



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU COMMENCES CONNECT AMERICA PHASE II CHALLENGE PROCESS

WC Docket No. 10-90
WC Docket No. 14-93

CHALLENGES DUE: August 14, 2014

By this Public Notice, the Wireline Competition Bureau (Bureau) announces the commencement of the Connect America Phase II challenge process for price cap territories. The Bureau also provides resources to assist parties in making challenges. The Bureau encourages providers, state commissions, local governments, and any other interested parties to participate in the challenge process.¹

The Bureau has released a list of census blocks that have been deemed initially eligible for Phase II support, available at <http://www.fcc.gov/wcb/SS20140414CAM411%20Support%20Locations.csv>. This list consists of census blocks that are: (1) shown as unserved by an unsubsidized competitor; (2) “high cost” according to the adopted Connect America Cost Model, which means that the census block has a calculated average cost per location above \$52.50 and below \$207.81; and (3) located in price cap territories.²

Parties have until **August 14, 2014**, 45 days from the release of this Public Notice, to file an FCC Form 505 to challenge the inclusion or exclusion of particular census blocks on the list. **Challenges may only be based on the first criterion: whether the block is served by an unsubsidized competitor.** Challengers may argue either that census blocks served by an unsubsidized competitor were improperly included on the list, or that census blocks unserved by an unsubsidized competitor that are otherwise eligible were improperly excluded from the list. A map of census blocks that have been deemed initially eligible for Phase II support can be found at <http://www.fcc.gov/maps/fcc-connect-america-fund-phase-ii-initial-eligible-areas-map>. More detailed filing instructions are below.

Background. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans. As part of that reform, the Commission established Connect America Phase II, which will provide ongoing support to promote the deployment of voice and broadband-capable networks in the high-cost areas of price cap territories. The

¹ See *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7214, para. 8 n.17 (Wireline Comp. Bur. 2013) (*Phase II Challenge Process Order*).

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663, 17725-26, 17728, paras. 159, 167 (2011) (*USF/ICC Transformation Order*). Model based support may only be used in price cap territories. For those census blocks split between a price cap carrier study area and a rate-of-return carrier study area, the rate-of-return carrier does not need to file a challenge to prevent the overbuilding of its portion of the census block.

Commission specified that Phase II support would not be provided in areas served by an unsubsidized competitor, and it delegated to the Bureau the responsibility of determining those areas.³ The Commission also specified that there be a process by which parties could challenge that initial determination of whether an area is unserved by an unsubsidized competitor.

The Bureau set forth the framework for the Commission-mandated challenge process in the *Phase II Challenge Process Order*.⁴ The challenge process is focused on whether an area is served or unserved by an unsubsidized competitor. Using the National Broadband Map as a starting point, the Bureau preliminarily determined which census blocks were served or unserved by an unsubsidized competitor. Parties then have an opportunity to present evidence contesting the Bureau's initial determination, arguing either that a census block deemed served should instead be treated as unserved, or that a census block deemed unserved should be treated as served.⁵ After assessing the challenges, responses, and evidence received, the Bureau will make a final determination as to which census blocks will be treated as unserved, and thus potentially eligible for Phase II support.⁶ That final determination will be used in making an offer of Phase II model-based support to price cap carriers to fund the deployment of voice and broadband-capable infrastructure in their territories.

Recently, the Commission directed the Bureau to commence the Phase II challenge process using the standard established in the 2013 *Phase II Service Obligations Order*.⁷ In order to qualify as "served" by an unsubsidized competitor, the census block must have voice service and broadband service with pricing that is reasonably comparable to that for similar services in an urban area. In addition, the broadband service must offer speeds of at least 4 Mbps downstream and 1 Mbps upstream, a usage allowance of at least 100 GB, and latency of 100 ms or less.⁸

Using data from the adopted version of the cost model, the Bureau is providing several tools to aid parties interested in participating in this challenge process. For each state, the Bureau has published two separate files: a coverage data file, which shows the existing providers in the state, and a top speed file, showing the speeds provided by an unsubsidized competitor to census blocks in the state. Those files, along with explanatory instructions, can be found at <http://www.fcc.gov/encyclopedia/state-level-broadband-data-files>.

The Bureau will not consider challenges related to whether the cost per location, as calculated by the Connect America Cost Model (i.e., the second criterion), is accurate. However, parties may argue that a census block that is above the extremely high-cost threshold (\$207.81) is incorrectly designated as served or unserved by an unsubsidized competitor.⁹ Parties may not challenge whether a census block

³ *Id.* at 17729, para. 170.

⁴ *Phase II Challenge Process Order*, 28 FCC Rcd at 7216-20, paras. 12-22.

⁵ *Id.*

⁶ *Id.* at 7220, para. 21.

⁷ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., FCC 14-54, para. 90 (rel. June 10, 2014); *see also Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060 (Wireline Comp. Bur. 2013) (*Phase II Service Obligations Order*).

⁸ *Phase II Service Obligations Order*, 28 FCC Rcd at 15076-80, paras. 39-47.

⁹ There are two reasons parties may wish to challenge these blocks, even though they are outside the cost thresholds. First, Phase II recipients are permitted to deploy to unserved census blocks in extremely high-cost areas in lieu of other eligible census blocks. *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 171 n.279. Second, as census blocks are eliminated from eligibility through the challenge process, those census blocks may be "replaced" with other unserved census blocks, consistent with the overall budget for price cap territories, by modestly

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that is below the high-cost threshold (\$52.50) is unserved, since the census block would be ineligible for Phase II funding in any case.

Filing Process. To file a challenge, parties *must* complete FCC Form 505, available at <http://www.fcc.gov/encyclopedia/connect-america-phase-ii-challenge-process>, and file it on the Commission's Electronic Comment Filing System (ECFS). **Challenges must be filed in WC Docket No. 14-93 using Form 505. Challenges not utilizing Form 505 will be dismissed.** In addition to filing challenges on ECFS, parties are also required to submit a copy of their challenge in a native format to the Commission in one of two ways: either by e-mailing the files to Form505@fcc.gov or by delivering storage media containing the files to Ryan Yates of the Telecommunications Access Policy Division, Wireline Competition Bureau (see Procedural Matters below).¹⁰

The Bureau has also created a **challenge process guide**, designed to walk parties through the process of filing and responding to challenges, as well as answer some frequently asked questions. The guide can be found at <http://www.fcc.gov/encyclopedia/connect-america-phase-ii-challenge-process>. While this guide is designed to assist parties in participating in the challenge process, parties should also read the relevant Commission and Bureau documents related to the challenge process, particularly the *Phase II Challenge Process Order* and the June 20, 2014 Public Notice providing additional guidance.¹¹

Responses to Challenges. At the end of the 45 day challenge period, the Bureau will review the challenges received. The Bureau will then issue a public notice indicating which challenges have provided sufficient evidence to make a prima facie case that the Bureau's initial determination regarding the status of a census block should be changed from served to unserved or vice versa. Respondents will then have 45 days from the release of that second public notice to file their responses related to those particular blocks.

After the close of the response period, the Bureau will make its final determination as to whether the challenged census blocks will be treated as served or unserved by an unsubsidized competitor for the purposes of Phase II and will issue the final list of census blocks eligible. That final list will be used for making an offer of Phase II model-based support to price cap carriers.

Procedural Matters. Interested parties may file challenges using Form 505 on or before the date indicated on the first page of this document. Challenges are to reference **WC Docket No. 14-93 and DA 14-942** and may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (May 1, 1998).

- Electronic Filers: Challenges and responses may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>. A electronic copy of the challenge and accompanying evidence must also be e-mailed to Form505@fcc.gov or mailed on machine

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increasing the extremely high-cost threshold. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964, 4041, para. 184 (Wireline Comp. Bur. 2014).

¹⁰ The Bureau stated in the *Phase II Challenge Process Order* that it would also specify the acceptable formats of evidence files. *Phase II Challenge Process Order*, 28 FCC Rcd at 7217, para. 14 n.32. Given the experience in the Phase I challenge process, we now conclude that it is not necessary to enumerate a list of acceptable file formats. In the Phase I challenge process, all evidence was submitted to the Bureau in a format that was easily accessible (e.g., Excel spreadsheets, Word documents, and PDFs). The Bureau anticipates that the format of evidence files for the Phase II challenge process will be substantially similar. In the event the Bureau is not able to access a particular type of file, the Bureau will contact the submitting party to request the file in a different format.

¹¹ *Wireline Competition Bureau Provides Guidance Regarding the Phase II Challenge Process*, WC Docket No. 10-90, Public Notice, DA 14-864 (Wireline Comp. Bur. rel. June 20, 2014); *Phase II Challenge Process Order*, 28 FCC Rcd at 7211.

readable media to the attention of Ryan Yates, Telecommunications Access Policy Division, Wireline Competition Bureau, using the mailing methods discussed below for paper filers.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Paper filers are still required to submit an electronic version of their challenge, either by e-mail to Form505@fcc.gov or sent on machine readable media to the attention of Ryan Yates, Telecommunications Access Policy Division, Wireline Competition Bureau, using the mailing methods discussed below.

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

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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

For further information on this Public Notice, please contact Ryan Yates, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400, ryan.yates@fcc.gov; or at TTY (202) 418-0484.

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