



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE TO CONNECT AMERICA FUND PHASE I INCREMENTAL SUPPORT RECIPIENTS REGARDING VALIDATION OF COMPLIANCE

WC Docket No. 10-90

The Wireline Competition Bureau (Bureau) provides guidance to price cap carriers that accepted Connect America Fund (CAF) Phase I incremental support regarding upcoming validation of compliance for Phase I incremental support.

CAF Phase I incremental support was provided in two rounds. For both rounds, recipients of incremental support are required to submit various certifications and to provide a list of geocoded locations as part of their annual FCC Form 481 submissions.¹ The three-year deadline for meeting the CAF Phase I incremental support obligations for the first round was July 24, 2015. CAF Phase I recipients for the first round are required to certify that they are meeting the CAF Phase I incremental support requirements and provide the final list of locations as part of their Form 481 submission due July 1, 2016. CAF Phase I recipients for the second round will be required to certify on their FCC Form 481 due July 1, 2016 that they deployed broadband to no fewer than two-thirds of the required locations within two years of the date of acceptance of support.² CAF Phase I recipients for the second round will submit geocoded information for the two-year milestone on July 1, 2016.

¹ See 47 CFR § 54.313(b)(1). In the first round, carriers were required to certify that deployment would occur in an area then shown on the National Broadband Map as unserved by fixed broadband with a minimum speed of 768 kbps downstream/200 kbps upstream and to the best of the carrier's knowledge was in fact unserved, the carrier's current capital improvement plan did not already include plans to complete broadband deployment to the area within the next three years, and that the support would not be used to satisfy any merger commitment or similar regulatory obligation. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17721, para. 147 (2011) (*USF/ICC Transformation Order*); *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). In the second round, the Commission adopted a number of additional requirements, while stating that all of the rules and requirements adopted for the first round would apply unless explicitly changed. *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7766, 7771, para. 13 (2013) (*Connect America Phase I Second Round Order*). In the second round, carriers were required, among other things, to certify that the locations met the expanded 3 Mbps downstream/768 kbps upstream eligibility requirement, and to the best of the carrier's knowledge, were not in a census block where funding was provided under the Broadband Initiatives Program or the Broadband Technology Opportunities to provide broadband at qualifying speeds. *Id.* at 7775, para. 24.

² See 47 CFR § 54.313(b)(1)(i). The individual date of acceptance varied by carrier, with the two-year deadline falling between October 31, 2015 and March 14, 2016. See *Wireline Competition Bureau Announces Deadlines for Connect America Phase I Round Two*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 11445 (2014).

USAC will be validating compliance with the deployment milestones and testing the accuracy of certifications.³ In the *USF/ICC Transformation Order*, the Commission directed USAC to assess compliance for each holding company that receives CAF Phase I funds.⁴ The Commission further stated that if the carrier fails to meet its buildout obligations, it “will be required to return the incremental support distributed in connection with that deployment obligation and will be potentially subject to other penalties, including additional forfeitures, as the Commission deems appropriate.”⁵

In response to informal inquiries from CAF Phase I incremental support recipients, we now provide guidance as to the types of documentation that recipients should be prepared to produce upon request.⁶ Examples of potentially relevant documentation would include, but not be limited to, engineering studies, construction schedules, records of plant placed in service, network maps, advertising materials and/or customer subscription records. Carriers should be prepared to produce their capital improvement plan from the time period immediately pre-dating the acceptance of CAF Phase I incremental support for either round. Carriers also should be prepared to produce documentation demonstrating the steps taken to determine an area was not already served according to the then-current National Broadband Map or slated to become served as a BIP or BTOP project, to the best of their knowledge.⁷ Carriers that accepted funding in the second round to deploy to locations shown on the then-current National Broadband Map as already served by them with 3 Mbps/768 kbps should be prepared to produce documentation that those locations were served at the time of acceptance through a copper-fed digital subscriber line access multiplexer.

The codified rule requires a carrier to certify at the two-year deadline that it has “deployed” to no fewer than two-thirds of the required number of locations, while the codified rule for the three-year deadline requires a carrier to certify that it has “deployed to all of the required locations” and that “it is offering broadband service” meeting the requirements for Phase I incremental support.⁸ Because we have not previously addressed the differing terminology in the rule for the two-year deadline, we will allow carriers to certify compliance with the two-year deadline for Phase I if they had installed the necessary infrastructure and facilities to offer service meeting the requisite requirements, even if they were not

³ In the *USF/ICC Transformation Order*, the Commission required CAF Phase I incremental support recipients to complete “build-out to two-thirds of the requisite number of locations within two years. We direct USAC to assess compliance with this requirement for each holding company that receives CAF Phase I funds.” See *USF/ICC Transformation Order*, 26 FCC Rcd at 17866, para. 628. The Commission indicated that carriers should be prepared to demonstrate that “assets necessary to offer broadband service have been placed in service in the requisite number of locations” and directed USAC “to test the accuracy of certifications made pursuant to our new reporting requirements.” *Id.*

⁴ *Id.*

⁵ *Id.* at 17721, para. 147.

⁶ See 47 CFR. § 54.320(b) (requiring recipients of high cost support to produce documentation upon request by the Administrator to demonstrate that support was received consistent with the rules).

⁷ For the first round, the relevant National Broadband Map was as of June 2011. For the second round, the relevant National Broadband Map was as of June 2012.

⁸ Compare 47 CFR 54.313(b)(1) with 47 CFR 54.313(b)(2). In the *USF/ICC Transformation Order*, the Commission required CAF Phase I incremental support recipients to complete “build-out to two-thirds of the requisite number of locations within two years.” See *USF/ICC Transformation Order*, 26 FCC Rcd at 17866, para. 628. The Commission indicated that carriers should be prepared to demonstrate that “assets necessary to offer broadband service have been placed in service in the requisite number of locations.” *Id.*

commercially offering service in the marketplace as of the exact date of the two-year deadline.⁹ We emphasize, however, that the Commission expects carriers promptly to begin offering service after completing the required construction for the two-year deadline, and that for purposes of meeting upcoming interim deadlines for Connect America Phase II and the voluntary election to Connect America ACAM support, carriers are required to be offering service as of the requisite deadline.

For both rounds of Phase I incremental support, if the carrier fails to certify in FCC Form 481 that it is meeting its obligations with respect to the required number of total locations by the three-year deadline, it should provide geocoded locations for those locations that it seeks to count towards its compliance obligation.¹⁰ USAC then will recover funds from the carrier on a per-location basis for the requisite number of locations in the month immediately following the failure to certify compliance with the requisite deadline. Likewise, for the upcoming certification for the second round of Phase I incremental support, if the carrier fails to certify in FCC Form 481 that it deployed to the requisite number of locations for the two-year milestone, it should submit the geocoded locations for those locations that it seeks to count towards its compliance obligation. USAC will recover funds from the carrier on a per-location basis in the month immediately following the failure to certify compliance with that deadline.

For additional information, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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⁹ The Commission has made clear, however, that for purposes of meeting upcoming interim deadlines for Connect America Phase II and the voluntary election to Connect America ACAM support, carriers are required to be offering service as of the requisite deadline.

¹⁰ Because carriers were able to accept funding for some locations at \$775 per location, and for other locations at \$550 per location during the second round, carriers that did not fully comply with the requisite deadline should identify clearly which locations they are submitting fall into which category.