



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE REGARDING PHASE II CHALLENGE PROCESS

WC Docket No. 10-90

1. In this Public Notice, the Wireline Competition Bureau (Bureau) provides guidance regarding several aspects of the upcoming Connect America Phase II process in which parties will be given an opportunity to challenge the determination of whether or not areas are served by an unsubsidized competitor. Building on the lessons learned in the Phase I challenge process, we discuss how the Bureau will interpret the term “served,” the evaluation of factual statements as evidence, and the treatment of confidential filings. We also remind parties that any evidence they wish us to consider must be included in their filings. This Public Notice does not begin the challenge process; the Bureau will issue a separate public notice at a later date explicitly announcing the start of the challenge process.

I. BACKGROUND

2. 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.¹ As part of those reforms, the Commission established Connect America Phase II to provide ongoing support to promote the deployment of voice and broadband-capable infrastructure in price cap areas.² The Commission determined that Phase II support would not be available in areas served by an unsubsidized competitor that offers voice and broadband service meeting the Commission’s broadband performance requirements.³ The Commission delegated to the Bureau the task of implementing the specific requirements of this rule, and it specified there should be a process that provides parties with an opportunity to challenge the Bureau’s determination of whether an area is unserved.⁴

3. Implementing the Commission’s decision, the Bureau set the parameters for how it would determine whether an entity would be considered an unsubsidized competitor, specifying the performance metrics a provider would be required to meet and how the Bureau would initially determine whether a census block was served or unserved by an unsubsidized competitor.⁵ In the *Phase II Challenge Process*

¹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*).

² *Id.* at 17725, para. 156.

³ *Id.* at 17729, para. 170. An unsubsidized competitor is a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support. *Id.* at 17701, para. 103.

⁴ *Id.* at 17729, paras. 170-171.

⁵ *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 15060, 15076-80, paras. 39-47 (Wireline Comp. Bur. 2013) (*Phase II Service Obligations Order*).

Order, the Bureau established a process by which parties could challenge the initial designation of a block as served or unserved.⁶ The Bureau also adopted FCC Form 505, which parties must use in filing challenges and responses.⁷ In submitting Form 505, parties must also fill out an accompanying certification, affirming that the statements contained in the challenge or responses are true and accurate to the best of the knowledge of the certifying official.⁸

4. While Phase II was being developed, the Commission concluded that it would provide for a second round of one-time Connect America Phase I support, and it allowed parties to challenge the eligibility of areas shown as served on the National Broadband Map. The Bureau resolved challenges filed by over 80 providers on a host of different grounds. For this second round of Phase I, the Bureau had no prior experience administering a challenge process. In advance of the challenge process, the Commission provided only limited guidance on the types of evidence that would be considered, as it could only make reasoned predictions about the types of evidence that might be submitted and arguments that would be raised.⁹ This absence of firm guidance, combined with the fact that Phase I support would provide one-time rather than ongoing funding, led the Bureau to interpret much of the evidence and statements received in a manner favorable to the putative existing providers.¹⁰

II. DISCUSSION

5. We conclude that providing additional guidance prior to the commencement of the Phase II challenge process will ensure that this process is conducted effectively and efficiently. Using the experience gained in the Phase I challenge process, the Bureau is in a better position to anticipate the types of evidence and arguments that may be submitted in the Phase II challenge process. Therefore, the Bureau, through this Public Notice, provides information on how the Phase II challenge process will be conducted and how parties can most effectively participate in that process. Such advance guidance will save time and effort while providing additional certainty to parties participating in the Phase II challenge process.¹¹

6. In the discussion below, we refer to challenges being made by price cap carriers and cable or fixed wireless providers.¹² We use the terms price cap carrier and cable or fixed wireless providers in this context because we anticipate such parties will submit the bulk of challenges. However, other entities, such as state commissions, localities, and individual consumers, are permitted and encouraged to challenge census blocks that they believe to be incorrectly designated as served or unserved. Notably, entities other than price cap carriers may wish to challenge the designation of census

⁶ *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013) (*Phase II Challenge Process Order*).

⁷ *Id.* at 7217, para. 14.

⁸ *Id.*

⁹ *See Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7766, 7779, para. 33 (2013) (noting various forms of evidence that parties could submit for the Phase I challenge process).

¹⁰ *See, e.g., Connect America Fund*, WC Docket No. 10-90, Order, 29 FCC Rcd 181, 186-87, para. 18 (Wireline Comp. Bur. 2014) (*Phase I Challenge Resolution Order*).

¹¹ The term “party” or “parties” is used generically to refer to any participant in the challenge process.

¹² Throughout this document we refer to a party arguing that a census block should be treated as unserved as the “price cap carrier” and the party arguing that a census block should be treated as served as the “provider” or “cable or fixed wireless provider.” This shorthand is used to avoid the necessity of continually using cumbersome language in referring to different categories of challengers; it is not intended to limit which parties are permitted to make challenges. As noted above, parties other than price cap carriers may argue that a census block is unserved, and parties other than cable or fixed wireless providers may argue that a census block is served.

blocks as served if they are potentially interested in obtaining funding for those census blocks being awarded through a competitive bidding process.

A. Firm Deadlines for Submission of Evidence in Challenge Process

7. As an initial matter, we remind parties that we do not intend to consider evidence or arguments submitted after the close of the comment cycle for the Phase II challenge process. Thus, the Phase II challenge process will operate under a best and final evidence system (i.e., parties only have one opportunity to submit evidence and arguments in support of their challenge). If a party's challenge is opposed, the party will not have an opportunity to respond to the opposition. Therefore, it is in the best interest of the party filing a challenge to present sufficient evidence with its filing to prevail in the challenge in the event it is opposed.

B. Defining the Scope of “to Serve”

8. Determining whether an unsubsidized competitor serves an area with voice and broadband service is essential to the Phase II challenge process.¹³ In filing a challenge, a provider must certify that the census block in question “is served by unsubsidized broadband and voice services meeting the Commission’s performance and pricing criteria.”¹⁴ Based on the experience gained in the Phase I challenge process,¹⁵ we conclude that it would be beneficial to the process to specify more clearly what is required in order for a party truthfully to certify on FCC Form 505 that a given census block is “served.”¹⁶

9. For purposes of the Phase II challenge process, in order to truthfully certify on FCC Form 505 that a census block is “served,” a provider must meet three criteria:

1) The provider must actually be offering voice and broadband service in the census block. “Offering” the service is more than being capable of offering service. For purposes of the Phase II challenge process, a provider is “offering” voice and broadband if it holds itself out to the public as able and willing to provide voice and broadband to a given location. The Bureau will examine this question from the point of view of the consumer: whether a consumer, examining the information available to her, would reasonably believe that she could order voice and broadband service from the provider at her address.

¹³ See, e.g., *Phase II Challenge Process Order*, 28 FCC Rcd at 7211, para. 1.

¹⁴ Connect America Phase II Challenge Process Form, FCC Form 505, available at *Phase II Challenge Process Order Appx.*, 28 FCC Rcd at 7225-26. See also 47 C.F.R. § 54.101; *Phase II Challenge Process Order*, 28 FCC Rcd at 7212-20, paras. 4-22.

¹⁵ *Phase I Challenge Resolution Order*, 29 FCC Rcd at 186-87, para. 18. In the second round of Phase I, we accepted a wide range of assertions as sufficient evidence that an area is served, in part because we had not previously specified precise language that parties should use in responding to challenges from price cap carriers. We thus construed statements that a census block in question is “serviceable” or “capable of being served” as a statement that the block was “served” for purposes of the Phase I challenge process. As was stated in the *Phase I Challenge Resolution Order*, this treatment of “serviceable” or “capable of being served” applied only to Phase I. See *id.* (“A statement that [the provider] ‘can provide’ service will not be sufficient to establish a block is served in Phase II.”).

¹⁶ Voice and broadband performance are issues of quality (i.e., is the service sufficiently robust to meet the Commission’s standards); for example, does the provider’s broadband have sufficient bandwidth, does it provide enough usage allowance, does it have low enough latency. Whether an area is “served” is a more fundamental question of availability – does the provider’s service even exist in the census block in question.

2) The provider must have voice and broadband-capable physical assets (wireline or wireless) in or adjacent to the census block at issue.¹⁷

3) The provider must already have customers in that census block, or previously had customers in that census block.¹⁸ If the provider has no current customers, but previously had customers, it must be able and willing to provision voice and broadband service to customers in that census block within seven to ten business days without an extraordinary commitment of resources and without any special construction charge or construction fee to consumers in that block.

10. In order to certify that a block is served, the party making the certification must have a factual basis to conclude each of these criteria is satisfied and be prepared to produce additional evidence to substantiate its claim to Commission staff upon request.¹⁹ If these criteria are not met, it cannot make the requisite certification. To certify falsely in this context would subject the party to potential enforcement action.²⁰

11. We note that providers are not required to make an independent showing regarding each of the three criteria when making their challenges; rather, we are merely providing guidance on how the term “served” is defined.²¹ The Bureau will weigh the evidence on both sides. For example, if a price cap carrier opposes a provider’s challenge and presents evidence that the provider does not meet one of these criteria, the Bureau may deny the provider’s challenge depending on the weight of evidence presented. In the event of a dispute, if a provider has shown with persuasive evidence that it meets each of these elements, the Bureau will generally deem that provider as serving the census block.²²

12. Persuasive evidence of a lack of service could include a showing that the provider’s online customer subscriber tool returns responses that service is not available in a given area.²³ If a provider’s subscription tool reports that service is unavailable for every address in a given census block,

¹⁷ For fixed wireless providers, a showing that the census block is covered by the propagation area of existing wireless facilities is equivalent to showing that there are physical assets in or adjacent to the census block.

¹⁸ These may be voice customers, broadband customers, or voice and broadband customers.

¹⁹ While these elements would generally establish that a census block is served, that does not necessarily mean the census block is ineligible for Phase II support. A census block may still be deemed eligible for support if, for example, it lacks access to broadband meeting the necessary performance metrics or pricing criteria.

²⁰ See 47 C.F.R. § 1.17. Pursuant to the Commission's Forfeiture Policy Statement and section 1.80 of the Commission’s rules, the base forfeiture amount for misrepresentation or lack of candor is the statutory maximum. *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087, 17098, 17113 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

²¹ Thus, if a provider submits an otherwise sufficient challenge but does not specifically enumerate how it meets each of these three criteria, that is sufficient for that challenge to be placed on public notice for a response; the Bureau will not dismiss a challenge on its face for failing to show that these three criteria are met. When a provider certifies that it “serves” a census block, the Bureau will interpret that as the provider meaning it meets all three of these criteria.

²² Note, however, that the provider’s challenge may still ultimately be denied if, for example, the provider did not submit evidence showing that it meets the broadband speed or usage allowance requirements.

²³ The Bureau previously relied on this evidence in the Phase I challenge process. See, e.g., *Phase I Challenge Resolution Order*, 29 FCC Rcd at 233, para. 276 (relying on Windstream’s analysis that every address in two census blocks entered into Time Warner Cable’s customer service website returned a result that service was not available).

that would be strong evidence that the provider is not offering service in the census block, and thus does not serve the census block. Also, the results of a phone or in-person survey asking whether customers in a given census block are served by voice and broadband from an existing provider would provide direct evidence of a lack of service.²⁴ In addition, if a website fails to indicate voice service is offered, that would be strong evidence that the census block is not served.²⁵

C. Factual Statements as Evidence

13. We reaffirm our conclusion from the Phase I challenge process that a statement from a person with knowledge of the facts is sufficient to fulfill the requirement that challenges be supported by evidence.²⁶ As we stated when implementing the Phase I challenge process, parties face criminal penalties for knowingly and willfully making materially false, fictitious, or fraudulent statements or representations on official matters before the Commission.²⁷ Furthermore, as such statements come from persons with direct knowledge of the facts being asserted, we view such a statement to be substantive evidence rather than a mere assertion.²⁸ We consider such statements to be testimonial in nature, rather than merely advancing an argument or position.

14. Given disputes in the record regarding Phase I certifications, the Bureau provides additional guidance as to what is required of a factual statement accompanying FCC Form 505 in the Phase II challenge process for it to carry evidentiary weight. First, any factual statement should be clearly labeled as such. While we do not require that the statement be a separate document or that it use specific language, it must be unambiguous that a particular statement is intended to be read as a factual assertion.²⁹ Second, the statement should clearly and succinctly state the relevant facts.³⁰ We do not require that the

²⁴ A survey is useful because it provides direct evidence as to whether customers are unable to get service from the other provider. Other methods, such as the porting analysis discussed below, require certain additional assumptions be made regarding the availability of service. We would not anticipate such a survey would necessarily require a response from every customer living in a given census block. Rather, a representative, statistically valid sample would likely be sufficient to present some evidence of a lack of existing service.

²⁵ If the provider fails to advertise it offers voice service on its website or through other means, we will conclude it is not holding itself out to the public as offering voice service, even if a customer may obtain voice service by requesting it from a customer service representative. As stated above, offering of service is examined from the perspective of the customer; if voice service is not advertised, it is unlikely a consumer would contact a customer service representative to ask for voice service.

²⁶ *Id.* at 184-85, paras. 10-12. Previously we used the term “certification” to refer to evidence consisting of a statement of fact from a person with knowledge of the fact being asserted. To prevent confusion with the FCC Form 505 Accuracy and Due Diligence Certification, we will now instead refer to this kind of evidence as factual statements or statements.

²⁷ *Id.* at 185, para. 12. *See also* 18 U.S.C. § 1001.

²⁸ *Phase I Challenge Resolution Order*, 29 FCC Rcd at 185, para. 12. In the Phase I challenge process, most factual statements came from providers claiming to serve census blocks, and the factual statements were made by persons who were familiar with the providers’ networks, or who were relying on representations of others familiar with those networks.

²⁹ While we do not require that parties make their factual statements in this format, we note that a separate document, distinct from the challenge’s other evidence which is labeled as “Statement,” would be unambiguous.

³⁰ Once again, while not required, we note that an enumerated list of facts is more clear and succinct than a lengthy signed pleading that contains both facts and arguments. We also caution parties that rely solely on factual statements to ensure that their statements necessarily attest to the facts required to support a challenge.

statement be signed by the person making it;³¹ however, it should be clear what person is making the statement, and how the person making the statement has knowledge of the facts being asserted.³²

15. The Bureau expects that it will face conflicting factual statements (e.g., a factual statement from a provider that is contradicted by a factual statement from a price cap carrier). While a statement alone can support a challenge, statements without additional supporting documentation are a relatively weak form of evidence.³³ If, for example, a provider files a challenge with only a factual statement as evidence that a particular block is served, and that challenge is opposed with some other form of persuasive, tangible evidence, the challenge will most likely be resolved in favor of the party that provides the tangible evidence.³⁴

D. Porting Analysis as Evidence

16. In the Phase I challenge process, Windstream challenged numerous census blocks on the basis that no local telephone number was ported from Windstream to another carrier for that census block over an 18-month period.³⁵ Windstream argued that the lack of number porting indicated that no other provider was serving the census block.³⁶ In Phase I, the Bureau concluded that such porting analysis was sufficient evidence to support a challenge that a block was unserved, and any unopposed challenge based on porting evidence would be granted.

17. We will take a similar approach in the Phase II challenge process. Given that the Bureau does not intend to consider evidence or arguments raised after the formal submission period for Phase II challenges, however, price cap carriers may wish to present more than just porting analysis evidence in making challenges. In the event that a cable or fixed wireless provider opposes such a challenge, there will be no opportunity for the price cap carrier to respond with supplemental evidence showing that the census block is unserved.³⁷

³¹ The person initialing the certification for FCC Form 505 will be asserting that all evidence presented is true and accurate to the best of her knowledge, and that she has undertaken due diligence to obtain knowledge regarding these claims.

³² Knowledge can be either direct (the person making the statement has first-hand knowledge) or indirect (the person making the statement has knowledge through reliance on the statements of others). For example, a network manager would be more likely to know first-hand whether facilities were located in a particular census block. The network manager has direct knowledge. The regional vice president for operations receives reports from the network manager, and those reports state that facilities exist in the census block. The vice president for operations has indirect knowledge. Both individuals have knowledge of the existing of facilities, so either may make a factual statement about plant existing in the census block.

³³ As with all forms of evidence, not all factual statements are of equally persuasive value. A statement that broadband meeting all the Commission's requirements is offered in a particular census block, that physical plant exists in that census block, and that the provider has a number of customers already receiving service is more persuasive than a statement only saying that the company offers broadband in the census block. The former challenge would be even more persuasive if accompanied by plant maps further supporting the statements in the certification.

³⁴ *Phase I Challenge Resolution Order*, 29 FCC Rcd at 183-84, paras. 7-8.

³⁵ Windstream Election of 2013 Connect America Fund Phase I Incremental Support, WC Docket No. 10-90, Attach. 3 (filed Aug. 20, 2013).

³⁶ *Id.*

³⁷ The opponent would still be required to produce evidence to support its opposition, either in the form of a factual statement or other tangible proof.

E. Confidentiality of Information

18. The Bureau is aware that some evidence, while germane to determining whether service is provided in a given census block, may contain information that is competitively sensitive or that raises consumer privacy concerns. We emphasize that in submitting evidence, parties are bound by all applicable privacy laws and regulations.³⁸ Parties submitting information should take steps to ensure that sensitive information is not improperly disclosed. To aid parties in ensuring such information is protected, we discuss below how parties should file sensitive evidence.

19. To the extent a provider's records are subject to laws or regulations related to customer proprietary network information, customer billing records should not be submitted if doing so is inconsistent with such laws or regulations.³⁹ Providers should also consider the applicability of the Electronic Communications Privacy Act,⁴⁰ as well as the prohibitions related to customer privacy described in 47 U.S.C. § 551.

20. Participants in the challenge process should consider alternatives to submitting competitively sensitive information or information implicating customer privacy. For instance, an officer may provide a factual statement that a number of customers are currently being served in the relevant census block without providing any identifying information relating to the customers. To the extent that the disclosure of customer records or portions of those customer records is not legally prohibited, and participants in the challenge process choose to submit records to substantiate their claims, they should take extreme care to protect customer privacy.

21. *Publicly Filed Evidence.* In the interest of transparency and accessibility, parties should publicly file their evidence unless there is a specific reason for not filing publicly. Thus, evidence that is not competitively sensitive and does not implicate customer privacy should be publicly filed. To the extent that documents can be redacted to remove competitively sensitive or customer privacy information while still preserving some evidentiary value, parties should do so and file a redacted copy in the public record.⁴¹

22. *Confidentially Filed Evidence.* Evidence which is competitively sensitive or implicates customer privacy may be filed confidentially, to the extent that such filing does not violate other laws or regulations.

23. To file confidentially, parties must comply with the requirements set forth in the Third Protective Order.⁴² Evidence must be clearly marked as confidential information filed pursuant to a

³⁸ *Wireline Competition Bureau Reminds Connect America Phase I Challenge Participants to Protect Customer Privacy in Challenge Process*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 13908 (Wireline Comp. Bur. 2013).

³⁹ See 47 U.S.C. § 222; 47 C.F.R. §§ 64.2001-64.2011.

⁴⁰ 18 U.S.C. § 2702(a)(3), (c) (prohibiting any provider of electronic communication service to the public from “knowingly divulg[ing] a record or other information pertaining to a subscriber to or customer of such service . . . to any governmental entity,” subject to certain exceptions). This is not an exhaustive list of statutes and regulations related to subscriber privacy. Each provider must exercise its own due diligence in ensuring its submissions comply with applicable law. Parties are also cautioned that, in circumstances where laws or regulations prohibit release of information to the government, the filing of unredacted versions of the records, even if filed confidentially, may still violate the applicable law.

⁴¹ As noted below, parties are permitted, but not required, to file confidentially an unredacted copy.

⁴² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Third Protective Order, 27 FCC Rcd 10276 (Wireline Comp. Bur. 2012).

protective order. The Bureau will also follow the procedures in the Third Protective Order for granting access to confidential information.⁴³

24. There is no requirement that information redacted in public filings also be confidentially filed in unredacted form.⁴⁴ Parties making redacted filings should consider the evidentiary benefit of filing a confidential unredacted version. Where an unredacted version is no more supportive on the issue of service than the redacted version, filing an unredacted version would be of limited value. For example, if a cable or fixed wireless provider was submitting customer records to demonstrate that it served the area, it might submit a public version of the billing record showing the customer's address, while redacting the customer's name and phone number. There is no need for the provider to submit an unredacted version showing the customer's name and phone number, as these details are unrelated to the question of whether the census block is served; the existence of a bill with a specific address.

25. While parties may file evidence confidentially, they must submit sufficient information that opposing parties may formulate a response.⁴⁵ To this end, a party filing confidentially must publicly make a partial disclosure, stating the type of evidence being submitted confidentially and what the party reasonably believes the confidential evidence demonstrates. The Bureau will disregard any confidential evidence that is not accompanied by such a partial disclosure. For example, a cable or fixed wireless provider might confidentially submit a plant map to show that it has facilities in the census block. The provider would also need to provide in the public record a partial disclosure stating that it has submitted a plant map, and that the provider believes that this plant map demonstrates that it has voice and broadband-capable facilities in the census block.

26. *Information That Should Not Be Submitted.* Certain information should not be included in a party's evidentiary submission to the Commission, even in confidential form. Examples of such information are customer proprietary network information,⁴⁶ records covered by the Electronic Communications Privacy Act,⁴⁷ or records otherwise protected by law for purposes of customer privacy.⁴⁸ Disclosure of such records, even to the Commission in confidential filings, may be a violation of law and could result in enforcement action.

⁴³ See *id.* at 10279, paras. 6-7.

⁴⁴ Particularly where the information redacted is competitively sensitive but of no evidentiary value in determining whether a given census block is served or unserved, there is no need to submit the unredacted information confidentially.

⁴⁵ This requirement is designed to minimize the number of instances where responding parties would require access to the confidential information in order to formulate a response.

⁴⁶ See 47 U.S.C. § 222; 47 C.F.R. §§ 64.2001-64.2011. Customer proprietary network information is information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and information contained in bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information. 47 U.S.C. § 222(h)(1). The term "telecommunications carrier" includes entities that provide interconnected VoIP. 47 C.F.R. § 64.2003(o). Given these restrictions, parties should use extreme caution when submitting customer record information and should consider alternate means of demonstrating that a census block is served.

⁴⁷ 18 U.S.C. § 2702(a)(3), (c).

⁴⁸ See, e.g., 47 U.S.C. § 551.

F. Evidence by Reference

27. Any evidence that a party relies on in its challenge should be submitted with the challenge. In the Phase I challenge process, some parties supported their challenges by referring to evidence available from other sources, such as on the National Broadband Map or in Form 477 submissions, without actually attaching said evidence. We prohibit this practice for the Phase II challenge process. We anticipate receiving a substantial number of filings in the challenge process. When a party incorporates evidence by reference, opposing parties and Commission staff must go through the effort of locating that information. This hinders the ability of opposing parties to respond and taxes Commission resources. Therefore, the Bureau will not consider evidence that is not included with the challenger or respondent's submission.⁴⁹

28. We provide one exception to this prohibition: if a party wishes to rely on evidence that for reasons beyond its control cannot be submitted along with its challenge, we encourage it to include a statement as to why it is not possible to submit that evidence and alternatives the party had considered in lieu of using evidence by reference.

III. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Act Analysis

29. The Regulatory Flexibility Act of 1980, as amended (RFA)⁵⁰ requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."⁵¹ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵² In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁵⁴

30. This Public Notice clarifies the rules previously adopted by the Commission in the *USF/ICC Transformation Order*.⁵⁵ These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the

⁴⁹ To the extent parties wish to cite to evidence not in a submittable form, they may rely on screenshots, factual statements, or any other form of evidence that they believe captures the evidentiary weight of the item. While we generally require that the evidence be submitted, we do not require that the evidence be submitted publicly. As noted above, parties are free to file evidence confidentially.

⁵⁰ The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁵¹ 5 U.S.C. § 605(b).

⁵² 5 U.S.C. § 601(6).

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

⁵⁴ Small Business Act, 15 U.S.C. § 632.

⁵⁵ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17729-32, paras. 171-78.

USF/ICC Transformation Order.⁵⁶ Therefore, we certify that the clarifications made in this Public Notice will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the order including a copy of this final certification, in a report to Congress pursuant to SBREFA.⁵⁷ In addition, the order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.⁵⁸

B. Paperwork Reduction Act of 1995 Analysis

31. This document does not contain new proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

C. Accessibility and Contact Information

32. 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).

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

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⁵⁶ *See id.* at 18324-63, App. O.

⁵⁷ *See* 5 U.S.C. § 801(a)(1)(A).

⁵⁸ *See* 5 U.S.C. § 605(b).