

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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Rural Broadband Experiments)	WC Docket No. 14-259
)	

ORDER

Adopted: March 8, 2016

Released: March 9, 2016

By the Commission: Commissioner Clyburn approving in part, dissenting in part and issuing a statement.

I. INTRODUCTION

1. In this Order we clarify that price cap carriers can use Phase II model-based support to serve locations in eligible census blocks where the price cap carrier has served or intends to serve a location or locations using Phase I Round 2 incremental support. We also make several modifications to the letter of credit requirements for recipients of rural broadband experiment support.

II. INTERPLAY BETWEEN PHASE I INCREMENTAL SUPPORT AND PHASE II

2. *Background.* In the *USF/ICC Transformation Order*, the Commission adopted a framework for the Connect America Fund to provide support in the territories of price cap carriers and their rate-of-return affiliates based on a combination of competitive bidding and a forward-looking cost model.¹ The Commission observed that developing a new cost model and bidding mechanism could be expected to take some time. To spur broadband deployment as those mechanisms were being developed, the Commission established Connect America Phase I. In Phase I, the Commission froze current high-cost support for price cap carriers and their affiliates, and, in addition made available two rounds of Phase I incremental support to price cap carriers to spur the immediate deployment of voice and broadband-capable networks while the Commission was in the process of implementing Phase II.² For the first round, price cap carriers elected nearly \$115 million in Phase I support, committing to deploy voice and broadband-capable networks to nearly 400,000 previously unserved Americans.³ For the second round, price cap carriers accepted nearly \$324 million to serve over 1.2 million Americans.⁴

3. In 2013, the Commission instructed price cap carriers to meet their Phase I Round 2 incremental support obligations by deploying service to locations outside of the census blocks where they

¹ *Connect America Fund et al.*; Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17712, para. 127 (2011) (*USF/ICC Transformation Order and/or FNPRM*) *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

² *Id.* at 17712-22, paras. 128-49; *Connect America Fund*, Report and Order, 28 FCC Rcd 7766 (2013) (*Phase I Round 2 Order*).

³ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report, WC Docket No. 10-90 et al., Appx. at 4-5 (2015), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0129/DOC-337019A1.pdf.

⁴ *Id.*

will receive Phase II support.⁵ The intent was to take steps to ensure that Connect America funds are used “in the most efficient manner possible” and to “avoid providing excess support in an area.”⁶

Subsequently, in December 2014, the Commission adopted a requirement that price cap carriers accepting model-based support annually submit a list of the geo-coded locations that are newly broadband-capable as a result of Phase II funding.⁷

4. On April 29, 2015, the Wireline Competition Bureau (Bureau) announced the final details of the offer of Phase II model-based support to price cap carriers, setting an August 27, 2015 deadline to accept or decline the offer.⁸ Ten carriers accepted over \$1.5 billion in annual support to provide broadband to nearly 7.3 million consumers in 45 states and the Commonwealth of the Northern Mariana Islands.⁹

5. *Discussion.* We now clarify that in light of the adoption of the geo-coded location reporting requirement for recipients of Phase II model-based support,¹⁰ if a price cap carrier has served or intends to serve a location or locations using Phase I Round 2 incremental support in a census block where that price cap carrier accepted Phase II model-based support, that price cap carrier may use Phase II model-based support to serve the remaining eligible locations within that census block.¹¹ Because it would be an inefficient use of Connect America support to permit a price cap carrier to receive both Phase I incremental and Phase II model-based support to serve a single location, however, the price cap carrier may not count the locations it serves using Phase I Round 2 incremental support towards its Phase II obligation to serve a set number of locations within the state. Accordingly, if the price cap carrier is using Phase I Round 2 funding to upgrade, or has already upgraded, specific locations in census blocks that were part of the offer of model-based support, it will need to deploy service to other locations in Phase II eligible census blocks or extremely high-cost census blocks in the state to fulfill its Phase II model-based support obligation to serve a specific number of locations.

6. We direct the Universal Service Administrative Company (USAC) to compare the list of geocoded locations that price cap carriers submit for their Phase II deployment obligation, with the list of geocoded locations that price cap carriers must submit to indicate the locations which they have served or

⁵ *Phase I Round 2 Order*, 28 FCC Rcd at 7774, para. 21 n.46.

⁶ *Id.* at 7774, para. 21.

⁷ *See Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15688-89, para. 125 (2014) (*December 2014 Connect America Order*) (requiring all price cap carriers accepting model-based support to include in their annual report a list of the geocoded locations to which they have newly deployed facilities capable of delivering broadband meeting the requisite requirements in Phase II-funded and extremely high-cost census blocks).

⁸ *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, Public Notice, 30 FCC Rcd 3905 (WCB 2015).

⁹ Press Release, FCC, State, County, and Carrier Data on \$9 Billion, Six-Year Connect America Fund Phase II Support for Rural Broadband Expansion (Sept. 15, 2015), https://apps.fcc.gov/edocs_public/attachmatch/DOC-335269A1.pdf.

¹⁰ These requirements are subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act. *See* Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat 163 (1995); 44 U.S.C. § 3507(a).

¹¹ *See, e.g.*, Letter from Robert Mayer, Vice President, Industry and State Affairs, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 8, 2015); Letter from AJ Burton, Director, Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Mar. 25, 2015); Letter from Michael D. Saperstein, Jr., Vice President, Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Nov. 25, 2014). Phase I as used herein does not apply to Phase I frozen support.

will serve to satisfy their Phase I Round 2 obligation.¹² If USAC determines that a price cap carrier has included in its list of Phase II locations any locations that the price cap carrier indicated it has deployed to or will deploy to using Phase I Round 2 incremental support, that price cap carrier will be deemed to have not met its Phase II model-based support build-out obligation and will be subject to the applicable non-compliance measures.¹³

7. We make this modest adjustment to our earlier conclusion that price cap carriers could not use Phase I Round 2 support to serve locations in census blocks where they receive Phase II support because at the time the Commission made these statements, it had not yet adopted the more granular reporting requirements for price cap carriers accepting Phase II support to identify the locations they have served using Phase II support.¹⁴ The Bureau and USAC will now have access to geocoded information for each location that a price cap carrier serves using Phase I Round 2 and using Phase II support, and thus can verify in a more targeted manner that support is being used efficiently on a location-by-location basis rather than on a census block-by-census block basis.

III. RURAL BROADBAND EXPERIMENTS

8. *Background.* In July 2014, the Commission adopted rules for a limited program of rural broadband experiments and established an objective methodology for selecting projects among formal applications from those carriers that would deploy new, robust broadband to consumers in price cap areas.¹⁵ Applications were due on November 7, 2014. On December 5, 2014, the Bureau announced the first round of 37 bidders that were provisionally selected for funding, and on March 4, 2015, the Bureau announced 12 additional provisionally selected bidders.¹⁶ Since that time, the Bureau has conducted post-selection review of the provisionally selected bidders, authorizing those bidders that meet the program's requirements on a rolling basis.¹⁷

9. Before a provisionally selected bidder may be authorized to begin receiving support, it must obtain a letter of credit that meets the Commission's requirements. Under those existing requirements, throughout the 10-year support term, the letter of credit must be valued at an amount equal to the total amount of support that has been disbursed plus the amount of support the recipient will receive in the next disbursement.¹⁸ Rural broadband experiment recipients must maintain an open and renewed

¹² *Phase I Round 2 Order*, 28 FCC Rcd at 7780, para. 35 (requiring recipients of Phase I support to provide geocoded latitude and longitude location information for each location they intend to count towards their Phase I deployment obligation with their two- and three-year milestone certifications). *See also Wireline Competition Bureau Announces Deadlines for Connect America Phase I Round Two*, Public Notice, 29 FCC Rcd 11445 (WCB 2014) (requiring that price cap carriers submit certain Phase I Round 2 location information no later than Feb. 24, 2015).

¹³ *See, e.g., December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54; 47 C.F.R. § 54.313(e)(2)(iii). This direction supersedes the direction that the Commission gave to USAC in 2013. *Phase I Round 2 Order*, 28 FCC Rcd at 7774, para. 21 n.46. We note that this direction does not apply to Phase I Round 1 support. Price cap carriers accepting Phase II model-based support may use their Phase II model-based support to upgrade locations that they have deployed to using Phase I Round 1 support.

¹⁴ *Phase I Round 2 Order*, 28 FCC Rcd at 7774, para. 21.

¹⁵ *Connect America Fund, ETC Annual Reports and Certifications*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014) (*Rural Broadband Experiments Order*).

¹⁶ *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines For Submission of Additional Information*, Public Notice, 29 FCC Rcd 14684 (WCB 2014); *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders For Rural Broadband Experiments*, Public Notice, 30 FCC Rcd 2045 (WCB 2015).

¹⁷ *See* Federal Communications Commission, Summary of Authorized Rural Broadband Experiment Projects, <https://www.fcc.gov/general/rural-broadband-experiments> (2016).

¹⁸ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8791, para. 62.

letter of credit until 120 days after the support term has ended.¹⁹ They must build out to 85 percent of locations with voice and broadband service meeting the relevant public interest obligations by year three and to 100 percent of locations by year five of their support term.²⁰ Recipients receive their rural broadband experiment support in equal monthly installments over the 10-year term, but they were given the opportunity to request 30 percent of their support upfront.²¹ Recipients that elected this option are required to build out to at least 25 percent of the required number of locations within 15 months of their first disbursement of support.²²

10. *Discussion.* We grant the Alliance of Rural Broadband Applicants (ARBA) petition for waiver in part to the extent the ARBA sought a reduction in the duration of the letter of credit requirement and asked that rural broadband experiment recipients be released from their letter of credit obligations upon satisfying their deployment obligations.²³ In response to concerns raised about the cost of maintaining a letter of credit for the entire support period, we 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 percent of the required number of locations, and USAC has validated that the entity has fully deployed its network.²⁴ We conclude that such an approach will help alleviate the costs of obtaining a letter of credit, particularly for entities that are able to build out their networks faster than the five-year build-out period, while still protecting the Commission's ability to recover the funds in the event that the entity is not building out its network as required. This approach is consistent with the approach used for Mobility Fund Phase I and Tribal Mobility Fund Phase I, where an entity is required to maintain a letter of credit valued at the support that had been disbursed until the Commission verifies that the build-out has been completed.²⁵ As a result, authorized rural broadband experiment recipients must only maintain their letter of credit until it is verified that the final build-out milestone has been met.²⁶

¹⁹ *Id.* at 8788, para. 55.

²⁰ *Id.* at 8794, para. 74.

²¹ *Id.* at para. 75.

²² *Id.*

²³ Petition for Waiver of Alliance of Rural Broadband Applicants, WC Docket Nos. 10-90, 14-58, at 11 (filed Jan. 27, 2015) (ARBA RBE Waiver Petition). *See also* Petition of NTCA – The Rural Broadband Association for Limited Waiver of Rural Broadband Experiment Letter of Credit Requirement, WC Docket Nos. 10-90, 14-58, 14-259, at 1 (filed Feb. 3, 2015); Comments of Tower Communications LLC, WC Docket Nos. 10-90, 14-259, at 1 (filed Jan. 29, 2015); Reply Comments of Last Mile Broadband LLC, WC Docket Nos. 10-90, 14-58, at 2 (filed Feb. 23, 2015) (Last Mile Broadband Feb. 2015 Reply). The Bureau denied ARBA's request for a suspension of the letter of credit commitment letter filing deadline. *Connect America Fund, Rural Broadband Experiments*, Order, 30 FCC Rcd 772, 776, para. 10 (Wireline Comp. Bur. 2015).

²⁴ *See, e.g.*, Comments of CoBank, ACB, WC Docket No. 10-90, WT Docket No. 10-208, at 3 (filed Mar. 20, 2015) (CoBank Mar. 2015 Comments); ARBA RBE Waiver Petition at 5-11; Comments of the National Rural Electric Cooperative Association, WC Docket Nos. 10-90, 14-259, at 5-6 (filed Mar. 30, 2015); Comments of the Wireless Internet Service Providers Association, WC Docket Nos. 10-90, 14-259, at 6 (filed Mar. 30, 2015); Reply Comments of American Cable Association, WC Docket Nos. 10-90, 14-259, at 3 (filed Apr. 13, 2015); Reply Comments of John Staurulakis, Inc., WC Docket Nos. 10-90, 14-259, at 3 (filed Apr. 13, 2015); Reply Comments of GVNW Consulting, Inc., WC Docket Nos. 10-90, 14-259, at 5 (filed Apr. 14, 2015); Letter from Brian McDermott, Counsel to Declaration Networks Group, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed May 13, 2015). We direct USAC to undertake the necessary validation contemporaneously with the relevant deployment milestones.

²⁵ *See, e.g.*, *USF/ICC Transformation Order*, 26 FCC Rcd at 17811, para. 447-48.

²⁶ We do not release recipients upon certification that they have completed their build-out obligations, because we conclude that it serves the public interest to verify that a recipient has actually met its build-out obligations before permitting an entity to close its letter of credit so that the public funds are still protected in the event it is found that the certification is inaccurate. *See* ARBA RBE Waiver Petition at 11 (requesting that the Commission terminate the

(continued....)

11. Recognizing that the risk of a default will lessen as a recipient makes progress towards building its network, we also find that it is appropriate to modestly reduce the value of the letter of credit in an effort to reduce the cost of maintaining a letter of credit as the recipient meets certain build-out milestones. Once recipients have met the 85 percent build-out milestone, we will also permit those recipients to obtain a new or renew their existing letters of credit so that they are valued at 80 percent of the total support disbursed plus the next year of support until the 100 percent build-out milestone has been met and verified.²⁷ We conclude that the benefit to recipients of potentially decreasing the cost of the letter of credit as it becomes less likely that a recipient will default outweighs the potential risk that if a recipient does default and is unable to cure, we will be unable to recover a modest amount of support.

12. Once a rural broadband experiment recipient has certified that it has deployed broadband and voice service meeting the Commission's requirements to 100 percent of the required number of locations and supplied the geocoded data for the final locations, it must keep the letter of credit open until the Commission can verify that the deployment has been met.²⁸ We direct USAC to implement processes to verify in a timely manner that deployment has occurred.²⁹ Once a rural broadband experiment recipient no longer maintains a letter of credit, the Commission will withhold support as described in the *Rural Broadband Experiments Order* if the Commission finds that the rural broadband experiment recipient is not providing voice and broadband service that meets the Commission's requirements to the funded locations.³⁰ If after the year cure period, the rural broadband experiment recipient is still not providing service that meets the Commission's requirements to all of the required locations, the Commission will withhold from the entity a percentage of support equivalent to the entity's compliance gap until it comes into compliance, rather than recover 100 percent of the support as originally contemplated when the Commission expected that the entity would have a letter of credit in place for the entire support period. If the entity cures the default before the 10-year support term has ended, it will be entitled to the withheld support and any subsequent payments.

13. We conclude that it is not necessary to continue to require rural broadband experiment recipients to maintain a letter of credit after the build-out period to provide an adequate incentive for rural broadband experiment recipients to offer service that meets the Commission's requirements. We note that rural broadband experiment recipients remain subject to forfeitures and other consequences for non-compliance in the event of a default, including but not limited to, potential revocation of ETC designation and disqualification from future competitive bidding for universal service support.³¹

14. We also grant ARBA's petition in part to the extent that it requests that entities that elected to receive 30 percent of their payment upfront be permitted to amend their applications to propose

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letter of credit obligation for rural broadband experiment recipients at the time they certify that they have met their build-out obligations). We conclude the benefit of being able to verify the certification outweighs the cost of the recipient having maintain the letter of credit while the certification is being verified.

²⁷ For example if a recipient meets the 85 percent build-out milestone at the end of its third year of support, that recipient may renew the letter of credit on an annual basis so that for year four, the letter of credit will be valued at 80 percent of the total support disbursed plus the support that will be disbursed in year four, and for year five, the letter of credit will be valued at 80 percent of the total support disbursed (including the support that was disbursed in year four) and the support that will be disbursed in year five.

²⁸ Once USAC and the Commission have verified that the final deployment milestone has been met, the Bureau will issue a letter confirming that the requirement has been verified and releasing the entity from its obligation to maintain a letter of credit.

²⁹ We expect such verification to occur within 120 days of certification of completion.

³⁰ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8799, para. 92. For the first six months that an entity is not in compliance, USAC will withhold five percent of the entity's total monthly support. For the next six months that the entity is not in compliance, USAC will withhold 25 percent of the entity's total monthly support. *Id.*

³¹ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8800-01, paras. 94, 96.

the standard deployment time period.³² The Commission adopted the requirement that entities specify whether they would be interested in receiving 30 percent of their support upfront in their applications so that the Commission could learn about whether there was interest in upfront support for the Phase II competitive bidding process.³³ To help reduce the costs of the letter of credit requirement for entities that have elected upfront support,³⁴ we will permit such entities that have not already been authorized to receive rural broadband experiment support to send a letter to the Commission electing to receive support in equal installments throughout the 10-year term rather than 30 percent upfront before they are authorized to begin receiving support. If they elect this option before they are authorized, they will no longer be required to deploy to 25 percent of locations and submit the required certifications within 15 months of their first disbursement of support.³⁵ To the extent provisionally selected bidders decide they still want to receive 30 percent of their support upfront they will need to obtain a letter of credit that covers this amount.

15. We deny ARBA's petition in part to the extent it requests that we reduce the value of the letter of credit to 50 percent of support.³⁶ Such an approach would prevent the Commission from recovering half of the Connect America support that it will disburse to rural broadband experiment recipients during the build-out period in the event that such support is not used for its intended purposes. While such an approach may reduce costs further for recipients,³⁷ we are not persuaded that the public interest will be better served by protecting only half of the Connect America support, particularly when the Commission has adopted other measures to help reduce the costs of maintaining a letter of credit for rural broadband experiment recipients.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

16. This document does not contain 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).

B. Congressional Review Act

17. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.³⁸

³² ARBA RBE Waiver Petition at 11-12. *See also* Last Mile Broadband Feb. 2015 Reply at 2.

³³ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8794, para. 75.

³⁴ ARBA RBE Waiver Petition at 11-12.

³⁵ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8794, para. 75.

³⁶ ARBA RBE Waiver Petition at 10-11. We note that ARBA appears to have mistakenly assumed that for Mobility Fund Phase I and Tribal Mobility Fund Phase I, recipients were only required to obtain a letter of credit that covered one-third of their support amount. *Id.* at 6-7. Actually, because Mobility Fund Phase I and Tribal Mobility Fund Phase I support was paid out in one-third installments, Mobility Fund recipients were required to obtain a letter of credit that covered the first one-third of support payment plus the default payment before receiving that payment. Before receiving the second one-third payment, Mobility Fund recipients were required to obtain another letter of credit or increase the size of their existing letter of credit so that it covered both the first and second payments that had been disbursed plus the default payment. Finally, Mobility Fund recipients were required to keep the letter of credit open for an additional 120 days after they had completed their build-out and received their final payment. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17811, paras. 447-48.

³⁷ ARBA RBE Waiver Petition at 5-10.

³⁸ *See* 5 U.S.C. § 801(a)(1)(A).

C. Final Regulatory Flexibility Act Certification

18. The Regulatory Flexibility Act of 1980, as amended (RFA),³⁹ 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.”⁴⁰ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴² 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).⁴³

19. This Order modifies and clarifies the rules adopted by the Commission in the *Rural Broadband Experiments Order*, the *Phase I Round 2 Order*, and the *USF/ICC Transformation Order*. These modifications and clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order* and the *Rural Broadband Experiments Order*. Therefore, we certify that the requirements of this Order 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 the Small Business Regulatory Enforcement Fairness Act of 1996.⁴⁴ 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.⁴⁵

D. Additional Information

20. *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).

21. *Additional Information*. For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, Alexander.Minard@fcc.gov, (202) 418-7400.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 214, 218-220, 254, 303(r), 403, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 160, 214, 218-220, 254, 303(r), 403, 503, 1302, and sections 1.1, and 1.427 of the Commission’s rules, 47 C.F.R. §§ 1.1,

³⁹ 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).

⁴⁰ 5 U.S.C. § 605(b).

⁴¹ 5 U.S.C. § 601(6).

⁴² 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 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.”

⁴³ Small Business Act, 15 U.S.C. § 632.

⁴⁴ *See* 5 U.S.C. § 801(a)(1)(A).

⁴⁵ *See* 5 U.S.C. § 605(b).

and 1.427, that this Report and Order IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

23. IT IS FURTHER ORDERED that, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Petition for Waiver filed by the Alliance of Rural Broadband Applicants on January 27, 2015 is GRANTED IN PART and DENIED IN PART to the extent described herein.

24. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

25. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

**STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN
APPROVING IN PART AND DISSENTING IN PART**

Re: *Connect America Fund*, WC Docket No. 10-90; *ETC Annual Reports and Certifications*, WC Docket No. 14-58; *Rural Broadband Experiments*, WC Docket No. 14-259.

To prevent waste and ensure that finite universal service support is used as efficiently as possible, the Commission prevented price cap providers from using federal universal service support from Connect America Fund (CAF) Phase I in the same census blocks as support for CAF Phase II. As today's Order notes, the intent of doing so was to ensure that Connect America funds are used "in the most efficient manner possible" and to "avoid providing excess support in an area."¹ Indeed, the Commission could not have been more clear when it said that "[n]o carrier should be allowed to satisfy its Phase I obligations in any census block where it receives Phase II support."² The Commission provided guidance to explain that "[i]f a carrier accepts Phase II support in a census block where it had initially planned to deploy broadband-capable networks to locations in order to meet its Phase I obligations, it must identify and deploy to the requisite number of locations in another census block for which it did not receive Phase II support."³

Today's item reverses that course and allows providers to use support from both CAF Phase I and CAF Phase II to serve the very same census block. The item concludes that it is appropriate to make this change because price cap carriers are now required to provide geocoded locations and, therefore, they cannot count the same location twice. The Order fails to explain how this change is preferable to the initial decision to require carriers to deploy to alternative census blocks. In fact, the item contains no analysis to determine: if this is the most efficient use of universal service, whether new communities could be served by the initial approach, how many census blocks have been approved for both CAF I and CAF II funding, if locations in the census blocks at issue are adjacent or are spread far apart, or if carriers are being overcompensated through CAF Phase I and Phase II by using such support to upgrade certain plant to serve multiple locations. Absent such analysis, I do not have the facts necessary to evaluate whether this is the most efficient use of universal service or whether support is excessive.

In 2015, price cap carriers accepted over \$1.5 billion in CAF II support annually, \$115 million in Phase I support and \$324 million in the second round of Phase I support. While the CAF Phase II offers of support took longer than anticipated, carriers have been on notice of this requirement since 2013 and should have planned accordingly. And, if carriers no longer want to use the funding, such support could be used to connect other unserved households, for example, on Tribal lands.

Adequate cost controls should be a hallmark in every program and I find the reversal here especially troubling given the magnitude of universal service support at issue. I therefore respectfully dissent.

¹ See *Connect America Fund*, *ETC Annual Reports and Certifications*, *Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-58, 14-259, Order, para. 3.

² *Connect America Fund*, Report and Order, 28 FCC Rcd 7766, 7774, para. 21 (2013) (Phase I Round 2 Order).

³ *Id.* In addition, in footnote 46, the Commission further explained that "USAC should inform carriers within 60 days of the close of the Phase II election period regarding any overlap between a carrier's planned Phase I deployments and its Phase II election, and remind those carriers that it may not count deployments in those census blocks toward their Phase I deployment obligations."