to provide voice service throughout its service areas, either through its own facilities or a combination of its own and other ETC's facilities, on the first day of that month. Price cap carriers electing to receive a seventh year of model-based support will maintain their obligation to provide both voice and broadband service throughout 2021, as explained in this document. These carriers will be relieved of their federal high-cost ETC obligation to offer voice telephony in specific census blocks on January 1, 2022, regardless of when a new ETC is authorized to receive Rural Digital Opportunity Fund support. Finally, incumbent price cap carriers that decline a seventh year of model-based support will be relieved of the federal high-cost ETC obligation to offer voice telephony on the first

day of the month after a new Rural Digital Opportunity Fund support recipient is authorized to receive support.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

138. This document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA) Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

139. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

140. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Rural Digital Opportunity Fund NPRM*. The Commission sought written public comment on the proposals in the *Rural Digital Opportunity Fund NPRM*, including comment on the IRFA. The Commission did not receive any comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

141. Bringing digital opportunity to Americans living on the wrong side of the digital divide continues to be the Federal Communication Commission's top priority. It is imperative that the Commission take prompt and expeditious action to deliver on its goal of connecting all Americans, no matter where they live and work. Without access to broadband, rural communities cannot connect to the digital economy and the opportunities for better education, employment, healthcare, and civic and social

engagement it provides.

142. In recent years, the Commission has made tremendous strides toward its goal of making broadband available to all Americans. But while the digital divide is closing, more work remains to be done. Therefore, in this Order, the Commission adopts the framework for the Rural Digital Opportunity Fund. It builds on the successful model from 2018's Connect America Fund (CAF) Phase II auction, which allocated \$1.488 billion to deploy networks serving more than 700,000 unserved rural homes and businesses across 45 states. The Rural Digital Opportunity Fund represents the Commission's single biggest step to close the digital divide by providing up to \$20.4 billion to connect millions more rural homes and small businesses to high-speed broadband networks. It will ensure that networks stand the test of time by prioritizing higher network speeds and lower latency, so that those benefitting from these networks will be able to use tomorrow's Internet applications as well as today's.

143. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. 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.

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

145. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

146. Finally, the small entity described as a “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.” U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”

147. Small entities potentially affected by the rules herein include Wireline Providers, Wireless Providers (except Satellite), Internet Service Providers (Broadband), Satellite Telecommunications, Electric Power Generators, Transmitters, and Distributors and All Other Telecommunications.

148. In the Order the Commission adopts rules that will apply in the Rural Digital Opportunity Fund auction. The Commission establishes four technology-neutral tiers of bids available for bidding with varying broadband speed and usage allowances, and for each tier will differentiate between bids that would offer either lower or higher latency. Like all high-cost ETCs, the Commission requires that Rural Digital Opportunity Fund recipients offer standalone voice service and offer voice and broadband service meeting the relevant performance requirements at rates that are reasonably comparable to rates offered in urban areas. All ETCs must advertise the availability of their voice services through their service areas, and the Commission requires support recipients also to advertise the availability of their broadband services within their service area. Rural Digital Opportunity Fund support recipients will also be subject to the same uniform framework for measuring speed and latency performance along with the

accompanying compliance framework as all other recipients of high-cost support required to serve fixed locations.

149. In the Order, the Commission adopts a 10-year support term for Rural Digital Opportunity Fund support recipients along with interim service milestones by which support recipients must offer the required voice and broadband service to a required number of locations. The final service milestones will differ based on whether the Bureau determines that there are more or fewer locations than initially determined by the Connect America Cost Model. Rural Digital Opportunity Fund recipients must also offer service to newly built locations upon reasonable request if those locations were built before milestone year eight.

150. For entities that are interested in participating in the Rural Digital Opportunity Fund, adopted a two-step application process. The Commission requires applicants to submit a pre-auction short-form application that includes information regarding their ownership, technical and financial qualifications, the technologies they intend to use and the types of bids they intend to place, their operational history, and an acknowledgement of their responsibility to conduct due diligence. Commission staff will review the applications to determine if applicants are qualified to bid in the auction.

151. The Commission also requires winning bidders to submit a long-form application in which they will submit information about their qualifications, funding, and the networks they intend to use to meet their obligations. During the long-form application period, the Commission will require long-form applicants to obtain an ETC designation from the state or the Commission as relevant that covers the eligible areas in their winning bids. Prior to being authorized to receive support, the Commission will require long-form applicants to obtain an irrevocable stand-by letter of credit that meets its requirements from an eligible bank along with a bankruptcy opinion letter. The amount of support the letter of credit must cover will vary based on whether the support recipient has met certain service milestones. Commission staff will review the applications and submitted documentation to determine whether long-form applicants are qualified to be authorized to receive support. The Commission will subject winning bidders or long-form applicants that default during the long-form application process to forfeiture.

152. To monitor the use of Rural Digital Opportunity Fund support to ensure that it is being used for its intended purposes, the Commission will require support recipients to file location and technology data on an annual basis in the online High Cost Universal Broadband (HUBB) portal and to make certifications when they have met their service milestones. The Commission also will require applicants to file certain information in their annual FCC Form 481 reports including information regarding the community anchor institutions they serve, the support they used for capital expenditures, and certifications regarding meeting the Commission's performance obligations and available funds. Support recipients will also be subject to the annual section 54.314 certifications, the same record retention and audit requirements, and the same support reductions for untimely filings as other high-cost ETCs.

153. For support recipients that do not meet their Rural Digital Opportunity Fund obligations, the Commission will subject such support recipients to the framework for support reductions that is applicable to all high-cost ETCs that are required to meet defined service milestones and to the process the Commission adopted for drawing on letters of credit for the CAF Phase II auction, subject to some modifications regarding the amount of support that will be recovered after the sixth and eighth service milestones, as applicable. Additionally, if a Rural Digital Opportunity Fund support recipient believes it cannot meet the 40% service milestone, it must notify the Bureau and provide information explaining this expected deficiency. If a support recipient has not made such a notification and has deployed to fewer than 20% of the required number of locations by the third year service milestone, the Commission will find the recipient to be default rather than withholding the support and giving the support recipient an additional year to come into compliance. Support recipients may also seek waiver if as they are deploying their networks there are not enough locations to meet their interim milestones.

154. The Commission also adopts specific support transition paths for census blocks served by price cap carriers receiving both legacy high-cost and model-based support, including delegating to the Wireline Competition Bureau the task of determining and implementing a mechanism that will enable price cap carriers to elect whether to receive an additional, seventh year of Phase II model-based support. Additionally, the Commission clarifies the continuing responsibilities of price cap carriers no longer

receiving support to serve specific areas.

155. 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.”

156. The Commission has considered the economic impact on small entities in reaching its final conclusions and taking action in this proceeding. The rules that the Commission adopts in the Order will provide greater certainty and flexibility for all carriers, including small entities. For example, the Commission adopts different performance standards for bidders to maximize the types of entities that can participate in the Rural Digital Opportunity Fund auction. Additionally, while the Commission declines to adopt any bidding credits, it does incorporate into the reserve prices for Tribal areas a Tribal Broadband Factor to provide an incentive for service providers, including small entities, to bid on and serve Tribal lands.

157. The Commission also expects that the minimum geographic area for bidding will be a census block group containing one or more eligible census blocks, but reserve the right to select census tracts when the Commission finalizes the auction design if necessary to limit the number of discrete biddable units. The Commission finds that this approach is preferable because it ensures that all interested bidders, including small entities, have flexibility to design a network that matches their business model and the technologies they intend to use. The Commission declines to adopt census blocks as the minimum geographic unit because there are significantly more eligible census blocks, increasing the complexity of the bidding process both for bidders, including small entities, and the bidding system and minimizing the potential for broad coverage by winning bidders.

158. The Commission declines to adopt a resource-intensive challenge process and instead have decided to rely on FCC Form 477 data and conduct a more streamlined challenge process to determine areas that are eligible for the Rural Digital Opportunity Fund auction. This means that service

providers, including small entities, will have to file a FCC Form 477 as they are already required to do to ensure that the areas they serve are not overbuilt. Through the challenge process, interested parties may also identify areas that have been served since they have submitted the most recent publicly available FCC Form 477 data or identify areas that have been awarded funding through federal or state broadband subsidy programs to provide 25/3 Mbps or better service.

159. Based on lessons learned from the CAF Phase II auction, the Commission also adopts a two-step application process that will allow entities interested in bidding to submit a short-form application to be qualified in the auction that it found to be an appropriate but not burdensome screen to ensure participation by qualified providers, including small entities. Only if an applicant becomes a winning bidder will it be required to submit a long-form application which requires a more thorough review of an applicant's qualifications to be authorized to receive support. Like the CAF Phase II auction, the Commission provides two pathways for eligibility for the auction—both 1) for entities that have at least two years' experience providing a voice, broadband, and/or electric transmission or distribution service, and 2) for entities that have at least three years of audited financials and can obtain an acceptable letter of interest from an eligible bank. The Commission expects that by proposing to adopt two pathways for eligibility and to permit experienced entities that do not audit their financial statements in the ordinary course of business to wait to submit audited financials until after they are announced as winning bidders, more small entities will be able to participate in the auction. The Commission declines to collect less financial and technical information from experienced providers, finding that all existing service providers are not necessarily qualified to bid for additional universal service support and that the passage of time since its last review may impact qualifications. At the same time, the Commission also declines to require more detailed technical and operational showings as suggested by some commenters because it found these proposals would provide significant barriers to entry for participation by interested entities, including small entities.

160. The Commission also permits all long-form applicants, including small entities, to obtain their ETC designations after becoming winning bidders so that they do not have to go through the ETC designation process prior to finding out if they won support through the auction. The Commission

declines to adopt the alternatives to letters of credit that were suggested by commenters because letters of credit better achieve the Commission's objective of protecting the public's funds. But recognizing that some CAF Phase II auction participants, including small entities, have expressed concerns about the costs of obtaining and maintaining a letter of credit, the Commission makes a modification to its requirements to allow support recipients to cover less support with their letters of credit and further reduce the value of their letters of credit once it has been verified that they have met certain service milestones.

161. The Commission declines to adopt additional performance requirements, like requiring specific subscription milestones, because it finds that they are likely to discourage many bidders, including small entities, from participating in the auction because they would risk losing funding in areas with low subscribership rates. The Commission also declines to adopt more aggressive service milestones and instead explain that entities with smaller projects have the opportunity to build-out faster than the service milestones.

162. The reporting requirements the Commission adopts for all Rural Digital Opportunity Fund support recipients are tailored to ensuring that support is used for its intended purpose and so that the Commission can monitor the progress of recipients in meeting their service milestones. The Commission finds that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on all entities, including small entities, particularly because much of the information that the Commission requires they report is information the Commission expects they will already be collecting to ensure they comply with the terms and conditions of support and they will be able to submit their location data on a rolling basis to help minimize the burden of uploading a large number of locations at once.

V. ORDERING CLAUSES

163. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, and §§ 1.1 and 1.425 of the Commission's rules, 47 CFR 1.1 and 1.425 this Report and Order IS ADOPTED. The Report and Order SHALL BE EFFECTIVE 30 days after publication in the Federal Register, except for portions containing information collection requirements in §§ 54.313, 54.316, 54.804,

and 54.806 that have not been approved by OMB. The Federal Communications Commission will publish a document in the Federal Register announcing the effective date of these provisions.

164. IT IS FURTHER ORDERED that Part 54 of the Commission's rules IS AMENDED as set forth in the following, and that any such rule amendments that contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act SHALL BE EFFECTIVE after announcement in the Federal Register of Office of Management and Budget approval of the rules, and on the effective date announced therein.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.
Federal Communications Commission.

Marlene Dortch,
Secretary,
Office of the Secretary.

Final Rules

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

PART 54- UNIVERSAL SERVICE

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

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

2. Amend § 54.310 by adding paragraphs (g) and (h) to read as follows:

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

* * * * *

(g) *Extended term of model-based support.* Eligible telecommunications carriers receiving model-based support may elect to receive a seventh year of such support. An eligible telecommunications carrier electing to receive this additional year of support makes a state-level commitment to maintain the required voice and broadband services in the areas for which it receives support during this extended term. The Wireline Competition Bureau will implement a mechanism to enable an eligible telecommunications carrier to elect whether to receive an additional seventh year of support.

(h) *Transition to Rural Digital Opportunity Fund support.* (1) In areas where the eligible telecommunications carrier elects to receive an optional seventh year of model-based support pursuant to paragraph (g) of this section, it shall receive such support for a full calendar year, regardless of the disposition of these areas in the Rural Digital Opportunity Fund auction.

(i) If the eligible telecommunications carrier becomes the winning bidder in the Rural Digital Opportunity Fund auction in these areas, it shall continue to receive model-based support through December 31, 2021. Thereafter, it shall receive monthly support in the amount of its Rural Digital Opportunity Fund winning bid.

(ii) If another provider is the winning bidder in the Rural Digital Opportunity Fund auction in these areas, the new provider shall receive monthly support in the amount of its Rural Digital Opportunity Fund

winning bid starting the first day of the month following its authorization by the Wireline Competition Bureau. The eligible telecommunications carrier shall continue to receive model-based support for these areas through December 31, 2021.

(iii) If there is no authorized Rural Digital Opportunity Fund auction support recipient in these areas or if these areas are deemed ineligible for the Rural Digital Opportunity Fund auction, the eligible telecommunications carrier shall continue to receive model-based support for these areas through December 31, 2021. Thereafter, it shall receive no additional support.

(2) In areas where the eligible telecommunications carrier declines to receive an optional seventh year of model-based support pursuant to paragraph (g) of this section, it shall cease receiving model-based support for these areas on December 31, 2020.

3. Amend § 54.312 by adding paragraph (e) to read as follows:

§ 54.312 Connect America Fund for Price Cap Territories—Phase I.

* * * * *

(e) *Eligibility for support after Rural Digital Opportunity Fund auction.* (1) A price cap carrier that receives monthly baseline support pursuant to this section and is a winning bidder in the Rural Digital Opportunity Fund auction shall receive support at the same level as described in paragraph (a) of this section for such area until the Wireline Competition Bureau determines whether to authorize the carrier to receive Rural Digital Opportunity Fund auction support for the same area. Upon the Wireline Competition Bureau's release of a public notice approving a price cap carrier's application submitted pursuant to §54.315(b) and authorizing the carrier to receive Rural Digital Opportunity Fund auction 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 Rural Digital Opportunity Fund winning bid.

(2) Starting the first day of the month following the release of the final eligible areas list for the Rural Digital Opportunity Fund auction, as determined by the Wireline Competition Bureau, no price cap carrier that receives monthly baseline support pursuant to this section shall receive such monthly baseline

support for areas that are ineligible for the Rural Digital Opportunity Fund auction.

(3) Starting the first day of the month following the close of Phase I of the Rural Digital Opportunity Fund auction, no price cap carrier that receives monthly baseline support pursuant to this section shall receive such monthly baseline support for areas where Rural Digital Opportunity Fund auction support is not awarded at auction for an eligible area.

(4) Starting the first day of the month following the authorization of Rural Digital Opportunity Fund auction support to a winning bidder other than the price cap carrier that receives monthly baseline support pursuant to this section for such area, the price cap carrier shall no longer receive monthly baseline support pursuant to this section.

4. Amend § 54.313 by revising paragraphs (e) introductory text, (e)(2) introductory text and (e)(2)(iii) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(e) In addition to the information and certifications in paragraph (a) of this section, the requirements in paragraphs (e)(1) and (2) of this section apply to recipients of Phase II, Rural Digital Opportunity Fund, Uniendo a Puerto Rico Fund Stage 2 fixed support, and Connect USVI Fund Stage 2 fixed support:

* * * * *

(2) Any recipient of Phase II, Rural Digital Opportunity Fund, Uniendo a Puerto Rico Fund Stage 2 fixed, or Connect USVI Fund Stage 2 fixed support awarded through a competitive bidding or application process shall provide:

* * * * *

(iii) Starting the first July 1st after meeting the final service milestone in § 54.310(c) or § 54.802(c) of this chapter until the July 1st after the Phase II recipient's or Rural Digital Opportunity Fund recipient's support term has ended, a certification that the Phase II-funded network that the Phase II auction recipient operated in the prior year meets the relevant performance requirements in § 54.309 of this chapter, or that the network that the Rural Digital Opportunity Fund recipient operated in the prior year meets the relevant performance requirements in § 54.805 for the Rural Digital Opportunity Fund.

* * * * *

5. Amend § 54.316 by revising paragraph (a)(4), adding paragraph (a)(8), and revising paragraphs (b)(5) and (c)(1) to read as follows:

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

(a) * * *

(4) Recipients subject to the requirements of § 54.310(c) shall report the number of locations for each state and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients of Connect America Phase II auction support shall also report the technology they use to serve those locations.

* * * * *

(8) Recipients subject to the requirements of § 54.802(c) shall report the number of locations for each state and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients of Rural Digital Opportunity Fund support shall also report the technology they use to serve those locations.

(b) * * *

(5) Recipients of Rural Digital Opportunity Fund support shall provide: No later than March 1 following each service milestone specified by the Commission, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its supported locations in each state.

* * * * *

(c) * * *

(1) Price cap carriers that accepted Phase II model-based support, rate-of-return carriers, and recipients of Rural Digital Opportunity Fund support must submit the annual reporting information required by March 1 as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

* * * * *

6. Revise subpart J to read as follows:

Subpart J- Rural Digital Opportunity Fund

Sec.

54.801 Use of competitive bidding for Rural Digital Opportunity Fund.

54.802 Rural Digital Opportunity Fund geographic areas, deployment obligations, and support disbursements.

§ 54.803 Rural Digital Opportunity Fund provider eligibility.

§ 54.804 Rural Digital Opportunity Fund application process.

54.805 Rural Digital Opportunity Fund public interest obligations.

§ 54.806 Rural Digital Opportunity Fund reporting obligations, compliance, and recordkeeping.

Subpart J- Rural Digital Opportunity Fund

§ 54.801 Use of competitive bidding for Rural Digital Opportunity Fund.

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of Rural Digital Opportunity Fund support and the amount of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.802 Rural Digital Opportunity Fund geographic areas, deployment obligations, and support disbursements.

(a) *Geographic areas eligible for support.* Rural Digital Opportunity Fund support may be made available for census blocks or other areas identified as eligible by public notice.

(b) *Term of support.* Rural Digital Opportunity Fund support shall be provided for ten years.

(c) *Deployment obligation.* (1) All recipients of Rural Digital Opportunity Fund support must complete deployment to 40 percent of the required number of locations as determined by the Connect America Cost Model by the end of the third year, to 60 percent by the end of the fourth year, and to 80 percent by the end of the fifth year. The Wireline Competition Bureau will publish updated location counts no later than the end of the sixth year. A support recipient's final service milestones will depend

on whether the Wireline Competition Bureau determines there are more or fewer locations than determined by the Connect America Cost Model in the relevant areas as follows:

(i) *More Locations.* After the Wireline Competition Bureau adopts updated location counts, in areas where there are more locations than the number of locations determined by the Connect America Cost Model, recipients of Rural Digital Opportunity Fund support must complete deployment to 100 percent of the number of locations determined by the Connect America Cost Model by the end of the sixth year. Recipients of Rural Digital Opportunity Fund support must then complete deployment to 100 percent of the additional number of locations determined by the Wireline Competition Bureau's updated location count by end of the eighth year. If the new location count exceeds 35% of the number of locations determined by the Connect America Cost Model within their area in each state, recipients of Rural Digital Opportunity Fund support will have the opportunity to seek additional support or relief.

(ii) *Fewer Locations.* In areas where there are fewer locations than the number of locations determined by the Connect America Cost Model, a Rural Digital Opportunity Fund support recipient must notify the Wireline Competition Bureau no later than March 1 following the fifth year of deployment. Upon confirmation by the Wireline Competition Bureau, Rural Digital Opportunity Fund support recipients must complete deployment to the number of locations required by the new location count by the end of the sixth year. Support recipients for which the new location count is less than 65 percent of the Connect America Cost Model locations within their area in each state shall have the support amount reduced on a pro rata basis by the number of reduced locations.

(iii) *Newly Built Locations.* In addition to offering the required service to the updated number of locations identified by the Wireline Competition Bureau, Rural Digital Opportunity Fund support recipients must offer service to locations built since the revised count, upon reasonable request. Support recipients are not required to deploy to any location built after milestone year eight.

(d) *Disbursement of Rural Digital Opportunity Fund funding.* An eligible telecommunications carrier will be advised by public notice when it is authorized to receive support. The public notice will detail how disbursements will be made.

§ 54.803 Rural Digital Opportunity Fund provider eligibility.

(a) Any eligible telecommunications carrier is eligible to receive Rural Digital Opportunity Fund support in eligible areas.

(b) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in the Rural Digital Opportunity Fund auction.

(c) To the extent any entity seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Rural Digital Opportunity Fund support, its designation as an eligible telecommunications carrier may be conditioned subject to receipt of Rural Digital Opportunity Fund support.

(d) Any Connect America Phase II auction participant that defaulted on all of its Connect America Phase II auction winning bids is barred from participating in the Rural Digital Opportunity Fund.

§ 54.804 Rural Digital Opportunity Fund application process.

(a) In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, any applicant to participate in competitive bidding for Rural Digital Opportunity Fund support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically qualified to meet the public interest obligations established for Rural Digital Opportunity Fund support;

(3) Disclose its status as an eligible telecommunications carrier to the extent applicable and certify that it acknowledges that it must be designated as an eligible telecommunications carrier for the area in which it will receive support prior to being authorized to receive support;

(4) Describe the technology or technologies that will be used to provide service for each bid;

(5) Submit any information required to establish eligibility for any bidding weights adopted by the Commission in an order or public notice;

(6) To the extent that an applicant plans to use spectrum to offer its voice and broadband services, demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the

minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for the term of support;

(7) Submit operational and financial information.

(i) If applicable, the applicant should submit a certification that it has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by an independent certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must submit unaudited financial statements from the prior fiscal year and certify that it will provide financial statements from the prior fiscal year that are audited by an independent certified public accountant by a specified deadline during the long-form application review process.

(A) If the applicant has provided a voice and/or broadband service it must certify that it has filed FCC Form 477s as required during this time period.

(B) If the applicant has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.

(ii) If an applicant cannot meet the requirements in paragraph (a)(7)(i) of this section, in the alternative it must submit the audited financial statements from the three most recent fiscal years and a letter of interest from a bank meeting the qualifications set forth in paragraph (c)(2) of this section, that the bank would provide a letter of credit as described in paragraph (c) of this section to the bidder if the bidder were selected for bids of a certain dollar magnitude.

(8) Certify that the applicant has performed due diligence concerning its potential participation in the Rural Digital Opportunity Fund.

(b) Application by winning bidders for Rural Digital Opportunity Fund support—

(1) *Deadline.* As provided by public notice, winning bidders for Rural Digital Opportunity Fund

support or their assignees shall file an application for Rural Digital Opportunity Fund support no later than the number of business days specified after the public notice identifying them as winning bidders.

(2) *Application contents.* An application for Rural Digital Opportunity Fund 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 qualified to meet the public interest obligations for Rural Digital Opportunity Fund support in each area for which it seeks support;

(iii) Certification that the applicant will meet the relevant public interest obligations, including the requirement that it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

(iv) A description of the technology and system design the applicant intends to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements for Rural Digital Opportunity Fund support;

(v) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the Rural Digital Opportunity Fund for the first two years of its support term and that the applicant will comply with all program requirements, including service milestones;

(vi) A description of how the required construction will be funded, including financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any;

(vii) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

(viii) Such additional information as the Commission may require.

(3) *Letter of credit commitment letter.* No later than the number of days provided by public notice, the long-form applicant shall submit a letter from a bank meeting the eligibility requirements outlined in paragraph (c) of this section committing to issue an irrevocable stand-by letter of credit, in the required

form, to the long-form applicant. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit.

(4) *Audited financial statements.* No later than the number of days provided by public notice, if a long-form applicant or a related entity did not submit audited financial statements in the relevant short-form application as required, the long-form applicant must submit the financial statements from the prior fiscal year that are audited by an independent certified public accountant.

(5) *Eligible telecommunications carrier designation.* No later than 180 days after the public notice identifying it as a winning bidder, the long-form applicant shall certify that it is an eligible telecommunications carrier in any area for which it seeks support and submit the relevant documentation supporting that certification.

(6) *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 long-form

applicant that may be authorized to receive Rural Digital Opportunity Fund support after the long-form applicant submits a letter of credit and an accompanying opinion letter as described in paragraph (c) of this section, in a form acceptable to the Commission. Each such long-form applicant shall submit a letter of credit and accompanying opinion letter as required by paragraph (c) of this section, in a form acceptable to the Commission no later than the number of business days provided by public notice.

(vi) After receipt of all necessary information, a public notice will identify each long-form applicant that is authorized to receive Rural Digital Opportunity Fund support.

(c) *Letter of credit.* Before being authorized to receive Rural Digital Opportunity Fund 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 Rural Digital Opportunity Fund support shall maintain the standby letter of credit in an amount equal to, at a minimum, one year of support, until the Universal Service Administrative Company has verified that the recipient has served 100 percent of the Connect America Cost Model-determined location total (or the adjusted Connect America Cost Model location count if there are fewer locations) by the end of year six.

(i) For year one of a recipient's support term, it must obtain a letter of credit valued at an amount equal to one year of support.

(ii) For year two of a recipient's support term, it must obtain a letter of credit valued at an amount equal to eighteen months of support.

(iii) For year three of a recipient's support term, it must obtain a letter of credit valued at an amount equal to two years of support.

(iv) For year four of a recipient's support term, it must obtain a letter of credit valued at an amount equal to three years of support.

(v) A recipient may obtain a new letter of credit or renew its existing letter of credit so that it is valued at an amount equal to one year of support once it meets its optional or required service milestones. The recipient may obtain or renew this letter of credit upon verification of its buildout by the Universal Service Administrative Company. The recipient may maintain its letter of credit at this level for the

remainder of its deployment term, so long as the Universal Service Administrative Company verifies that the recipient successfully and timely meets its remaining required service milestones.

(vi) A recipient that fails to meet its required service milestones must obtain a new letter of credit or renew its existing letter of credit at an amount equal to its existing letter of credit, plus an additional year of support, up to a maximum of three years of support.

(vii) A recipient that fails to meet two or more required service milestones must maintain a letter of credit in the amount of three year of support and may be subject to additional non-compliance penalties as described in § 54.320(d).

(2) *Bank eligibility.* 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) That is insured by the Federal Deposit Insurance Corporation, and

(B) That has a bank safety rating issued by Weiss of B- or better; or

(ii) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non–United States bank:

(A) That 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) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's; and

(D) Issues the letter of credit payable in United States dollars

(3) *Bankruptcy opinion letter.* A long-form applicant for Rural Digital Opportunity Fund support shall provide with its letter of credit an opinion letter from its 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 under section 541 of the Bankruptcy Code.

(4) *Non-compliance.* Authorization to receive Rural Digital Opportunity Fund support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

(i) Failure by a Rural Digital Opportunity Fund support recipient to meet its service milestones for the location totals determined by the Connect America Cost Model, or the location total that is adjusted by the Wireline Competition Bureau for those areas where there are fewer locations than the number of locations determined by the Connect America Cost Model, as required by § 54.802 will trigger reporting obligations and the withholding of support as described in § 54.320(d). Failure to come into full compliance during the relevant cure period as described in §§ 54.320(d)(1)(iv)(B) or 54.320(d)(2) will trigger a recovery action by the Universal Service Administrative Company as described in § 54.320(d)(1)(iv)(B) or § 54.806(c)(1)(i), as applicable. If the Rural Digital Opportunity Fund recipient does not repay the requisite amount of support within six months, the Universal Service Administrative Company will be entitled to draw the entire amount of the letter of credit and may disqualify the Rural Digital Opportunity Fund support recipient from the receipt of Rural Digital Opportunity Fund support or additional universal service support.

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau, or its respective designees, which letter, attached to a standby letter of credit draw certificate, shall be

sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.805 Rural Digital Opportunity Fund public interest obligations.

(a) Recipients of Rural Digital Opportunity Fund support are required to offer broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparable usage capacity, recipients are presumed to meet this requirement if they meet or exceed the usage level announced by public notice issued by the Wireline Competition Bureau. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(b) Recipients of Rural Digital Opportunity Fund support are required to offer broadband service meeting the performance standards for the relevant performance tier.

(1) Rural Digital Opportunity Fund support recipients meeting the minimum performance tier standards are required to offer broadband service at actual speeds of at least 25 Mbps downstream and 3 Mbps upstream and offer a minimum usage allowance of 250 GB per month, or that reflects the average usage of a majority of fixed broadband customers as announced annually by the Wireline Competition Bureau over the 10-year term.

(2) Rural Digital Opportunity Fund support recipients meeting the baseline performance tier standards are required to offer broadband service at actual speeds of at least 50 Mbps downstream and 5 Mbps upstream and offer a minimum usage allowance of 250 GB per month, or that reflects the average usage of a majority of fixed broadband customers as announced annually by the Wireline Competition Bureau over the 10-year term..

(2) Rural Digital Opportunity Fund support recipients meeting the above-baseline performance tier standards are required to offer broadband service at actual speeds of at least 100 Mbps downstream and

20 Mbps upstream and offer at least 2 terabytes of monthly usage.

(3) Rural Digital Opportunity Fund support recipients meeting the Gigabit performance tier standards are required to offer broadband service at actual speeds of at least 1 Gigabit per second downstream and 500 Mbps upstream and offer at least 2 terabytes of monthly usage.

(4) For each of the tiers in paragraphs (b)(1) through (3) of this section, bidders are required to meet one of two latency performance levels:

(i) Low-latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds; and

(ii) High-latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

(c) Recipients of Rural Digital Opportunity Fund support are required to bid on category one telecommunications and Internet access services in response to a posted FCC Form 470 seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program for eligible schools and libraries (as described in § 54.501) located within any area in a census block where the carrier is receiving Rural Digital Opportunity Fund support. Such bids must be at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

§ 54.806 Rural Digital Opportunity Fund reporting obligations, compliance, and recordkeeping.

(a) Recipients of Rural Digital Opportunity Fund support shall be subject to the reporting obligations set forth in §§ 54.313, 54.314, and 54.316.

(b) Recipients of Rural Digital Opportunity Fund support shall be subject to the compliance measures, recordkeeping requirements and audit requirements set forth in § 54.320(a)-(c).

(c) Recipients of Rural Digital Opportunity Fund support shall be subject to the non-compliance measures set forth in § 54.320(d) subject to the following modifications related to the recovery of support.

(1) If the support recipient does not report it has come into full compliance after the grace period for its sixth year or eighth year service milestone as applicable or if USAC determines in the course of a

compliance review that the eligible telecommunications carrier does not have sufficient evidence to demonstrate that it is offering service to all of the locations required by the sixth or eighth year service milestone as set forth in § 54.320(d)(3):

(i) Sixth year service milestone. Support will be recovered as follows after the sixth year service milestone grace period or if USAC later determines in the course of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it was offering service to all of the locations required by the sixth year service milestone:

(A) If an ETC has deployed to 95 percent or more of the Connect America Cost Model location count or the adjusted Connect America Cost Model location count if there are fewer locations, but less than 100 percent, USAC will recover an amount of support that is equal to 1.25 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations;

(B) If an ETC has deployed to 90 percent or more of the Connect America Cost Model location count or the adjusted Connect America Cost Model location count if there are fewer locations, but less than 95 percent, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 5 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state;

(C) If an ETC has deployed to fewer than 90 percent of the Connect America Cost Model location count or the adjusted Connect America Cost Model location count if there are fewer locations, USAC will recover an amount of support that is equal to 1.75 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state.

(ii) Eighth year service milestone. If a Rural Digital Opportunity Fund support recipient is required to serve more new locations than determined by the Connect America Cost Model, support will be recovered as follows after the eighth year service milestone grace period or if USAC later determines in the course

of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it was offering service to all of the locations required by the eighth year service milestone:

(A) If an ETC has deployed to 95 percent or more of its new location count, but less than 100 percent, USAC will recover an amount of support that is equal to the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations;

(B) If an ETC has deployed to 90 percent or more of its new location count, but less than 95 percent, USAC will recover an amount of support that is equal to 1.25 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations;

(C) If an ETC has deployed to 85 percent or more of its new location count, but less than 90 percent, USAC will recover an amount of support that is equal to 1.5 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 5 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state;

(D) If an ETC has deployed to less than 85 percent of its new location count, USAC will recover an amount of support that is equal to 1.75 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state.

(2) Any support recipient that believes it cannot meet the third-year service milestone must notify the Wireline Competition Bureau within 10 business days of the third-year service milestone deadline and provide information explaining this expected deficiency. If a support recipient has not made such a notification by March 1 following the third-year service milestone, and has deployed to fewer than 20 percent of the required number of locations by the end of the third year, the recipient will immediately be in default and subject to support recovery. The Tier 4 status six-month grace period as set forth in § 54.320(d)(iv) will not be applicable.

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