

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
Developing a Unified Intercarrier Compensation ) CC Docket No. 01-92
Regime )

ORDER

Adopted: June 15, 2016

Released: June 15, 2016

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In the Rate-of-Return Reform Order, the Commission adopted significant reforms to the rules governing carriers subject to rate-of-return regulation, including the adoption of a new Connect America Fund Broadband Loop Support (CAF BLS) mechanism, budget controls for support provided to rate-of-return carriers, an operating expense limitation, a capital investment allowance, and a voluntary path to model-based support for rate-of-return carriers (also known as the Alternative Connect America Cost Model, or ACAM).1

2. A number of parties have informally asked questions regarding various aspects of the Rate-of-Return Reform Order. In this Order, the Bureau addresses several matters arising from implementation of the Rate-of-Return Reform Order.2

II. DISCUSSION

3. Transfer of Exchanges. In the Rate-of-Return Order, the Commission adopted section 54.902, Calculation of CAF BLS Support for Transferred Exchanges, which replaced a similar rule governing the calculation of Interstate Common Line Support (ICLS) for transferred exchanges.3 As revised, section 54.902(b) provides that a rate-of-return carrier that acquires exchanges from a price cap carrier shall receive the same amount of support for the exchanges as the price cap carrier received, and be subject to the same obligations, absent further Commission actions.4 This rule applies only to exchanges acquired after the effective date of the revised rule, which was May 24, 2016. For exchanges acquired before the effective date of the revised rule, a rate-of-return carrier will receive, for the acquired exchanges, the amount of CAF BLS otherwise provided by the CAF BLS rules, much as the carrier

1 Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (Rate-of-Return Reform Order and Further Notice).

2 Rate-of-Return Reform Order, 31 FCC Rcd at 3156, para. 185 n.413.

3 Id. at 3249, Appx. B, § 54.902. The Bureau notes that section 54.305 (Sale or transfer of exchanges) does not apply to CAF BLS and did not apply to ICLS. 47 CFR § 54.305.

4 Rate-of-Return Reform Order, 31 FCC Rcd at 3249, Appx. B, § 54.902.

received ICLS for those exchanges. The Bureau further notes that any acquisition of exchanges would be subject to a study area waiver, providing an opportunity to provide further direction regarding the treatment of those exchanges as the circumstances warrant.

4. *Application of monthly per-line limit on universal service support.* Section 54.302 of the Commission's rules limits each study area to \$250 per month per loop in high-cost universal service support, exclusive of Connect America Intercarrier Compensation Replacement support (CAF ICC support).<sup>5</sup> This limit is applied to study area support prior to the application of the budgetary constraint adopted in the *Rate-of-Return Reform Order*.<sup>6</sup> The Bureau notes that sections 54.901(f) and 54.1310(d), which apply the budget control to CAF BLS and HCLS respectively, refer to "forecasted disbursements" (*i.e.*, the amount the universal service administrator expects to actually pay), rather than calculated support amounts or some other intermediate step.<sup>7</sup>

5. *Additional ACAM and Transitional Support Budget.* In the *Rate-of-Return Reform Order*, the Commission adopted "a budget of up to an additional \$150 million annually, or up to \$1.5 billion over the 10-year term, utilizing existing high-cost funds to facilitate the voluntary path to the model."<sup>8</sup> After the initial election of ACAM support by carriers, the Bureau will "determine the extent to which, in the aggregate, their model-based support plus transition payments exceed the total legacy support received for 2015 by that subset of rate-of-return carriers."<sup>9</sup> If the difference does not exceed \$150 million, then "no adjustment to the offered support amounts or deployment obligations will be necessary, we will not lower the \$200 per location funding cap, and those carriers that indicated their interest will be deemed to have elected the voluntary path to the model."<sup>10</sup>

6. The Bureau clarifies that, for the purpose of determining whether the additional ACAM support and transitional payments exceed the \$150 million budget, the Bureau will consider the annualized amount that would be disbursed over the ten-year term. In other words, the disbursements for additional ACAM and transitional support amounts may exceed \$150 million in the early years, due to transitional support payments, but may not exceed \$1.5 billion in the aggregate over the ten-year term. The Bureau notes that the model-based support disbursements will be level over the ten-year term, and only the transitional support would change, as it phases down.

7. *Timing of Operating Expense Limitation and Reductions in Authorized Rate of Return.* In the *Rate-of-Return Order*, the Commission adopted an operating expense limitation.<sup>11</sup> For administrative efficiency, in order to coordinate the implementation of several recently adopted mechanisms, the operating expense limitation will be implemented on January 1, 2017 for all rate-of-return carriers receiving HCLS and CAF-BLS support. Operating expense limitation reductions to both HCLS and CAF BLS will begin in the first support payment for the period beginning January 1, 2017 (thus, the first check with any reductions will be in February 2017, which will be support for January 2017). The HCLS reductions will be based on the coefficients that were obtained from the regression using the 2014 cost data that NECA filed with the FCC in September 2015. To allow for a smooth transition to this operating expense limitation, the Commission concluded that carriers should only be subject to one-half

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<sup>5</sup> 47 CFR § 54.302. The Commission amended this rule to reflect the replacement of ICLS with CAF BLS and to include consumer broadband-only loops in the calculation of the per loop support amount in an Errata.

<sup>6</sup> *Rate-of-Return Order*, 31 FCC Rcd at 3142-45, paras. 146-55.

<sup>7</sup> *Id.* at 3248, 3251, Appx. B, §§ 54.901(f), 54.1310(d).

<sup>8</sup> *Id.* at 3111-12, para. 60.

<sup>9</sup> *Id.* at 3112-13, para. 62.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3124-26, paras. 95-104.

of the required reduction in the first year in which the operating expense limitation is implemented, which will be 2017.

8. Similarly, the first reduction in the authorized rate of return will occur in July 2016. In that case, the new rate of return (11 percent) will be applied to 2014 data such that, beginning in July 2016, carrier disbursements for HCLS will reflect the 11 percent authorized rate-of-return. For ICLS, each carrier will file a revised Form 508 (forecasting interstate common line revenue requirement and revenues) on June 30 reflecting the July 1, 2016 effective date of the new authorized rate of return, and will incorporate the new authorized rate of return in its Form 509 (reporting actual interstate common line revenue requirement and revenues) when it is due on December 31, 2017.

9. Consistent with the *Rate-of-Return Reform Order*, the National Exchange Carrier Association (NECA) is required to submit data related to the operating expense limitation within 30 days of the effective date of the Order.<sup>12</sup> With the exception of housing unit and density for study areas with frozen exchanges, NECA has all of the data necessary to calculate the operating expense limitations. NECA should use the most recently available data for these calculations. Therefore, the Bureau expects that NECA will provide to USAC a list of those companies subject to the reductions based on a regression done using 2014 data and the 2014 coefficients. In addition, NECA should provide estimates of reductions in HCLS or CAF BLS for those carriers identified by the regression analysis.<sup>13</sup> USAC will notify the carriers of any reductions after it validates the calculations. NECA's estimates are not final and therefore should not be shared directly with the carriers or their representatives.

10. *Additional guidance regarding operating expense limitation.* The Bureau also provides the following guidance regarding the operating expense limitation adopted by the Commission. First, the Bureau clarifies that study areas that are not in the operating expense limitation regression are still subject to the operating expense limitation because all that is needed to calculate a study area cap is its density and housing unit information. Thus, average schedule companies, study areas entirely comprised of acquired exchanges subject to section 54.305 of the Commission's rules, and companies converting from average schedule to cost-based support are potentially subject to the operating expense limitation.<sup>14</sup>

11. Second, study areas with acquired exchanges subject to section 54.305 will be included in the regression using the operating costs, housing units and density associated with the remainder of their study area.<sup>15</sup> There will be two operating expense limitations calculated for these study areas: (1) a limitation on operating expenses that may be recovered through HCLS using the geographic data of exchanges not subject to section 54.305 and (2) an operating expense limitation for CAF-BLS using the geographic data of the entire study area.

12. Third, the *Rate-of-Return Reform Order* requires that the operating expenses that are associated with the acquired exchanges subject to section 54.305 be excluded from the regression.<sup>16</sup> Most of the relevant operating expenses are reported in NECA's October filing and are already broken out by acquired and non-acquired exchanges within the study area. The remaining data must be pulled from the

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<sup>12</sup> *Id.* at 3126, para. 104.

<sup>13</sup> The Bureau understands that NECA has developed a spreadsheet that shows the estimated amount of operating expense allowed for a study area based on 2014 data and coefficients. NECA should also provide that to USAC.

<sup>14</sup> Study areas entirely comprised of exchanges subject to section 54.305 will not have their HCLS affected by the operating expense limitation, but their CAF-BLS payments are subject to operating expense limitation.

<sup>15</sup> For a study area comprised wholly of exchanges subject to section 54.305, none of the study area will be included in the regression for HCLS and no limitation will be applied for HCLS.

<sup>16</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3125, para. 99, n.106.

annual cost studies, however, and are separately reported for acquired or non-acquired exchanges.<sup>17</sup> For those operating expenses, the portion that is associated with the acquired exchanges, and therefore should be excluded, should be calculated as follows: Multiply the cost study operating expenses by the ratio created by dividing the study area acquired exchange operating expenses (from NECA's annual HCLS filing) by the study area's total operating expenses (from NECA's annual HCLS filing).

13. Fourth, the Bureau clarifies that no further action is necessary to make the corporate operations expense limitation operational for consumer broadband-only loops. Pursuant to section 54.1308(a)(4), the corporate operations expense limitation is calculated on a per-loop basis for HCLS using unseparated common line expenses and voice loops.<sup>18</sup> The corporate operations expense limitation is extended to CAF-BLS through section 54.901(c), which limits the corporate operations expense allocated to the Common Line Revenue Requirement or the Consumer Broadband-only Loop Revenue Requirement to "[t]he portion of the monthly per-loop amount computed pursuant to [section 54.1308(a)(4)(ii)] that would be allocated to the Interstate Common Line Revenue Requirement or Consumer Broadband-only Loop Revenue Requirement."<sup>19</sup> Some parties have suggested that, in order to be applicable to the Consumer Broadband-only Loop Revenue Requirement, the calculation in section 54.1308(a)(4) must be modified to include broadband-only loop costs and loops.

14. Such modification is not necessary due to the manner in which the Consumer Broadband-only Loop Revenue Requirement is calculated. Pursuant to section 69.416, the Consumer Broadband-only Loop Revenue Requirement is calculated using common line expenses as a surrogate.<sup>20</sup> Because the Consumer Broadband-only Loop Revenue Requirement is calculated based on per-line common line expenses, it is appropriate to apply the per-line corporate operations expense limitation calculated even though it is calculated based on common line expenses and loops.

15. *Timing of the Capital Investment Allowance.* The capital investment allowance will affect HCLS disbursements beginning in 2019 and CAF BLS disbursements on January 1, 2017.<sup>21</sup> Section 54.303(b) states that the capital investment allowance "shall apply only with respect to Loop Plant Investment incurred after the effective date of this rule."<sup>22</sup> Because HCLS disbursements are made each calendar year and are calculated based on data from two calendar years prior (for instance, 2017 calendar-year HCLS disbursements are based on 2015 calendar-year data), the capital investment allowance will apply to HCLS disbursements supporting investment made beginning in 2017, which will be in 2019. Initial CAF-BLS disbursements are made each tariff year and are calculated based on projected data for the tariff year in which they are disbursed.<sup>23</sup> Thus, the capital investment allowance will be implemented contemporaneously with the implementation of CAF BLS, which the Bureau expects to occur beginning in January 2017.

16. *Additional Guidance Regarding the Capital Investment Allowance.* The capital investment allowance (also known as Allowed Loop Plant Investment (AALPI)) is subject to several

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<sup>17</sup> The cost accounts that are not already routinely reported by acquired and non-acquired exchanges are: Account 6310: Information origination/termination expenses; Account 6510: Other property plant and equipment expenses; Account 6610: Customer operations expense: Marketing; and Account 6620: Customer operations expense: Services.

<sup>18</sup> 47 CFR § 54.1308.

<sup>19</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3248, Appx. B, § 54.901(c).

<sup>20</sup> *Id.* at 3255, Appx. B, § 69.416.

<sup>21</sup> *Id.* at 3127-31, paras. 105-15.

<sup>22</sup> *Id.* at 3237, Appx. B, § 54.303(b).

<sup>23</sup> *Id.* at 3249-50, Appx. B, § 54.903. CAF BLS disbursements are ultimately subject to true up based on actual costs and revenues. *Id.*

adjustments.<sup>24</sup> The order in which these adjustments are applied will have an effect on the size of the adjustments. The Bureau clarifies that the broadband deployment adjustment must be applied prior to any adjustments related to special circumstances.<sup>25</sup> Because the broadband deployment adjustment is a percentage increase or reduction to the allowance, while the special circumstances adjustment is a flat addition to the allowance, applying the special circumstance first would result in a net adjustment that is either smaller or large than would be justified by the special circumstance and would be contrary to the Commission's intent in allowing the adjustment based on special circumstances. The Bureau further clarifies that the minimum AALPI is applied after all other adjustments.<sup>26</sup>

17. *Average schedule carrier participation in the NECA traffic-sensitive pool.* In the *Rate-of-Return Reform Order*, the Commission concluded that carriers electing model-based support would no longer be subject to rate-of-return regulation for common line offerings and could not participate in NECA's common line pool.<sup>27</sup> The Bureau clarifies that section 69.605(c) of the Commission's rules does not preclude an average schedule carrier electing model-based support from participating in the NECA traffic-sensitive pool and tariff.<sup>28</sup> Under the new regulatory paradigm for carriers electing model-based support, the only interstate services that remain subject to rate-of-return regulation are special access services.<sup>29</sup> Nothing in the *Rate-of-Return Order* altered the ability of a rate-of-return carrier electing model-based support to remain either cost-based or average schedule for special access services. The limitation referenced in section 69.605(c) applies only to services that remain subject to rate-of-return regulation. Because common line offerings will now fall outside of this limitation, we clarify that an average schedule carrier electing model-based support may continue to participate in the NECA traffic-sensitive pool and tariff so long as it otherwise complies with the requirements of section 69.605(c).

18. *Determining the Consumer Broadband-Only Loop Investment and Expenses.* In the *Rate-of-Return Reform Order*, the Commission established a mechanism for determining the amount of Consumer Broadband-Only Loop investment and expenses a carrier is required to remove from the Special Access category when it begins offering Consumer Broadband-Only Loops.<sup>30</sup> In sections 69.311(b)(2) and 69.416(b)(2) of the rules adopted in the Order, the rules refer to the number of "voice and voice/data lines in the study area to produce an average" investment and expense per line to determine the Consumer Broadband-Only Loop investment and expenses that must be removed.<sup>31</sup> In making these calculations, we clarify that the average number of lines should be used, as that would yield the most accurate results. Thus, rate-of-return carriers should use the average number of lines when determining these amounts.

19. *Calculation of Budget Control.* The *Rate-of-Return Reform Order* established a budget control mechanism for rate-of-return carriers.<sup>32</sup> The Bureau clarifies that "total demand" equals

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<sup>24</sup> *Id.* at 3237-39, Appx. B, §54.303(b)-(m).

<sup>25</sup> *Id.* at 3238-39, Appx. B, §§ 54.303(e), (k).

<sup>26</sup> *Id.* at 3239, Appx. B., § 54.303(m).

<sup>27</sup> *Id.* at 3097, 3160, paras. 21, 195.

<sup>28</sup> See 47 CFR § 69.605(c) (providing that "any company that does not join in association tariffs for all access elements shall not be deemed to be an average schedule company.").

<sup>29</sup> Interstate switched access services are no longer subject to rate-of-return regulation, but carriers are permitted to remain in the NECA traffic-sensitive pool. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17712, 17934-35, para. 801 & n.1499 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>30</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3158-59, para. 191.

<sup>31</sup> 47 CFR §§ 69.311(b)(2) and 69.416(b)(2).

<sup>32</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd at 3142-45, paras. 146-55.

forecasted disbursements for rate-of-return carriers, including High-Cost Loop Support (HCLS) (including safety net and safety valve support), CAF BLS or ICLS, CAF ICC support, and ACAM support (including additional support provided to facilitate the voluntary path to the model and transitional support payments), except that total demand shall not exceed \$2.0 billion plus any additional ACAM support or transitional support payments.

20. With that clarification made, the Bureau provides the following examples to illustrate the operation of the budget calculation. Note that in Example 1, Total Demand exceeds \$2.0 billion plus additional ACAM support provided to facilitate the voluntary path to the model and transitional support payments. As a result, Total Demand is constrained. In Example 2, Total Demand does not exceed that limitation, so no constraint is applied.

<b>ILLUSTRATIVE EXAMPLES (dollars in millions)</b>		
	Example 1	Example 2
<b>Calculate Total Demand</b>		
HCLS	\$675	\$625
CAF BLS or ICLS	\$750	\$600
CAF ICC	\$370	\$370
ACAM support (not including additional and transitional support)	\$400	\$400
ACAM support (additional and transitional support only)	\$140	\$140
Total Demand	\$2,335	\$2,135
Except Total Demand cannot exceed \$2.0 billion plus additional and transitional ACAM support	\$2,140	\$2,135
<b>Subtract CAF ICC</b>		
CAF ICC	\$370	\$370
SubTotal	\$1,770	\$1,765
<b>Subtract Model-based and Transitional Support</b>		
Model-based and Transitional Support	\$540	\$540
Budget for Legacy Rate-of-Return Support Mechanisms	\$1,230	\$1,225

21. The Bureau further clarifies that, for the purpose of forecasting HCLS demand, USAC should assume for administrative convenience that the HCLS cap for the next calendar year will be adjusted based on a rural growth factor that is the same as the most recent one.<sup>33</sup> Pursuant to the *Rate-of-Return Reform Order*, USAC will, on May 1 of each year, set targeted HCLS and CAF-BLS amounts for upcoming July 1 to June 30 tariff year.<sup>34</sup> The HCLS cap, however, will be reset based on the rural growth

<sup>33</sup> See 47 CFR § 1303.

<sup>34</sup> *Rate-of-Return Reform Order*, 31 FCC Rcd at 3248, 3251, Appx. B, §§ 54.901(f) and 54.1310(d).

factor on January 1. Adjusting the forecasted HCLS demand in the targeted HCLS and CAF BLS calculations to reflect the mid-period change in the HCLS cap ensures that the budget amount is appropriately balanced between the targeted HCLS and the targeted CAF BLS.<sup>35</sup>

22. For administrative ease, USAC will utilize a budget at \$1 billion for the second half of 2016 for implementation of the budget control mechanism. Thus, for the period from July 1, 2016 through December 31, 2016, USAC will calculate to what extent, if any, rate-of-return carriers' projected disbursements exceed \$1 billion. If projected disbursements exceed \$1 billion, USAC will implement reductions according the methodology adopted in the *Rate-of-Return Reform Order* so that total support for the six-month period does not exceed \$1 billion.

23. *Contributions Treatment of Non-Tariffed Services.* Several parties have informally inquired regarding the status of non-tariffed services for universal service fund contributions purposes, focusing on the discussion in the *Rate-of-Return Reform Order* regarding the detariffing of wholesale consumer broadband-only loop offerings.<sup>36</sup> As explained in the *Rate-of-Return Reform Order*, many rate-of-return carriers have historically sold wholesale DSL service under tariff to affiliates that, in turn, offer retail broadband Internet access services to residential consumers.<sup>37</sup> In response to these inquiries, we describe below the contribution requirements associated with such a detariffed wholesale transmission service provided by rate-of-return carriers.<sup>38</sup>

24. A detariffed transmission service still is subject to contributions if it is being offered as a telecommunications service.<sup>39</sup> Under the statute, a "telecommunications service" is the "offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used."<sup>40</sup> The Instructions to the Telecommunications Reporting Worksheet (FCC Form 499) reinforce this, making clear that filers that voluntarily offer such a transmission service on a common carrier basis must report those revenues as assessable revenues on their FCC Form 499.<sup>41</sup>

25. On the other hand, if a rate-of-return carrier chooses to offer and provide transmission only to its affiliated Internet service provider on a private carriage basis as an input in the provision of a mass market retail broadband Internet access service, that service would not be a telecommunications service subject to a mandatory contribution obligation. While rate-of-return carriers have typically

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<sup>35</sup> The targeted HCLS and targeted CAF BLS amounts should be level across the period so that the CAF BLS does not fluctuate during the tariff year.

<sup>36</sup> See *Rate-of-Return Reform Order*, 31 FCC Rcd 3159, para. 193, n.428.

<sup>37</sup> *Id.* at 3118, para. 83.

<sup>38</sup> The discussion of universal service contributions for certain wholesale broadband transmission services here does not encompass the retail broadband Internet access service addressed by the *Open Internet Order* forbearance framework. *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601, 5819, para. 460 (2015) (*Open Internet Order*), *aff'd sub nom USTA v. FCC*, No. 15-1063 (D.C. Cir. June 14, 2016).

<sup>39</sup> 47 CFR § 54.706. See also, e.g., *Universal Service Contribution Methodology et al.*, Order, 27 FCC Rcd 13780, 13795-96, 13797, paras. 31-36, 39 n.109 (2012). In this regard, we interpret the reference in footnote 428 of the *Rate-of-Return Reform Order* to "detariffed" offerings not being subject to contributions obligations as a short-hand referring to offerings that not only are detariffed, but also offered on a private carriage basis. 31 FCC Rcd 3159, para. 193, n.428. In light of the citation to the *Open Internet Order*'s discussion of carriers voluntarily offering service as telecommunications service (whether or not tariffed), we view footnote 428 of the *Rate-of-Return Reform Order* as referring to scenarios where the relevant wholesale service is both detariffed and offered as a private carriage service.

<sup>40</sup> 47 USC § 153(46).

<sup>41</sup> 2016 Instructions to the Telecommunications Reporting Worksheet, Form 499-A at 26.

offered Internet transmission services as telecommunications services subject to the full scope of Title II for various historical reasons, nothing in our rules requires them to do so today. They are free to detariff the service and provide it only to their own affiliate on a private carrier basis, comparable to the price cap carriers. Pursuant to the *Open Internet Order*, carriers that choose to change their offering of Internet transmission service as a telecommunications service are required to notify the Wireline Competition Bureau 60 days before making that change.<sup>42</sup>

### III. PROCEDURAL MATTERS

#### A. Paperwork Reduction Act

26. This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).<sup>43</sup> Therefore, the Order does not contain any new or modified information collection burdens for small businesses with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.<sup>44</sup>

#### B. Final Regulatory Flexibility Act Certification

27. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>45</sup> requires agencies to prepare a regulatory flexibility analysis for rulemaking proceedings, unless the agency certifies that “the rule will not have a significant economic impact on a substantial number of small entities.”<sup>46</sup> The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>47</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>48</sup> 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).<sup>49</sup>

28. We hereby certify that the clarifications adopted in this Order will not have a significant economic impact on a substantial number of small entities. This Order clarifies rules adopted in the *Rate-of-Return Reform Order* to assist in the implementation of that decision and reduce burden on impacted parties. These revisions do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the *Rate-of-Return Reform Order*.<sup>50</sup> The Commission will send a copy of this Order, including a copy of this final certification, to the Chief

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<sup>42</sup> *Open Internet Order*, 30 FCC Rcd at 5819, para. 460 n.1378.

<sup>43</sup> Pub. Law No. 104-13; 44 U.S.C. Part 35.

<sup>44</sup> Pub. Law No. 107-198; *see* 44 U.S.C. § 3606(c)(4).

<sup>45</sup> 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).

<sup>46</sup> 5 U.S.C. § 605(b).

<sup>47</sup> 5 U.S.C. § 601(b).

<sup>48</sup> 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.” 5 U.S.C. § 601(3).

<sup>49</sup> Small Business Act, 15 U.S.C. § 632.

<sup>50</sup> *See Rate-of-Return Reform Order*, 31 FCC Rcd at 3286, Appx. D.

Counsel for Advocacy of the SBA.<sup>51</sup> In addition, the Order (or a summary thereof) and certification will be published in the Federal Register.<sup>52</sup>

**C. Congressional Review Act**

29. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>53</sup>

**IV. ORDERING CLAUSES**

30. Accordingly, IT IS ORDERED, that pursuant to the authority contained in sections 1, 2, 4(i), 201-203, 220, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201-203, 220, 254, and 403, and pursuant to sections 0.91, 0.201(d), and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.201(d), and 0.291, and pursuant to the delegation of authority in footnote 413 of the *Rate-of-Return Reform Order*, this Order is ADOPTED.

31. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>54</sup>

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

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief  
Wireline Competition Bureau

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<sup>51</sup> 15 U.S.C. § 632.

<sup>52</sup> *Id.*

<sup>53</sup> *See* 5 U.S.C. § 801(a)(1)(A).

<sup>54</sup> *Id.*