

FCC FACT SHEET^{*}
Connect America Fund Phase II Auction (Auction 903)
Order and Order on Reconsideration – WC Docket No. 10-90

Background: Last year, the Commission adopted rules for the Connect America Fund Phase II auction (Phase II auction), which will award up to \$1.98 billion over 10 years to service providers that commit to offer voice and broadband services to fixed locations in unserved high-cost areas. This auction will be the first time the FCC has awarded ongoing high-cost universal service support through competitive bidding in a multiple-round, reverse auction. Use of this auction mechanism will maximize the value the American people receive for the universal service dollars we spend, balancing higher-quality services with cost efficiencies.

What the Order and Order on Reconsideration Would Do:

- Address the remaining issues raised by parties challenging the Commission’s orders implementing the Connect America Phase II auction (Auction 903).
- Resolve petitions challenging the Commission’s decisions on the following issues:
 - how to compare bids of different performance levels,
 - standalone voice requirements,
 - deployment benchmarks and eligibility, and
 - state-specific bidding weights, among other matters.
- Modify the Commission’s letter of credit rules to provide some additional relief for Phase II auction recipients by reducing the costs of maintaining a letter of credit.

^{*} This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in WC Docket No. 10-90, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR § 1.1200 *et seq.*

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
Connect America Fund Phase II Auction) AU Docket No. 17-182

ORDER AND ORDER ON RECONSIDERATION*

Adopted: []

Released: []

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* This document has been circulated for tentative consideration by the Commission at its January 2018 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

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I. INTRODUCTION

1. Today, we consider the remaining issues raised by parties challenging the Commission’s orders implementing the Connect America Phase II (Phase II) auction (Auction 903), in which service providers will compete to receive support of up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas.¹ Specifically, we resolve petitions challenging the Commission’s decisions on the following issues: how to compare bids of different performance levels, standalone voice requirements, Phase II auction deployment and eligibility, and state-specific bidding weights, among other matters. We also modify the Commission’s letter of credit rules to provide some additional relief for Phase II auction recipients by reducing the costs of maintaining a letter of credit. By resolving these issues, we move the Commission a step closer to holding the Phase II auction and, in turn, to the goal of closing the digital divide for all Americans, including those in rural areas of our country.

II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission adopted an approach to providing universal service support in price cap areas through a combination of “a new forward-looking model of the cost of constructing modern multi-purpose networks” and a competitive bidding process (Phase II support).² Subsequently, in the *Phase II Auction Order*, the Commission adopted a framework and rules for the Phase II auction, including the public interest obligations for different performance tiers and latency levels, the budget, the eligible areas, the eligibility requirements, and post-auction obligations and oversight measures.³ In the *Phase II Auction FNPRM Order*, the Commission adopted weights for comparing bids for the different performance tiers and latency levels, and declined to adopt any other weights for bidders in the Phase II auction.⁴

3. On August 4, 2017, the Commission adopted a public notice seeking comment on specific details regarding the mechanics of the Phase II auction, including the auction format and reserve prices.⁵ After consideration of the record, the Commission will announce in a public notice the final details for the Phase II auction, including the Phase II auction-specific deadlines and dates.

¹ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (*Phase II Auction Order*); *Connect America Fund et al.*, Report and Order and Order on Reconsideration, 32 FCC Rcd 1624 (2017) (*Phase II Auction FNPRM Order*).

² *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17725, para. 156 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff’d sub nom.*, In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

³ See generally *Phase II Auction Order*, 31 FCC Rcd 5949.

⁴ See generally *Phase II Auction FNPRM Order*, 32 FCC Rcd 1624.

⁵ *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Connect America Fund Phase II Auction (Auction 903)*, Public Notice, 32 FCC Rcd 6238 (2017) (*Phase II Auction Comment Public Notice*).

(continued....)

III. ORDER ON RECONSIDERATION

A. Comparing Bids of Different Performance Levels

4. *Background.* In the *Phase II Auction Order*, the Commission concluded that it would accept bids for four performance tiers with varying speed and usage allowances, and with respect to each tier, it would provide for bids at either low or high latency.⁶ The Commission stated a preference for higher speeds over lower speeds, higher over lower usage allowances, and low latency over high latency, and decided that weights would be used to account for these preferences.⁷ The Commission also decided that bids in all tiers would be considered simultaneously, so that bidders that propose to meet one set of performance standards will compete directly against bidders that propose to meet other performance standards, taking into account the weights adopted by the Commission for each performance tier and latency level.⁸ Specifically, the Commission adopted weights so that Minimum performance tier (10/1 Mbps) bids will have a 65 weight; Baseline performance tier (25/3 Mbps) bids will have a 45 weight; Above Baseline performance tier (100/20 Mbps) bids will have a 15 weight; and Gigabit performance tier (1 Gbps/500 Mbps) bids will have zero weight.⁹ In addition, high-latency bids will have a 25 weight and low-latency bids will have zero weight added to their respective performance tier weight.¹⁰

5. Hughes Network Systems, LLC (Hughes) petitioned for reconsideration asking the Commission to reconsider the weights it adopted and, instead, to adopt a bid weighting matrix that provides a high-latency weight of no more than 10 and maximum weights of 25 for 10/1 Mbps service, 15 for 25/3 Mbps service, 10 for 100/20 Mbps service and zero for Gigabit service.¹¹ Hughes claims that the weighting matrix adopted by the Commission “places such a heavy thumb on the scales in favor of low-latency, high-speed bids that such bids will always ‘necessarily win.’”¹²

6. *Discussion.* We decline to reconsider the weights the Commission adopted for bids in the Phase II auction for the varying performance tiers and latency levels. In adopting these weights, which the Commission found to be within a reasonable range of the increments proposed in the record, the Commission appropriately recognized the value of higher-speed and lower-latency services to consumers.¹³ The Commission sought to balance its preference for higher-quality services with its objective to use the finite universal service budget effectively. Based on its predictive judgment, the Commission concluded that its approach is likely to promote competition within and across areas by giving all service providers the opportunity to place competitive bids, regardless of the technology they intend to use to meet their obligations.¹⁴

7. We disagree with Hughes’ contention that low-latency, high-speed bids will always necessarily win. Bids will be scored relative to the reserve price and therefore bids placed for lower

⁶ *Phase II Auction Order*, 31 FCC Rcd at 5956-63, paras. 14-37 (adopting the standards for the Minimum, Baseline, Above Baseline, and Gigabit performance tiers and for High and Low latency bids). The Commission subsequently reconsidered the monthly usage allowances for the Above Baseline and Gigabit performance tiers. See *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1651, paras. 71-73.

⁷ *Phase II Auction Order*, 31 FCC Rcd at 5976-77, paras. 84-85.

⁸ *Id.* at 5957, 5976-77, paras. 17, 84-85.

⁹ *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1628, paras. 16-17.

¹⁰ *Id.*

¹¹ Petition for Reconsideration of Hughes Network Systems, LLC, WC Docket Nos. 10-90, 14-58 (filed Apr. 20, 2017) (Hughes Petition).

¹² *Id.* at 3.

¹³ *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1630, 1633-34, paras. 23, 27.

¹⁴ *Id.* at 1633-34, para. 27.

speeds and high latency will have the opportunity to compete for support, but will have to be particularly cost-effective to compete with higher tier bids.¹⁵

8. Hughes presents a hypothetical example that only reinforces the conclusion that adopting minimal weights would be inappropriate. Even if the Commission were to adopt Hughes' proposed weights, it is unclear from Hughes' own statements in the record whether Hughes could place winning bids. Hughes argues that the Commission failed to take into account record evidence that "the lower bound for satellite providers' bids will be above \$185 per customer per month in the 25/3 Mbps tier," and that there was no data in the record to contradict its showing.¹⁶ Assuming that Hughes could receive from subscribers a reasonably comparable rate of \$88 per month for offerings at 25/3 Mbps, Hughes claims that the lower bound for satellite providers' bids in this tier will be above \$185 per customer per month.¹⁷ In the example, Hughes compares a fiber-based provider bidding a reserve price of \$250 in the Gigabit tier to a satellite provider bidding \$187 in the Baseline tier under two scenarios.¹⁸ Under the hypothetical, the Gigabit bid would win using the Commission's adopted weights; using Hughes' proposed weights, the satellite provider would win. If the fiber-based provider and the satellite provider required \$250 and \$187 in support per location, respectively, neither would win if the Commission adopts its proposal to cap support per location at \$146.10.¹⁹ Notwithstanding the reserve price, we are not convinced that awarding \$187 per customer for high-latency, lower-speed satellite service would be the preferred outcome, or particularly cost-effective, if we could fund a Gigabit network for only \$63 more per customer. Lowering support amounts is not the Commission's only goal. Rather, the Commission must balance—within a finite budget—its goal of lower support amounts and wider coverage with its goal of service at higher speeds and lower latency.

9. Hughes has not presented any analysis or data that persuades us that we should alter the balance the Commission sought to achieve with the adopted weights. The Commission previously concluded that adopting smaller weight differences between tiers, as Hughes advocates, would be inappropriate.²⁰ The Commission was concerned that minimal weighting could deprive rural consumers of the higher-speed, lower-latency services that consumers value and that are common in urban areas.²¹ The Commission predicted that minimal weight differences would likely result in bids in lower tiers prevailing, leaving all consumers with minimum service even though some service providers might be

¹⁵ See *id.* at 1633-34, 1637-38, paras. 27, 33.

¹⁶ Hughes Petition at 11. See also Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 2 (filed Feb. 14, 2017) (Hughes Feb. 14, 2017 *Ex Parte* Letter) ("Hughes has analyzed pricing for enterprise and other higher-capacity satellite broadband offerings and determined that satellite providers will require total revenue in the range of \$275 per customer per month in order to provide a [Connect America] compliant broadband offering, given appropriate traffic management practices."); Rural Coalition Opposition at 5-6 (arguing that "Hughes . . . never explains the factual basis for a monthly support of \$187 per month per household" and "merely asserts" its claim "without justification or evidence").

¹⁷ Hughes Feb. 14, 2017 *Ex Parte* Letter at 2.

¹⁸ Hughes Petition at 4-5.

¹⁹ In the *Phase II Auction Order*, the Commission decided to cap the amount of support per location provided to extremely high-cost areas and, in the *Phase II Auction Comment Public Notice*, proposed imposing a \$146.10 per-location, per-month funding cap, which is the maximum amount of support per-location offered to price cap carriers that accepted model-based support. See *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90; *Phase II Auction Comment Public Notice*, 32 FCC Rcd at 6258, para. 67 & n.103.

²⁰ *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1630-32, para. 24.

²¹ *Id.*

able to offer increased speeds for marginally more support.²²

10. We are not persuaded that we should reconsider the weights adopted by the Commission to reflect the consumer preference data cited by Hughes. In the *Phase II Auction FNPRM Order*, the Commission concluded that “establishing weights based on specific data is likely to be a drawn out and complicated process that may further delay the Phase II auction and may not produce an improved outcome in the auction.”²³ Hughes argues that the Commission adopted weights that provide “too great of a bidding advantage to high-speed, high-capacity, low-latency services,”²⁴ and claims that “[s]atellite broadband customers are just as satisfied as the customers of other types of broadband providers, notwithstanding the inevitable latency resulting from the data travel time to and from a geostationary satellite.”²⁵ Hughes now claims that “changing the bidding weights would require simply changing numeric values in the Commission’s existing auction software and result in no delay.”²⁶ Even if it were true that changing the auction software would be easy, there would only be no delay if the Commission simply accepted Hughes values and ignored data cited by other parties.²⁷ Nothing in Hughes’ reply comments fundamentally changes the Commission’s prior conclusion.

11. The Commission previously rejected arguments that it should adopt a narrower weight for latency than for speed tiers to account for claims that consumers value higher speed over latency.²⁸ The Commission emphasized that “these claims do not address the concerns raised by commenters about the inherent limitations of high latency services—particularly for interactive, real-time applications and voice services given that high latency providers may be the only voice providers in the area.”²⁹ Hughes does not address the inherent limitations of satellite voice service, particularly in rural areas, and argues that there is no valid policy reason to provide such an advantage to low-latency bids.³⁰ We disagree. In areas where winning bidders begin receiving Phase II support, the incumbent price cap carriers not receiving such support will be immediately relieved of their federal high-cost eligible telecommunications carrier (ETC) obligation to offer voice telephony in those census blocks, and the winning bidder will have the responsibility of providing the supported service: voice telephony.³¹ The potential savings to the Fund of supporting non-terrestrial broadband services must be balanced with the fact that providers of such

²² *Id.*

²³ *Id.* at 1634, para. 28.

²⁴ Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Aug. 29, 2017) (citing results of empirical research on the relative value that consumers place on speed, bandwidth, and latency in purchasing broadband).

²⁵ Hughes Petition at 9 (footnotes omitted). Hughes cites a statement regarding Consumer Reports data in a Hughes *Ex Parte* Letter, and Comments filed by ViaSat including a chart based on Consumer Reports data showing consumer satisfaction ratings for WildBlue/ViaSat at the same level as cable services in 2014. The chart also shows consumer satisfaction ratings for other satellite service to be considerably lower. *Id.* at n.22.

²⁶ Reply Comments of Hughes Network Systems, AU Docket No. 17-182, WC Docket No. 10-90, 4 (filed Oct. 18, 2017). *But see* Comments of the Rural Coalition, AU Docket No. 17-182, WC Docket No. 10-90, at 5 (filed Sept. 18, 2017).

²⁷ *See, e.g., Phase II Auction FNPRM Order*, 32 FCC Rcd at 1634, para. 28 nn.59-62.

²⁸ *Id.* at 1638, para. 34.

²⁹ *Id.*

³⁰ *See e.g., Opposition of the Rural Coalition*, WC Docket Nos. 10-90, 14-58, at 12-13 (filed May 18, 2017) (Rural Coalition Opposition) (arguing that high latency adversely impacts voice communications and is particularly problematic in rural communities where delay for local calls is compounded because of the “double-hop” of the signal traveling up and down to the satellite).

³¹ *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15670, para. 69 (2014) (*December 2014 Connect America Order*).

(continued....)

services will have the obligation to provide the supported service—voice telephony—to rural consumers as well.³²

12. We also are not persuaded by Hughes' argument that we should reduce the speed and latency weights to "account for satellite broadband systems' more expedited deployment capabilities."³³ Hughes argues that satellite service is "quicker to market" because it is not affected by obstacles faced by terrestrial broadband providers such as lengthy permitting processes, construction delays, limited consumer demand, or geographical isolation.³⁴ Although satellite service may theoretically be available sooner in rural areas, it is not clear that satellite providers will be meeting the needs of rural and underserved communities any sooner than other providers. The Commission granted a petition for reconsideration regarding re-auctioning areas served by high-latency service providers, filed by ViaSat and supported by Hughes, because it agreed that it may be difficult for high-latency service providers to obtain enough subscribers to meet a 35 percent subscription threshold by the end of the third year of support.³⁵ In doing so, the Commission was persuaded by comments suggesting that many of the factors related to low adoption are likely to be present in more rural high-cost areas of the country.³⁶ We have no reason to think these factors have changed and decline to modify the weights to account for "speed to market."³⁷

13. For the reasons stated above, we decline to reconsider the weights the Commission adopted for bids in the Phase II auction for the varying performance tiers and latency levels.

B. Latency Performance Testing

14. *Background.* In the *Phase II Auction Order*, the Commission required bidders submitting low-latency bids to meet the same 100 millisecond (ms) latency standard that applies to price cap carriers that accepted the Phase II offer of model-based support and rate-of-return carriers that elect the voluntary path to the model.³⁸ Recognizing that some bidders may not be able to meet that latency standard, the Commission adopted an alternative standard. Bidders submitting high-latency bids are required to meet a two-part standard for the latency of both their voice and broadband service: (1) the Commission requires that 95 percent or more of all peak period measurements of network round trip latency must be at or below 750 ms, and (2) with respect to voice performance, the Commission requires high-latency bidders

³² 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101.

³³ Reply Comments of Hughes Network Systems, LLC, WC Docket Nos. 10-90, 14-58, at 8-9 (filed May 30, 2017) (Hughes Reply).

³⁴ *Id.*

³⁵ *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1649, para. 67.

³⁶ *Id.* & n.162 (citing Petition for Reconsideration and Clarification of ViaSat, Inc., WC Docket No. 10-90 et al., at 3-4 (filed Aug. 8, 2016) (noting low adoption rates due to low incomes, age, education and disability); Opposition and Comments of Hughes Network Systems, WC Docket No. 10-90 et al., at 2-3 (filed Sept. 2, 2016) (Hughes Opposition) (explaining that "the most rural and remote parts of the country" have "the lowest adoption rates nationwide").

³⁷ After the time for filing petitions for reconsideration, or amendments thereto, had passed, Hughes proposed incorporating additional weighting to account for speed to market. See Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 22, 2017) (attaching "A Proposal to Incorporate Time-to-Deployment into CAF Phase II Auction Scoring" by Scott Wallsten, June 19, 2017). Even if this proposal were not untimely filed, we would decline to adopt additional weighting for speed to market.

³⁸ *Phase II Auction Order*, 31 FCC Rcd at 5960, para. 29 (adopting a minimum latency requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 100 milliseconds). See also *Connect America Fund*, Report and Order, 28 FCC Rcd 15060, 15068-72, paras. 19-25 (WCB 2013) (*Phase II Service Obligations Order*).

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to demonstrate a score of four or higher using the Mean Opinion Score (MOS), similar to the standard that the Commission adopted for one category of rural broadband experiments.³⁹

15. ADTRAN, Inc. (ADTRAN) filed a petition for clarification or reconsideration seeking to clarify that an applicant selecting the high-latency option must be prepared to demonstrate that its service meets the MOS of four or higher under the International Telecommunication Union's ITU-T Recommendation P.800 using the conversational-opinion tests and not the listening-opinion tests.⁴⁰ Alternatively, if the Commission intended to allow an applicant to demonstrate compliance using either conversational-opinion tests or listening-opinion tests, ADTRAN asks that we reconsider that decision.

16. *Discussion.* As an initial matter, we clarify that the Commission has not yet specified which of the methods for subjective determination of transmission quality identified in ITU-T Recommendation P.800 should be used to demonstrate compliance with the second part of the two-part standard (MOS of four or higher). Based on the sparse record before us, we decline to do so at this time.⁴¹ ADTRAN proposes requiring a testing methodology that uses a model network in a laboratory setting and argues that this is preferable to a methodology that listens to calls on the actual network. ADTRAN does not mention the ITU's other recommended option: interview and survey tests. We find that there is insufficient information in the record to specify which of the ITU's recommended options applicants should be prepared to use to demonstrate an MOS of four or higher. We expect that the specific methodology will be adopted by the Bureaus and Office of Engineering and Technology (OET) by June 2018, consistent with the Commission's previous direction to refine a methodology to measure the performance of ETCs' services subject to general guidelines adopted by the Commission.⁴²

17. We also clarify that recipients of Phase II support awarded through competitive bidding should use the same testing methodologies for measuring peak period roundtrip latency adopted for price cap carriers accepting model-based Phase II support.⁴³ That is, the same testing methodologies should be used by Phase II recipients whether they are demonstrating compliance with the 100 ms requirement or the 750 ms requirements. As set forth in the *Phase II Service Obligations Order*, providers can rely on existing network management systems, ping tests, or other commonly-available measurement tools, or on the alternative Measuring Broadband America (MBA) program results if they have deployed at least 50 white boxes in funded areas throughout the state.⁴⁴

³⁹ *Phase II Auction Order*, 31 FCC Rcd at 5960-61, para. 30.

⁴⁰ Petition for Clarification or Reconsideration of ADTRAN, Inc., WC Docket No. 10-90 et al. (filed July 5, 2016) (ADTRAN Petition). *See also* Comments of ADTRAN, Inc., AU Docket No. 17-182, WC Docket No. 10-90, at 2-4 (filed Sept. 18, 2017); Reply Comments of the Rural Coalition, AU Docket No. 17-182, WC Docket No. 10-90, at 18-19 (filed Oct. 18, 2017); Reply Comments of the Institute for Local Self-Reliance et al., AU Docket No. 17-182, WC Docket No. 10-90, at 7-8 (filed Oct. 18, 2017) (Institute for Local Self-Reliance et al. Reply).

⁴¹ Only WISPA supported ADTRAN on this issue. Opposition to Petitions for Reconsideration of the Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 6-7 (filed Sept. 2, 2016) (WISPA Sept. 2016 Opposition). ViaSat said it had no objections to the Commission clarifying that MOS must be established based on "live communications" but does not explain what it means by this. *See* Letter from John P. Janka, Counsel for ViaSat, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3, n.5 (filed Feb. 2, 2016). In commenting on the *Phase II Auction Comment Public Notice*, the Institute for Local Self-Reliance urged the Commission to conduct the MOS tests and to make such results public, and "only accept bids from entities that can guarantee a [MOS] of 4.0 or greater when latency in a call is .5 to 1.5 seconds long." Comments of the Institute for Local Self-Reliance, AU Docket No. 17-182, WC Docket No. 10-90, at 2 (filed Sept. 18, 2017).

⁴² *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 112; 47 CFR § 54.313(a)(11).

⁴³ *See Comment Sought on Performance Measures for Connect America High-Cost Universal Service Support Recipients*, WC Docket No. 10-90, Public Notice, DA 17-1085 (WCB, WTB, OET rel. Nov. 7, 2017) (seeking to update the record regarding performance measures).

⁴⁴ *Phase II Service Obligations Order*, 28 FCC Rcd at 15070-72, paras. 23-25.

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C. Standalone Voice Requirement

18. In the *USF/ICC Transformation Order*, the Commission required that, as a condition of receiving Connect America Fund support, ETCs must offer voice telephony as a standalone service throughout their designated service area.⁴⁵ Consistent with section 254(b) of the Communications Act of 1934, as amended, the Commission emphasized that ETCs must offer voice telephony services at rates that are reasonably comparable to urban rates.⁴⁶ In the *December 2014 Connect America Order*, the Commission adopted a similar reasonable comparability rate certification requirement for broadband performance obligations.⁴⁷

19. Three parties state that they would provide voice using voice over Internet protocol (VoIP) and ask the Commission to clarify or remove the requirement that broadband service providers provide standalone voice service.⁴⁸

20. *Discussion.* The Commission adopted the standalone voice requirement in 2011.⁴⁹ When it adopted the separate standalone broadband reasonable comparability requirement in 2014, the Commission explained that “high-cost recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets our requirements.”⁵⁰ Setting aside the untimeliness of these requests, we would not reconsider the requirement that Connect America Fund recipients offer voice telephony—the supported service—at rates that are reasonably comparable to rates for voice service in urban areas. We are not persuaded by arguments that, because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service.⁵¹ Phase II auction recipients may be the only ETC offering voice in some areas and not all consumers may want to subscribe to broadband service. To comply with Connect America Fund service

⁴⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, para. 80. *See also* 47 C.F.R. § 54.101(b).

⁴⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, para. 81 (“[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas” (quoting 47 U.S.C. § 254(b))).

⁴⁷ *December 2014 Connect America Order*, 29 FCC Rcd at 15686-87, para. 120.

⁴⁸ Request for Clarification or Partial Reconsideration of Southern Tier Wireless, Inc., WC Docket No. 10-90 et al., at 4 (filed July 20, 2016) (Southern Tier Wireless Petition) (requesting that the requirement for a standalone voice service be removed); Petition for Clarification or Reconsideration of Crocker Telecommunications, LLC, WC Docket No. 10-90 et al., at 7 (filed July 18, 2016) (Crocker Telecommunications Petition) (asking Commission to clarify that broadband providers need only provide broadband as a standalone service); Petition for Reconsideration of Broad Valley Micro Fiber Networks, Inc., WC Docket No. 10-90 et al., at 3-4 (filed July 20, 2016) (Broad Valley Petition) (opposing the standalone voice requirement). *See also*, Comments of Space Exploration Technologies Corp., AU Docket No. 17-182, WC Docket No. 10-90, at 6-9 (filed Sept. 18, 2017) (SpaceX Comments) (asking the Commission to clarify that CAF II recipients need not offer standalone voice). Several parties suggest that we dismiss Southern Tier Wireless, Crocker Telecommunications, and Broad Valley’s petitions for reconsideration as improperly filed because they address issues that the Commission sought comment on in the *Phase II Auction FNPRM*. Opposition of ViaSat, Inc., WC Docket No. 10-90 et al., at 2-3 (filed Sept. 2, 2016); Hughes Opposition at 2-3. Instead, the Commission addressed those comments related to issues raised in the *Phase II Auction FNPRM* in the *Phase II Auction FNPRM Order* and only address the portions of the petitions that seek reconsideration or clarification of the Commission’s existing rules in this Order. *See generally Phase II Auction FNPRM Order*, 32 FCC Rcd 1624.

⁴⁹ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17693, para. 80.

⁵⁰ *December 2014 Connect America Order*, 29 FCC Rcd at 156887, para. 120 (footnote omitted).

⁵¹ Crocker Telecommunications Petition at 7; Broad Valley Petition at 3-4; Southern Tier Wireless Petition at 4; SpaceX Comments at 7-8.

obligations, support recipients can offer VoIP over their broadband network on a standalone basis, but they must offer the service at the reasonably comparable rate for voice services.⁵²

D. Phase II Auction Deployment

21. In the *Phase II Auction Order*, the Commission adopted service milestones for Phase II auction recipients. Specifically, Phase II auction recipients must complete construction and commercially offer service meeting the relevant public interest obligations to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization, an additional 20 percent in the subsequent years, and 100 percent by the end of the sixth year.⁵³ The total number of locations that a Phase II auction recipient is required to serve in each state is determined by adding the number of locations that the Connect America Cost Model (CAM) identified in each eligible census block included in the recipient's winning bids in the state.⁵⁴

1. Required Number of Phase II Auction Locations

22. *Background.* For the offer of model-based support to price cap carriers, the Commission delegated authority to the Wireline Competition Bureau (Bureau) to address situations where a price cap carrier brings to the Bureau's attention any known disparity between the number of locations identified by the CAM and the number of locations actually on the ground by adjusting the number of funded locations a price cap carrier must serve in the state and the associated funding levels on a pro rata basis.⁵⁵ Broad Valley Micro Fiber Networks Inc. (Broad Valley), Crocker Telecommunications, LLC (Crocker Telecommunications) and Southern Tier Wireless, Inc. (Southern Tier Wireless) request that the Commission clarify that Phase II auction winning bidders also will have the opportunity to bring to the Commission's attention after the auction any discrepancy between the number of locations identified by the CAM and the actual number of locations that are found to be located in the eligible census blocks in a recipient's winning bids.⁵⁶ They also request that support be adjusted pro rata to account for any discrepancies.⁵⁷

23. *Discussion.* We decline to clarify that we will adjust the location totals and support amounts for Phase II auction winning bidders that report disparities between the number of locations that the CAM has identified in eligible census blocks and the actual number of locations a winning bidder might identify in those census blocks post-auction.⁵⁸ Unlike price cap carriers accepting the state-wide

⁵² See *Wireline Competition Bureau Announces Results of 2017 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowances for ETCs Subject to Broadband Public Interest Obligations*, Public Notice, 32 FCC Rcd 1358 (WCB 2017).

⁵³ *Phase II Auction Order*, 31 FCC Rcd at 5964, paras. 40-41.

⁵⁴ See CostQuest Associates, Inc., *Connect America Cost Model: Model Methodology 12-15* (Dec. 22, 2014), <https://transition.fcc.gov/wcb/CAM%20v.4.2%20Methodology.pdf> (CAM Methodology).

⁵⁵ *December 2014 Connect America Order*, 29 FCC Rcd at 15659, para. 38 n.88.

⁵⁶ Broad Valley Petition at 3 (requesting that winning bidders have at least four months to submit a challenge to the number of locations and have its support adjusted on a pro rata basis without any penalties); Crocker Telecommunications Petition at 3-4 (requesting that winning bidders be able to submit the discrepancies within six months of being announced as winning bidders and that the winning bidder's support and/or required totals be increased or decreased to account for such a discrepancy without any penalties); Southern Tier Wireless Petition at 4-5 (requesting a minimum of 15 weeks after notice of winning bidders to bring discrepancies to the Commission's attention and that support be reduced or increased depending on the number of locations identified).

⁵⁷ Broad Valley Petition at 3; Crocker Telecommunications Petition at 3-4; Southern Tier Wireless Petition at 5.

⁵⁸ See also Comments of Vantage Point Solutions, WC Docket No. 10-90, at 7-8 (filed Sept. 18, 2017) (Vantage Point Comments); Reply Comments of the Rural Wireless Association, Inc., WC Docket No. 10-90, AU Docket No. 17-182, at 9-10 (filed Oct. 18, 2017) (RWA Oct. 18, 2017 Reply).

offer of model-based support,⁵⁹ Phase II auction bidders can be selective about which areas they choose to include in their bids. Accordingly, they have the opportunity and responsibility to conduct due diligence prior to the auction to make certain that they can identify and offer service to the required number of locations if they are ultimately authorized to receive support.⁶⁰ If they are unable to identify the requisite number of locations that the cost model has associated with a particular census block,⁶¹ they can choose not to bid on that census block group, to find other locations within the eligible census blocks in that census block group, or to find other census block groups to include in their bids that have more locations in their eligible census blocks than what the cost model has identified to ensure they can serve the required number of locations in the state.⁶²

24. Moreover, the proposal set forth by these petitioners would impose undue administrative burdens on the Commission by requiring it to engage in complex and time-consuming negotiations with each winning bidder as to the number of locations it is required to serve census block-by-census block and to make associated adjustments to its support. Although the Phase II offer of model-based support was made to 10 price cap carriers,⁶³ we anticipate that there could be many more Phase II auction winning bidders. The Commission would need to verify the number of locations that each winning bidder claims to be on the ground before adjusting support levels. This process could potentially lead to delays in the authorization of Phase II support that would ultimately delay the deployment of voice and broadband services. Further, because the Commission has a finite Phase II auction budget that will be allocated

⁵⁹ No price cap carrier accepting model-based support had its support adjusted to account for any discrepancies in the required number of locations. While Frontier submitted a letter seeking such an adjustment in seven states where it accepted Phase II model-based support, it later withdrew its letter when it determined that it could locate additional locations. See Letter from Michael Golob, Senior Vice President, Network and Engineering Integration, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 30, 2015) (identifying discrepancies in the number of locations in the states where Frontier accepted Phase II model-based support); Letter from Kathleen Q. Abernathy, Executive Vice President, External Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Mar. 9, 2016) (withdrawing its previous letter because its “additional review efforts continue to identify new or different numbers of locations” and requesting “that the Bureau not take any action regarding reducing Frontier’s location counts or associated funding”). See also Crocker Telecommunications Petition at 4; Vantage Point Comments at 3 (referencing Frontier’s initial request).

⁶⁰ *Phase II Auction Order*, 31 FCC Rcd at 5966, para. 47 (“Potential bidders are responsible for undertaking the necessary due diligence in advance of bidding to identify particularly problematic census blocks when they are preparing their bids and have the option of not including such blocks in their bids.”). Like the preliminary list of eligible census blocks, the final list of eligible census blocks will identify the number of locations associated with each eligible census block. See *Wireline Competition Bureau Releases Preliminary List and Map of Eligible Census Blocks for the Connect America Phase II Auction*, Public Notice, 31 FCC Rcd 8870 (WCB 2016).

⁶¹ Vantage Point Comments at 2-5 (describing case studies where it found that the Alternative Connect America Cost Model (A-CAM) had overestimated the number of locations in wire centers, describing how rate-of-return carriers that accepted A-CAM were finding it difficult to locate enough locations, and explaining how initial due diligence for the Phase II auction has uncovered location disparities). But see Letter from Dustin Johnson, Vice President of Consulting, WC Docket No. 10-90, at 1 (filed Oct. 20, 2017) (correcting its comments and explaining that the location gap that it had noted would be “in excess of 25% for one carrier” instead “will likely end up being less than 15%” after further analysis); *infra* note [[87]]. See also Reply Comments of Illinois Electric Cooperative, AU Docket No. 17-182, WC Docket No. 10-90, at 4 (filed Oct. 18, 2017) (noting that it “shares the general concern of Vantage Point regarding the level of accuracy determining eligible census blocks”).

⁶² [[The Commission has proposed using census blocks groups as the minimum geographic unit for bids. *Phase II Auction Comment Public Notice*, 32 FCC Rcd at 6242, para. 13.]]

⁶³ *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).

(continued....)

through the auction, the Commission would also be constrained from giving winning bidders more support if they identify more locations.⁶⁴

25. For similar reasons, we decline to find that a Phase II auction recipient will have met its service obligation if it offers service to all the locations that are in a census block even though it has not offered service to the number of locations the cost model has identified for that census block.⁶⁵ It would also impose undue administrative burdens for the Commission to have to verify that there are no additional locations in each census block where a recipient claims to have served every location. Instead, we expect that such a recipient would serve additional locations in other eligible census blocks that are included in its winning bids in the state to meet its statewide location requirement.

26. The Commission has already accounted for the fact that the cost model may not exactly reflect the facts on the ground by giving bidders the flexibility to serve only 95 percent of the model-determined number of locations if they face unforeseeable challenges in meeting their obligations and to return a proportional amount of their support.⁶⁶ And if a discrepancy is later discovered due to special circumstances beyond a recipient's control that would make it impossible for the recipient to meet the 95 percent service milestone by the required deadline, it will have the option of seeking waiver of the service milestones.⁶⁷ We acknowledge that bidders that intend to bid on small areas may be more likely to face challenges in identifying enough locations to meet the required totals.⁶⁸ We conclude, however, that because such bidders have the opportunity and responsibility to conduct due diligence prior to bidding and can take advantage of the 95 percent flexibility and seek waiver in the event of unforeseen circumstances, the potential risk that these entities may be subject to penalties if they cannot offer service to the required total is outweighed by the administrative burdens that would result if the Commission were required to negotiate with each winning bidder.

27. For these reasons, we also are not convinced that we should broaden the Commission's existing definition of locations for all Phase II auction recipients so they have more potential locations that they can serve in their winning census blocks.⁶⁹ The focus of Phase II has been on serving housing units and businesses that receive mass market service, with areas being designated as high-cost by the CAM based on the cost to serve these types of locations.⁷⁰ Moreover, reserve prices are being set using the CAM,⁷¹ and the Commission proposed awarding no more support than the CAM calculates is needed

⁶⁴ Crocker Telecommunications Petition at 4; Southern Tier Wireless Petition at 5.

⁶⁵ See Vantage Point Comments at 7; Verizon Reply Comments, WC Docket No. 10-90, AU Docket No. 17-182, at 9 (filed Oct. 18, 2017) (Verizon Oct. 18, 2017 Reply); RWA Reply at 10.

⁶⁶ *Phase II Auction Order*, 31 FCC Rcd at 5965-66, paras. 44-47.

⁶⁷ 47 CFR § 1.3. See also *December 2014 Connect America Order*, 29 FCC Rcd at 15700, para. 154 (providing as examples a severe weather event, an inability to secure a right of way, or an unforeseen obstacle that prevents building to a location). The Commission has indicated that it does not expect to routinely grant waiver requests, and "that failure to plan for some contingencies will counsel against a finding that there is good cause to grant a waiver request." *December 2014 Connect America Order*, 29 FCC Rcd at 15660, para. 40 n.93.

⁶⁸ Southern Tier Wireless Petition at 4.

⁶⁹ Vantage Point Comments at 6; RWA Reply at 10 (suggesting that the Commission expand the definition of locations and include such locations as "agricultural-based and utility-based facilities").

⁷⁰ *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 3964, 4031-33, paras. 158-63 (2014); *Connect America Fund et al.*, Report and Order, 28 FCC Rcd 5301, 5322-23, paras. 50-55 (2013) (explaining how the Connect America Cost Model calculates support for housing units and businesses receiving mass market services). See also *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (*Location Guidance Public Notice*) (providing guidance on location reporting).

⁷¹ *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90.

to serve housing units and businesses receiving mass market services in high-cost areas, with a cap on extremely high-cost locations.⁷² Accordingly, we decline to permit *all* recipients to divert Phase II support away from housing units and businesses receiving mass market services to other types of locations because *some* recipients may find it difficult to serve the number of locations identified by the model. Instead, we expect all potential bidders to do their due diligence prior to bidding to ensure they can locate the required number of locations meeting the Commission's definition and then use the Commission's existing mechanisms, including 95 percent flexibility and the waiver process, if unforeseen circumstances make it impossible for the recipient to meet its Phase II obligations for the required number of locations.

2. Flexibility in Meeting Deployment Obligations

28. *Background.* In the *Phase II Auction Order*, the Commission acknowledged that the "facts on the ground" may lead to some unforeseeable challenges for Phase II auction recipients in meeting their deployment obligations and determined to give Phase II auction recipients the same flexibility it gave price cap carriers accepting model-based support in meeting those obligations.⁷³ Specifically, Phase II auction recipients must deploy to at least 95 percent of the required number of locations (i.e., funded locations) in each state.⁷⁴ At the end of the support term, recipients that have deployed to at least 95 percent, but less than 100 percent of the number of funded locations in the state are required to refund support based on the number of funded locations left unserved in the state.⁷⁵ The amount of support that must be refunded is based on one-half the average support for the top five percent of the highest cost funded locations nationwide.⁷⁶

29. In the *Phase II Auction Order*, the Commission also directed the Bureau to average the costs calculated by the CAM for each census block at the census-block level so that all the locations in a census block are high-cost funded locations that count towards a Phase II auction recipient's required location total.⁷⁷ For the purposes of model-based support, the CAM calculated the costs associated with each carrier, wire center, or splitter separately, on a sub-census block basis.⁷⁸ This approach resulted in some census blocks having a combination of low-cost, high-cost, and/or extremely high-cost locations within the census block, and only the high-cost locations counted towards the total number of locations that the price cap carrier was required to serve in a state. To simplify administration and oversight of compliance with Phase II auction obligations, the Commission directed the Bureau to average costs at the census block level for the Phase II auction.⁷⁹

30. Verizon seeks reconsideration of the Commission's decision to give Phase II auction recipients 95 percent flexibility for their deployment obligations.⁸⁰ Instead, Verizon requests that the

⁷² *Phase II Auction Comment Public Notice*, 32 FCC Rcd at 6258-59, paras. 65-70.

⁷³ *Phase II Auction Order*, 31 FCC Rcd at 5965-66, paras. 44-47.

⁷⁴ *Id.* at 5966, para. 45.

⁷⁵ *Id.*

⁷⁶ *Id.*; *December 2014 Connect America Order*, 29 FCC Rcd at 15660-61, para. 42 (requiring that a Phase II recipient refund an amount based on the number of locations left unserved and the average Phase II support the recipient receives in a state multiplied by 1.89).

⁷⁷ *Phase II Auction Order*, 31 FCC Rcd at 5971-72, paras. 64-66.

⁷⁸ *Id.* at 5971, para. 62 (citing CAM Methodology at 16 n.16).

⁷⁹ *Id.* at 5971-72, paras. 64-65.

⁸⁰ Verizon Petition for Reconsideration, WC Docket No. 10-90 et al., at 5-8 (filed Aug. 8, 2016) (Verizon Petition).

Commission give Phase II auction recipients “significantly greater location flexibility”—90 percent—and not require recipients that take advantage of this flexibility to return associated support.⁸¹

31. *Discussion.* We deny Verizon’s request. We are not persuaded that we should reduce the service obligation to give recipients 90 percent flexibility. We acknowledge that, because costs will be averaged at the census block level, all the locations the CAM identified in each census block in the authorized bids will count towards Phase II auction recipients’ funded location total.⁸² While this differs from the Phase II model-based support requirements, in which some of the locations in some of the census blocks do not count toward the state-required location totals,⁸³ Phase II auction bidders will have the advantage of choosing which eligible census blocks to include in their bids. As the Commission explained, if a Phase II auction bidder does its due diligence as required prior to the auction and determines it cannot identify enough locations in a certain eligible census block, it can choose not to bid on the geographic area (e.g., census block group) that contains that census block.⁸⁴ Moreover, because compliance will be determined on a state-wide basis,⁸⁵ the bidder could also identify additional locations in the other eligible census blocks within the census block group or choose to bid on additional census block groups where it is able to identify more locations in eligible census blocks than the CAM had identified to meet its statewide total.⁸⁶

32. We recognize the Commission’s decision could mean that some census blocks will not receive bids because of a discrepancy between the number of locations that are actually in the census block and the number of locations identified by the cost model.⁸⁷ But were we to permit Phase II auction

⁸¹ *Id.* at 5-8.

⁸² *Id.* at 6-7.

⁸³ *Id.* at 6-7; Verizon Reply to Oppositions, WC Docket No. 10-90 et al., at 5-6 (filed Sept. 12, 2016) (Verizon Reply). *See also* Opposition and Comments of the United States Telecom Association, WC Docket No. 10-90 et al., at 10 (filed Sept. 2, 2016) (USTelecom Opposition) (claiming that “disparities in location information will have a much greater impact” on Phase II auction recipients than price cap carriers that accepted the offer of model-based support).

⁸⁴ *See Phase II Auction Order*, 31 FCC Rcd at 5966, para. 47.

⁸⁵ *Id.* at 5966, para. 46.

⁸⁶ *See also* WISPA Sept. 2016 Opposition at 3 (stating that “a 95 percent threshold will encourage thoughtful planning and efficient deployment of technology that can serve a higher percentage of locations”). Verizon claims that “[n]o amount of ‘thoughtful planning’ or ‘efficient deployment’ will enable a carrier to deploy broadband to the modeled location count if the locations do not exist in the real world.” Verizon Reply at 6. However, as discussed, bidders will have the responsibility to conduct due diligence prior to bidding which will inform which eligible census blocks a bidder should include in or exclude from its bids to ensure that it can meet its funded location requirement.

⁸⁷ Verizon Petition at 7; Verizon Reply at 6. *See also* USTelecom Opposition at 10 (“These location count differences, combined with the obligation of providers to build to at least 95 percent of modeled locations, will discourage parties from bidding on any area in which the actual location count is less than the modeled location count, or, bidders face other challenging facts on the ground.”); Verizon Oct. 18, 2017 Reply at 7-9 (citing Vantage Point’s arguments regarding location discrepancies); Reply Comments of AT&T, WC Docket No. 10-90, AU Docket No. 17-182, at 13-15 (noting that CAM includes surrogate locations and citing Vantage Point’s arguments regarding location discrepancies). AT&T claims that Vantage Point analyzed the effects of these surrogates and “found that the model overestimates locations in eligible census blocks by an average of over 20%.” *Id.* The study Vantage Point cites in its comments analyzed only 144 wire centers, and used subscriber locations from client records, not census housing unit data. Vantage Point Reply at 2 (citing Letter from Larry Thompson, CEO, Vantage Point, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. B, at 4 (filed July 13, 2015)). Moreover, 96% of all residential locations and 94% of all business locations in the model are geocoded. *See Connect America Fund*, et. al., WC Docket No. 10-90, et al. Report and Order, 28 FCC Rcd 5301, 5323, para. 53 n.115 (WCB 2013).

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recipients to use up to 90 percent flexibility in each state, the result could be as much as an additional five percent of locations potentially remaining unserved in Phase II auction-funded census blocks. Because these unserved locations would be in census blocks where Phase II auction recipients are receiving support, targeting support to these locations through another mechanism could prove difficult.⁸⁸ Instead, we conclude that 95 percent flexibility is a more reasonable balance between ensuring that as many locations as possible get served in Phase II auction-funded areas and giving recipients some flexibility in the case of unforeseeable circumstances.⁸⁹ We can then address those areas that did not get bids through the Remote Areas Fund auction to the extent they remain unserved.⁹⁰

33. We acknowledge that some bidders may bid for more support to compensate for the risk of having to return support if they cannot meet the 100 percent service milestone.⁹¹ But we conclude that this potential increase in costs is outweighed by the benefits of ensuring that at least 95 percent— as opposed to 90 percent—of the required number of locations in Phase II-funded areas are served, particularly given that unserved locations in Phase II-funded areas would be difficult to target with another support mechanism. Additionally, we expect that the competitive pressure imposed by competing for a finite budget in the Phase II auction will help mitigate bid inflation. Finally, any support that is returned by a Phase II recipient that serves less than 100 percent of the required number of locations can be repurposed to support broadband through other universal service mechanisms.

34. For these reasons, we also are not persuaded that we should permit Phase II auction recipients to take advantage of the 95 percent flexibility without returning an associated amount of support.⁹² Moreover, we are not convinced by claims that it is unnecessary for such recipients to return support because bids will “already reflect the cost of building out to the minimum number of locations.”⁹³ Instead, we expect that all Phase II auction bidders will bid with the intention of serving 100 percent of funded locations, will factor the cost of serving 100 percent of the locations into their bids, and will take advantage of the flexibility only if necessary. Indeed, if we lowered the flexibility to 90 percent, under Verizon’s logic, we would be conceding that even more locations within eligible blocks could be unserved following the auction. Because Phase II auction bidders are required to conduct due diligence prior to bidding, the Commission explained that it adopted the flexibility to address “unforeseeable challenges” that Phase II auction recipients may have in meeting their deployment obligations.⁹⁴ If a Phase II auction bidder initially plans to build to only 95 percent of the required number of locations and then later in the support term experiences unforeseeable events, it will be subject to non-compliance measures if it is unable to serve at least 95 percent of locations and is unable to obtain a waiver.⁹⁵ We

⁸⁸ See *Phase II Auction Order*, 31 FCC Rcd at 5966-67, para. 48 (noting that the Commission has not yet identified an “administratively feasible method” for ensuring that unserved consumers in partially served census blocks are not left behind and encouraging all stakeholders to work together to propose such a method).

⁸⁹ As explained above, the Commission has also stated that if an ETC is unable to meet the required deployment obligations due to circumstances beyond its control, it could seek waiver of the service milestones. *December 2014 Connect America Order*, 29 FCC Rcd at 15700, para. 154. However, the Commission has cautioned that it does not expect such waiver requests will be granted routinely, and a failure to plan for some contingencies would make it difficult to establish that there is good cause to warrant waiver. *Id.* at 15660, para. 40, n.93.

⁹⁰ *Phase II Auction Order*, 31 FCC Rcd at 6018-20, paras. 196-204 (recognizing that all Phase II auction eligible areas may not receive bids and adopting a framework and rules for the Commission to move expeditiously to implement a Remote Areas Fund).

⁹¹ USTelecom Opposition at 11.

⁹² Verizon Petition at 7-8; USTelecom Opposition at 11; Vantage Point Comments at 5; RWA Reply at 9.

⁹³ Verizon Petition at 8; USTelecom Opposition at 11.

⁹⁴ *Phase II Auction Order*, 31 FCC Rcd at 5965-66, paras. 44-45.

⁹⁵ See 47 CFR § 54.320.

expect it would be difficult for a recipient to meet its burden of demonstrating good cause to grant a waiver of the deployment obligations if it did not plan to build to 100 percent of funded locations at the outset of its support term.

3. Accelerated Payment for Early Deployment

35. *Background.* In the *Phase II Auction Order*, the Commission declined to adopt an accelerated payment option for recipients of Phase II auction support.⁹⁶ It had proposed in the *April 2014 Connect America Order* potentially disbursing support on an accelerated timetable if a recipient completed its deployment ahead of the service milestones.⁹⁷ The Commission explained that it was not persuaded that it could implement such a proposal within the available annual Phase II auction budget, that such an approach would complicate the non-compliance scheme, which includes withholding monthly support payments, and that recipients already have incentives to build out their networks quickly. Crocker Telecommunications requests that the Commission reconsider this decision to permit entities that have winning bids for the Above-Baseline and Gigabit tiers to seek accelerated support.⁹⁸ Crocker Telecommunications suggests that because Phase II support “does not provide the full funding that is required to deploy and operate a broadband-capable network,” the accelerated support will incentivize recipients to deploy their networks more quickly.⁹⁹

36. *Discussion.* We decline to reconsider the Commission’s decision not to adopt an accelerated payment option for recipients of Phase II auction support. We are not convinced that the benefits of an accelerated payment option would outweigh any potential additional burden on rate payers. Moreover, as the Commission explained, service providers already have the incentive to build out their networks more quickly so that they can begin earning revenues to help with their costs.¹⁰⁰ They also have an incentive to meet the final service milestone as soon as possible because once it has been verified that they have met their deployment obligations, they can further reduce costs by no longer maintaining a letter of credit.¹⁰¹ While Crocker Telecommunications suggests that the requirement that Phase II auction recipients offer the required services at rates that are reasonably comparable to those offered in urban areas means that revenues may not offset the higher costs of building in rural areas,¹⁰² nothing precludes a recipient from securing other funding options that can help with the upfront costs of building out and maintaining its network before it receives its full ten years of support.¹⁰³

37. Additionally, we are concerned about our ability to accurately predict the amount by which the Phase II auction budget could be exceeded and, in turn, the potential impact of an accelerated option. Crocker Telecommunications suggests that, given the size of the Phase II auction budget relative to the entire universal service budget, and taking into consideration the additional contributions from providers that will be offering VoIP over their Phase II-funded networks, an accelerated payment option would not result in “dramatic swings in the contribution factor” if the Commission exceeds its annual

⁹⁶ *Phase II Auction Order*, 31 FCC Rcd at 5967, para. 50.

⁹⁷ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7107, para. 161.

⁹⁸ Crocker Telecommunications Petition at 5-6. Crocker Telecommunications refers to Tiers 3 and 4, which we are assuming are meant to correspond to the Above-Baseline and Gigabit performance tiers.

⁹⁹ Crocker Telecommunications Petition at 6.

¹⁰⁰ *Phase II Auction Order*, 31 FCC Rcd at 5967, para. 50.

¹⁰¹ *Id.* at 5967, 5991, paras. 50, 123.

¹⁰² Crocker Telecommunications Petition at 6; 47 CFR § 54.309(a).

¹⁰³ See e.g., *Phase II Auction Order*, 31 FCC Rcd at 5989, para. 116 (“We anticipate that many bidders will need to obtain a loan or rely upon other sources of funding to cover the cost of building the network, with the ongoing support used to repay those construction loans.”).

Phase II auction budget.¹⁰⁴ Whereas in the rural broadband experiments, the Commission had access to the entire \$100 million budget at the start of the program, and thus could make an accelerated payment option available because the Commission could cover any upfront payment requests without needing to increase the contribution factor or wait for the following year's budget,¹⁰⁵ here, however, we will have only the annual Phase II auction budget available each year. Too many unknowns remain about the Phase II auction—including the number of bidders that will participate, the number of bidders that would request and qualify for an accelerated support option, the size of those bidders' bids, and the timing for when the bidders would be eligible to receive accelerated support—to predict with any degree of certainty how much we could potentially exceed the annual budget if we were to adopt an accelerated option.¹⁰⁶

38. Even if we could determine that giving Phase II auction recipients the option of receiving accelerated support would not dramatically increase the contribution factor, we are not convinced that it would serve the public interest to do so. The Phase II auction is one of many universal service programs, and the Commission is responsible for making decisions that balance the objectives of all of the programs with the burdens on the end-user rate payers that fund the programs.¹⁰⁷ We are not persuaded that increasing the contribution factor by even a small margin for the Phase II auction would be justified for the sole purpose of providing more support earlier in the term, given our efforts to also remain within a budget for other universal service programs.

E. Eligibility of Areas Included in Next-in-Line Category 1 Rural Broadband Experiment Bids

39. *Background.* In the *December 2014 Connect America Order*, the Commission established a process for selecting next-in-line bidders for the rural broadband experiments in the event any provisionally-selected bidders defaulted before the Commission finalized the list of census blocks that would be eligible for the Phase II offer of model-based support to price cap carriers.¹⁰⁸ Specifically, all bidders for rural broadband experiment support that wanted to remain in consideration were required to submit the required technical and financial information to the Commission by a set deadline.¹⁰⁹ If they met these requirements and had placed category 1 bids, the census blocks that were included in category 1 bids (RBE census blocks) were removed from the offer of model-based support and would be made eligible for the Phase II auction.¹¹⁰

40. The Commission also decided in the *December 2014 Connect America Order* that “any area served by an unsubsidized facilities-based terrestrial competitor that offers broadband at 10/1 Mbps” would be ineligible for support in the Phase II auction, finding that it would be an “inefficient use of

¹⁰⁴ Crocker Telecommunications Petition at 5-6.

¹⁰⁵ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8794, para. 75 (2014) (*Rural Broadband Experiments Order and/or FNPRM*).

¹⁰⁶ Crocker Telecommunications does not explain why \$50 million in annual support is a reasonable assumption for the amount of support by which the Commission may exceed its annual budget if recipients request and qualify for an accelerated payment option. Crocker Telecommunications Petition at 6.

¹⁰⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 57 (explaining that one of the fundamental goals of the Commission's Connect America reforms “is to minimize the overall burden of universal service contributions on American consumers and businesses”).

¹⁰⁸ *December 2014 Connect America Order*, 29 FCC Rcd at 15674-75, para. 83.

¹⁰⁹ *Id.* at 15674-75, para. 83.

¹¹⁰ *Id.* at 15675-76, paras. 84-85. Category 1 bids were those bids that proposed to deploy a network capable of delivering 100 Mbps downstream/25 Mbps upstream, while offering at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all locations within the selected census blocks; usage and pricing that is reasonably comparable to usage and pricing available for competitive wireline offerings in urban areas; and latency no greater than 100 milliseconds. *Rural Broadband Experiments Order*, 29 FCC Rcd at 8780, para. 26.

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Connect America support to provide funding in these areas.”¹¹¹ In the *Phase II Auction Order*, the Commission also decided to exclude from the Phase II auction census blocks that a price cap carrier already serves with broadband speeds of at least 10/1 Mbps.¹¹² The Commission directed the Bureau to release a preliminary list of eligible census blocks for the Phase II auction incorporating these decisions, and to publish a final list of eligible census blocks no later than three months prior to the deadline for submission for short-form applications.¹¹³

41. The National Rural Electric Cooperative Association (NRECA) and the Utilities Technology Council (UTC) jointly request that the Commission reconsider its decision to exclude from Phase II auction eligibility RBE census blocks that are served by an unsubsidized competitor or a price cap carrier with broadband at speeds of 10/1 Mbps.¹¹⁴

42. *Discussion.* We dismiss as untimely NRECA and UTC’s petition for reconsideration of the Commission’s decision to exclude from the Phase II auction RBE census blocks that are served by an unsubsidized competitor with broadband at speeds of 10/1 Mbps. The Commission decided in the *December 2014 Connect America Order* that “any area” served by an unsubsidized competitor offering 10/1 would be excluded from the Phase II auction.¹¹⁵ The Commission also stated that shortly before the Phase II auction it expected to “update the list of census blocks that will be excluded from eligibility” from the Phase II auction “based on the most current data” so as to “take into account any new deployment that is completed” prior to the auction.¹¹⁶ The Commission did not indicate that there would be any exceptions to this decision.¹¹⁷ The Commission’s decision not to offer support in areas served by

¹¹¹ *December 2014 Connect America Order*, 29 FCC Rcd at 15671, 15674, paras. 73, 80.

¹¹² *Phase II Auction Order*, 31 FCC Rcd at 5973, paras. 70-71.

¹¹³ *Id.* at 5973-74, paras. 72-73.

¹¹⁴ See generally Joint Petition for Reconsideration of the National Rural Electric Cooperative Association and the Utilities Technology Council, WC Docket No. 10-90 et al. (filed July 21, 2016) (NRECA/UTC Petition). Several electric cooperatives filed comments in support of NRECA and UTC’s petition. See Orcas Power and Light Cooperative Statement in Support, WC Docket No. 10-90 et al. (filed Aug. 26, 2016) (OPLC Comments); Illinois Electric Cooperative Statement in Support, WC Docket No. 10-90 et al. (filed Aug. 26, 2016) (IEC Comments); Roanoke Electric Cooperative Statement in Support, WC Docket No. 10-90 et al. (filed Aug. 23, 2016) (REC Comments).

¹¹⁵ *December 2014 Connect America Order*, 29 FCC Rcd at 15671, 15674, paras. 73, 80 (emphasis added).

¹¹⁶ *December 2014 Connect America Order*, 29 FCC Rcd at 15674, para. 80.

¹¹⁷ The Commission’s decision in the *Phase II Auction Order* to include all of the support associated with the RBE census blocks in the Phase II auction budget does not suggest that the Commission intended that all of these census blocks would be eligible for bidding. See NRECA/UTC Petition at 6 (citing *Phase II Auction Order*, 31 FCC Rcd 5974-75, paras. 77, 79). First, the Commission made its budget decisions in the same order where it decided to exclude census blocks served by price cap carriers at 10/1 Mbps broadband and directed the Bureau to update the eligible census block list with the most recent publicly available data to implement this decision and its decision in the *December 2014 Connect America Order* to exclude census blocks served by unsubsidized competitors. *Phase II Auction Order*, 31 FCC Rcd at 5975, para. 79. It did not yet have the updated list of eligible census blocks. Second, the Commission also included in the budget support associated with all of the census blocks where price cap carriers declined support even though the Commission had also made clear that some of these census blocks would not be eligible because of the Commission’s eligible area decisions. *Id.* Finally, the Phase II auction budget is not tied to the CAM-calculated support amounts for each eligible census block because census blocks that were removed from the Phase II offer, like extremely high-cost census blocks, are also eligible for the Phase II auction and no additional support was added to the budget to account for those census blocks. See *April 2014 Connect America Order*, 29 FCC Rcd at 7060, para. 30.

(continued....)

an unsubsidized competitor is one of the fundamental principles of the Connect America Fund,¹¹⁸ so it is reasonable to expect that the Commission would make explicit any exceptions to this policy.¹¹⁹

43. Because the Commission made the decision to exclude all census blocks served by an unsubsidized competitor from the Phase II auction in the *December 2014 Connect America Order*, NRECA and UTC should have filed a petition for reconsideration of this decision within 30 days of publication of that order in the Federal Register.¹²⁰ NRECA and UTC failed to do so. Instead, NRECA and UTC filed a petition for reconsideration of this decision after the May 2016 *Phase II Auction Order*. In that order, the Commission took steps to implement the decisions it had already made about Phase II auction eligible areas in the *December 2014 Connect America Order*, including its decision to exclude areas served by unsubsidized competitors, by deciding that it would: 1) rely on the most recent publicly available FCC Form 477 data for identifying eligible Phase II auction census blocks, 2) conduct a limited challenge process, 3) average costs at the census block level, and 4) direct the Bureau to release a preliminary list of eligible census blocks.¹²¹ NRECA and UTC do not take issue with these implementation decisions. Because NRECA and UTC instead seek reconsideration of the Commission's underlying decision in the *December 2014 Connect America Order* to exclude from the Phase II auction census blocks served by unsubsidized competitors, we dismiss this portion of the petition as untimely.

44. Notwithstanding the untimely nature of this portion of the petition, we deny it on the merits. We similarly deny the timely filed portion of the petition asking us to reconsider the Commission's decision to exclude from the auction RBE census blocks served by price cap carriers at broadband speeds of 10/1 Mbps.¹²² In both instances, we conclude that the Commission's decision to exclude these census blocks reasonably balances the Commission's objectives in furtherance of the public interest. The Commission has repeatedly emphasized that while it has a preference for higher speeds, higher data usage, and lower latency, it must balance these preferences against its objective of maximizing its finite budget to serve as many unserved consumers as possible and not overbuilding locations served by private capital.¹²³ For this reason, the Commission adopted different performance tiers for the Phase II auction starting with 10/1 Mbps speeds,¹²⁴ and for this reason the Commission decided to make ineligible census blocks already served by unsubsidized competitors and price cap

¹¹⁸ USTelecom Opposition at 4-5.

¹¹⁹ See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17673, para. 24 (“Importantly, the [Connect America Fund] will only provide support in those areas where a federal subsidy is necessary to ensure the build-out and operation of broadband networks. The [Connect America Fund] will not provide support in areas where unsubsidized competitors are providing broadband that meets our definition.”). While the Commission noted that it would be removing “any” rural broadband census block from the offer of model-based support and indicated that it would instead make such census blocks available for the Phase II auction, it did not explicitly exempt the census blocks from its other decision to make ineligible any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps and to update the list of census blocks that will be excluded from eligibility based on the most current data available shortly before the auction. See OPLC Comments at 2-3; IEC Comments at 2; REC Comments at 2 (citing *December 2014 Connect America Order*, 29 FCC Rcd at 15675, para. 84).

¹²⁰ 47 CFR § 1.429(d).

¹²¹ *Phase II Auction Order*, 31 FCC Rcd at 5968-73, paras. 53-68, 72-73.

¹²² Our decision is limited to the rural broadband census blocks that are the subject of NRECA/UTC's petition. See Opposition of NTCA-The Rural Broadband Association, WC Docket No. 10-90 et al., at 7-8 (filed Sept. 2, 2016) (requesting that the Commission make clear “that any decision rendered with respect to this matter does not and will not have any practical or precedential effect upon areas in which [rate-of-return carriers] operate as the incumbent . . .”).

¹²³ *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 84.

¹²⁴ *Id.* at 5957, para. 15.

carriers at broadband speeds of 10/1 Mbps.¹²⁵ Although the decision to exclude these census blocks means that these areas may not have access to higher speeds through the Phase II auction,¹²⁶ the Commission found that using the Phase II auction budget to address the digital divide by targeting those areas that lack a provider offering even 10/1 Mbps speeds to at least one residential location was a more effective use of the limited Phase II budget.¹²⁷

45. UTC and NRECA are asking the Commission to use our finite budget to fund census blocks where either an unsubsidized competitor using private capital or a price cap carrier has already deployed broadband at speeds meeting or exceeding the Commission's minimum 10/1 Mbps speeds. We recognize that all locations in these census blocks may not be served with 10/1 Mbps or higher speeds, as they would have been if the blocks were included in the Phase II auction.¹²⁸ Nevertheless, we conclude that, on balance, it better serves the public interest to focus our finite budget on areas that lack *any* broadband provider offering speeds that meet our requirements than on areas that have such a provider somewhere in the block.¹²⁹ This approach will ensure that our budget will be used to serve consumers that completely lack access to broadband meeting our minimum speed requirements rather than diverting funds to potentially overbuild areas where consumers already have access to such service.

46. We are not convinced by UTC and NRECA's arguments that the "cost efficiencies that would be gained by removing [the rural broadband experiment] census blocks are greatly outweighed by the public interest benefits that would be lost if [the] census blocks go unfunded."¹³⁰ Although it is possible that the current provider offering 10/1 Mbps in these areas may cease offering service at these speeds,¹³¹ it also is possible that the current provider could improve its offerings without Connect America support. Similarly, it is possible that some price cap carriers or unsubsidized competitors may target only one location in the RBE census blocks with 10/1 Mbps broadband service to make them ineligible for the Phase II auction.¹³² But consumers overall may benefit if such service providers take this opportunity to expand their 10/1 Mbps broadband offerings without Phase II auction support because that support then could be directed to areas that are totally unserved. There is also a possibility that service providers that were interested in bidding in RBE census blocks that are now ineligible may still win support in surrounding eligible areas. Such recipients may be able to leverage their funded networks

¹²⁵ *Id.* at 5973, paras. 70-71; *December 2014 Connect America Order*, 29 FCC Rcd at 15671, 15674, paras. 73, 80.

¹²⁶ NRECA/UTC Petition at 11 (claiming the Commission's decision to exclude certain RBE census blocks "locks-in the status quo for the rural communities located in the affected census blocks"). *See also* OPLC Comments at 3; IEC Comments at 2; REC Comments at 2.

¹²⁷ *Phase II Auction Order*, 31 FCC Rcd at 5973, paras. 70-71 (noting the Commission's "finite budget" and its "objective of targeting support to areas that are unserved" and finding "that it furthers the public interest to exclude census blocks that are already served" by price cap carriers at 10/1 Mbps broadband speeds); *December 2014 Connect America Order*, 29 FCC Rcd at 15674, para. 80 (finding that "it would be an inefficient use of Connect America support to provide funding" in areas served by unsubsidized competitors). *See also* USTelecom Opposition at 4 (stating that "the Commission's decision represents sound public policy and reflects prudent use of limited [Connect America Fund] resources").

¹²⁸ NRECA/UTC Petition at 9-10 (claiming the Commission's decision "is a perpetuation of the 'digital divide' between rural and urban areas"). *See also* OPLC Comments at 3; IEC Comments at 2; REC Comments at 2.

¹²⁹ *Phase II Auction Order*, 31 FCC Rcd at 5973, para. 70.

¹³⁰ Reply Comments of the Utilities Technology Council and the National Rural Electric Cooperative Association, WC Docket No. 10-90 et al., at 3-5 (filed Sept. 12, 2016) (NRECA/UTC Reply).

¹³¹ NRECA/UTC Petition at 10.

¹³² NRECA/UTC Reply at 2 (claiming that the Commission's decision "encourages price cap carriers to game the process and thwart competition, because it creates an open opportunity for them to target [rural broadband experiment] areas for deployment, thereby undercutting their competitors from being able to access funding in those areas").

(continued....)

in eligible areas so that it becomes cost-effective to deploy higher speeds in the ineligible census blocks absent support. Finally, if an area that was excluded from the Phase II auction does subsequently become unserved, either because the provider ceases offering service in that area or the provider does not upgrade its broadband service speeds to meet the Commission's current definition of "served," the Commission could make that area eligible for the Remote Areas Fund or for other future competitive bidding to the extent it remains unserved.¹³³

47. We also are not persuaded by NRECA and UTC's claims that potential applicants "acted in good faith" in assuming that all RBE census blocks would be made eligible for the Phase II auction or that the Commission's decisions "penalize[]" those potential applicants for moving forward and deploying broadband prior to the Phase II auction.¹³⁴ As we explain below, all potential bidders have known since at least April 2014 that the Commission contemplated excluding certain census blocks from the Phase II auction, and it had been the Commission's longstanding policy to exclude census blocks served by unsubsidized competitors for its programs since the Connect America Fund was created.¹³⁵ But even if we were to agree that it was reasonable for applicants to assume that all RBE census blocks would be included, we are not convinced that applicants that intended to bid on these blocks are worse off than applicants that intend to bid on other census blocks. Any census block that is on the preliminary eligible census block list could subsequently become ineligible if it is reported as served in the most recent publicly available Form 477 when the final list of eligible census blocks is released. This means that any applicant could invest resources to get ready to bid for an area, only to later discover that it is no longer eligible. The Commission took measures to reduce this possibility by directing the Bureau to release the final census block list three months prior to the short-form application filing deadline so that applicants have time to plan and prepare for bidding.¹³⁶ We also conclude that the potential costs applicants incur in planning to bid on census blocks that ultimately become ineligible are outweighed by the benefits to consumers of using the Phase II auction budget efficiently.

48. Moreover, the fact that some applicants already deployed networks in the RBE blocks, even though they acknowledge they had no guarantee of winning support through the auction, provides further support for the Commission's decision not to make these census blocks eligible for the auction. The Commission did not adopt the eligibility rules or the public interest obligations for the Phase II auction until the *Phase II Auction Order* in May 2016.¹³⁷ Thus, the entities that NRECA and UTC cite in their petition as already having deployed broadband to these areas in July 2016 did not know, when they deployed broadband to these areas, if they could meet the eligibility requirements or what public obligations would be required; whether their applications would ultimately be approved to participate in the auction; whether they would win in the Phase II auction; and, whether they would be authorized to receive support.¹³⁸ Given these uncertainties, it seems unlikely that a broadband provider would deploy to an area if it thought it could not sustain the service without support. Because these providers could make a business case to serve these areas, even at the risk that they would not qualify to participate in the auction or win support, we see no reason why we should use our finite funds to support these areas instead of areas where no provider has been able to make a business case to serve.

49. We also disagree with NRECA and UTC's claims that our decisions favor price cap

¹³³ *Phase II Auction Order*, 31 FCC Rcd at 5973, para. 70 n.141.

¹³⁴ NRECA/UTC Petition at 4, 8-9, 11; NRECA/UTC Reply at 1-2.

¹³⁵ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7110-11, paras. 174-75; *USF/ICC Transformation Order*, 26 FCC Rcd at 17673-74, para. 24. See also USTelecom Opposition at 4-5.

¹³⁶ *Phase II Auction Order*, 31 FCC Rcd at 5974, para. 73.

¹³⁷ See generally *Phase II Auction Order*, 31 FCC Rcd 5949.

¹³⁸ See also USTelecom Opposition at 5 (noting that such providers "made deliberate and informed business decisions to deploy broadband infrastructure in the absence of any federal [Connect America] support").

carriers.¹³⁹ NRECA and UTC claim that price cap carriers were given the “right of first refusal to model based support without any removal of census blocks in those areas.”¹⁴⁰ However, they neglect to acknowledge that census blocks that were served by unsubsidized competitors at 4/1 Mbps and above (the Commission’s minimum speed requirement when the decision was made) were removed from the offer of model-based support, as were the RBE census blocks that are the subject of the petition.¹⁴¹ Moreover, price cap carriers and other competitive bidders are both precluded from receiving Phase II support in ineligible RBE census blocks because they were removed from the offer of model-based support and from the Phase II auction.

50. We also do not find it persuasive to compare the Commission’s decisions with respect to the offer of model-based support to price cap carriers with its decisions to remove certain census blocks from the Phase II auction.¹⁴² NRECA and UTC claim that the Commission’s decisions are “arbitrary and capricious” because they “disparately den[y] competitive providers . . . from being able to receive funding under Phase II in areas where they have deployed broadband networks.”¹⁴³ Price cap carriers were able to receive Phase II funding in areas where they had already deployed 10/1 broadband service. But for the offer of model-based support, the Commission offered price cap carriers a state-wide commitment in high-cost areas so that if they accepted support, they would be required to offer voice and broadband at speeds of 10/1 Mbps to the required number of locations in their service area in the state where they were already an ETC, and in most cases they were already receiving universal service funding in those areas. The Commission decided that it preferred this approach as opposed to one in which the Commission would immediately adopt competitive bidding everywhere because price cap carriers were “in a unique position to deploy broadband networks rapidly and efficiently” throughout their “large service areas.” The Commission further concluded that, on balance, and in its predictive judgment, its approach “best serves consumers in these areas in the near term, many of whom are receiving voice services today supported in part by universal service funding and some of whom also receive broadband, and will speed the delivery of broadband to areas where consumers have no access today.”¹⁴⁴

51. Here, the Commission also used its predictive judgment when deciding how to allocate its finite Phase II auction budget to best serve consumers, but under different conditions. For the Phase II auction, a service provider need not be the incumbent to compete for support; bidders can be selective about which eligible areas they include in their bids; bidders may not have received universal service support in the past to serve the areas for which they intend to bid; and, there are likely more areas eligible for support than there is support available. For the offer of model-based support, the Commission was constrained by the service area of a specific price cap carrier and reliant on only one incumbent carrier to reach its objectives of maximizing coverage. Here, the Commission is constrained by the Phase II auction budget. Therefore, it decided to take a different approach in the Phase II auction by targeting support only to those areas that are unserved by price cap carriers and unsubsidized competitors at 10/1 Mbps

¹³⁹ NRECA/UTC Petition at 9.

¹⁴⁰ NRECA/UTC Reply at 2.

¹⁴¹ *December 2014 Connect America Order*, 29 FCC Rcd at 15675, para. 84; *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 170.

¹⁴² NRECA/UTC Petition at 9-11; NRECA/UTC Reply at 6.

¹⁴³ NRECA/UTC Reply at 6.

¹⁴⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17730-32, paras. 175-78. *See also id.* at 17727, para. 165 (noting that the Commission sought “to avoid consumer disruption—including the loss of traditional voice service—while getting robust, scalable broadband to substantial numbers of unserved rural Americans as quickly as possible”). The United States Court of Appeals for the Tenth Circuit found that the Commission “reasonably exercised its discretion in adopting this . . . funding framework for price-cap areas . . .” *In re FCC 11-161*, 753 F.3d 1015, 1083 (10th Cir. 2014).

minimum broadband speeds. Nothing in the record persuades us that the Commission would better serve the public interest by reconsidering this approach.

52. Nor are we convinced that the Commission's decision to exclude certain census blocks from the Phase II auction "frustrate[s] the fundamental purpose" of the rural broadband experiments. NRECA and UTC claim that the purpose of the experiments was to "challenge status quo broadband from the price cap carriers."¹⁴⁵ While the Commission may have indicated that it expected the rural broadband experiments to provide the Commission with information about "which and what types of parties are willing to build networks that will deliver services that exceed" the performance standards the Commission adopted for the offer of model-based support,¹⁴⁶ the Commission intended to use what it learned to inform the rules it adopted for the Phase II auction.¹⁴⁷ The Commission did not decide to exclude the RBE census blocks from the offer of model-based support to price cap carriers until after rural broadband experiment bidders had placed their bids,¹⁴⁸ suggesting that it was not the fundamental purpose of the program to give losing rural broadband experiment bidders another opportunity to bid for support in the RBE census blocks in the Phase II auction. Instead, the rural broadband experiments served their purpose by giving the Commission valuable experience and data it could use when determining the public interest obligations and eligibility requirements for the Phase II auction. The Commission is under no obligation to ensure that all participants in the rural broadband experiments have the opportunity to bid for their desired census blocks in the auction, particularly when it would conflict with the Commission's overall objectives for the Phase II auction.

53. Finally, we disagree with NRECA and UTC's claims that applicants had no notice that the Commission might exclude RBE census blocks from the Phase II auction.¹⁴⁹ Consistent with the requirements of Section 553 of the Administrative Procedure Act,¹⁵⁰ interested parties had an opportunity for meaningful comment on the Commission's proposals to exclude certain census blocks from Phase II auction eligibility. The Commission noted in the *April 2014 Connect America FNPRM* that, if its proposal to establish 10 Mbps as the minimum broadband downstream speed was adopted, "Phase II funds would only be available in a competitive bidding process for any area lacking 10 Mbps/1 Mbps."¹⁵¹ In the *FNPRM*, the Commission sought comment on excluding from the Phase II auction "any area" that is served by a price cap carrier that offers fixed residential voice and broadband meeting the Commission's requirements,¹⁵² and on excluding from Phase II "those census blocks" that are served by a facilities-based terrestrial competitor offering voice and broadband services at 10/1 Mbps.¹⁵³

¹⁴⁵ NRECA/UTC Petition at 11; NRECA/UTC Reply at 3.

¹⁴⁶ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8771, para. 6.

¹⁴⁷ See generally *Phase II Auction Order*, 29 FCC Rcd 5949 (repeatedly referencing its experience with the rural broadband experiments in making Phase II auction decisions); *Rural Broadband Experiments Order*, 29 FCC Rcd at 8772, para. 6 ("[W]e expect these experiments also will inform key decisions that we will be making in the coming months regarding the Connect America Fund").

¹⁴⁸ *December 2014 Connect America Order*, 29 FCC Rcd at 15674-77, paras. 83-89. Rural broadband experiment bids were due November 7, 2014. *Wireline Competition Bureau Announces Date for Opening of Rural Broadband Experiments Application Filing Window and Final Deadline for Applications*, Public Notice, 29 FCC Rcd 12621 (WCB 2014).

¹⁴⁹ NRECA/UTC Petition at 4-8; NRECA/UTC Reply at 5.

¹⁵⁰ 5 U.S.C. § 553.

¹⁵¹ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7110, para. 175.

¹⁵² *Id.* at 7111, para. 175 (emphasis added).

¹⁵³ *Id.* at 7110, para. 174 (emphasis added).

54. Although the Commission did not seek comment on applying these exclusions specifically to the RBE census blocks, such action is a logical outgrowth of the Commission's proposals. Under the "logical outgrowth" standard, a notice of proposed rulemaking does not violate notice requirements under the Administrative Procedures Act if it "provide[s] the public with adequate notice of the proposed rule followed by an opportunity to comment on the rule's content."¹⁵⁴ First, the Commission sought comment "on the broader question of whether universal service funds are ever efficiently used when spent to overbuild areas where another provider has already deployed service."¹⁵⁵ Given the broad nature of this question, the parties were on notice that the Commission was contemplating eliminating support for served areas in any universal service context. Second, while the *FNPRM* did not explicitly propose that the RBE census blocks would be made eligible for the Phase II auction if they were removed from the offer of model-based support,¹⁵⁶ both NRECA and UTC filed comments in response to the *FNPRM* requesting that the Commission make the RBE census blocks available for competitive bidding.¹⁵⁷ Because they had the opportunity to urge the Commission to include the census blocks in the Phase II auction, they also had the opportunity to comment on how the Commission's proposals for the Phase II auction—including whether to exclude areas served by unsubsidized competitors—should or should not apply to the RBE census blocks. In fact, those comments also separately discuss the Commission's proposals to remove from eligibility the Phase II auction census blocks served by price cap carriers and raise similar arguments to those raised in the petition.¹⁵⁸ In the section seeking comment on the interplay between the Phase II offer of model-based support and the rural broadband experiments, the Commission did not suggest that census blocks removed from the offer of model-based support would be exempt from its broader Phase II auction proposals if the removed blocks were considered eligible for the Phase II auction inventory.¹⁵⁹

F. Automatic Eligibility for Rural Broadband Experiment Provisionally-Selected Winning Bidders

55. *Background.* The Commission's rules require each applicant seeking to participate in the Phase II auction to provide in its short-form application, among other things, basic ownership information, certifications regarding its qualifications to receive support, and information regarding its operational and financial capabilities.¹⁶⁰ The information provided in a short-form application helps

¹⁵⁴ *Agape Church, Inc. v. FCC*, 738 F.3d 397, 422 (D.C. Cir. 2013); see generally *Covad Commc'ns Co. v. FCC*, 450 F.3d 528, 548-49 (D.C. Cir. 2006).

¹⁵⁵ *April 2014 Connect America FNPRM* at 7110, para. 178.

¹⁵⁶ See *id.* at 7123-24, paras. 220-23 (seeking comment on the interplay between the rural broadband experiments and Phase II).

¹⁵⁷ Comments of National Rural Electric Cooperative Association, WC Docket No. 10-90 et al., at 14 (filed Aug. 8, 2014) (NRECA Aug. 2014 Comments); Comments of the Utilities Technology Council, WC Docket No. 10-90 et al., at 5-8 (filed Aug. 8, 2014) (UTC Aug. 2014 Comments).

¹⁵⁸ See, e.g., Comments of National Rural Electric Cooperative Association, WC Docket No. 10-90 et al., at 10-11 (filed Aug. 8, 2014) (suggesting that the Commission's proposal to exclude census blocks served by price cap carriers from the Phase II auction "has the practical effect of insulating subsidized price cap carriers from competition and would enable these carriers to continue to provide 4/1 Mbps service" and that "price cap carriers will be under no pressure to improve service to those areas and to expand coverage to unserved locations"); Comments of the Utilities Technology Council, WC Docket No. 10-90 et al., at 22 (filed Aug. 8, 2014) ("Taking these areas off the table by declaring them ineligible because even a small portion of the area is served by a subsidized competitor would leave the remainder of the unserved customers in those areas in regulatory limbo for eternity"). See also Reply Comments of Utilities Technology Council, WC Docket No. 10-90 et al., at 8-9 (filed Sept. 18, 2014).

¹⁵⁹ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7123-24, paras. 220-23.

¹⁶⁰ See 47 CFR §§ 1.21001(b), 54.315(a) (describing the information that each Phase II auction applicant must submit in its application to become qualified to participate in the Phase II auction); *Phase II Auction Comment*

confirm that an applicant meets certain basic qualifications for participation in the bidding and enables Commission staff to ensure compliance with certain rules and bidding restrictions that help protect the integrity of the auction. After the deadline for filing short-form applications, Commission staff will review all timely submitted applications to determine whether each applicant has complied with the application requirements and provided all information concerning its qualifications for bidding, and thus is qualified to bid.

56. For the rural broadband experiments, entities that were interested in bidding were required to submit an application with their bids that included, in addition to other information, background information on the applicant and its qualifications to provide voice and broadband service, as well as a description of its proposed project.¹⁶¹ The Commission announced applicants that submitted the most cost-effective bids as provisionally-selected bidders.¹⁶² During the post-selection review process, each provisionally-selected bidder was required to submit three years of audited financial statements, a description of its proposed technology and system design with a network map certified by a professional engineer, and a letter of credit commitment letter from a qualified bank.¹⁶³ Prior to authorizing each bidder to receive support, Commission staff reviewed that information to determine if each winning bidder was financially and technically qualified to meet the obligations of support in the areas included in their winning bids.¹⁶⁴ A number of provisionally-selected bidders were not ultimately authorized to receive support because they failed to submit the required financial or technical information during the post-selection review period.¹⁶⁵

57. Broad Valley Micro Fiber Networks Inc. (Broad Valley) petitioned for reconsideration of the Phase II auction eligibility rules, requesting that the Commission adopt an “alternative eligibility path” by “automatically qualify[ing]” any entity that was selected as a provisional winning bidder for the rural broadband experiments.¹⁶⁶

58. *Discussion.* We decline to reconsider the Commission’s Phase II auction eligibility rules and automatically qualify to participate in the Phase II auction those entities that were selected as provisional winning bidders for the rural broadband experiments. We are not persuaded that provisionally-selected bidders that failed to submit all of the required information during the rural

Public Notice, 32 FCC Rcd at 6242-58, paras. 15-64 (proposing that Phase II auction applicants submit additional information).

¹⁶¹ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8784-85, para. 45.

¹⁶² See *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, Public Notice, 30 FCC Rcd 2045 (WCB 2015); *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).

¹⁶³ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-88, para. 54.

¹⁶⁴ *Id.*

¹⁶⁵ See, e.g., *Connect America Fund et al.*, Order, 30 FCC Rcd 772 (WCB 2015); *Connect America Fund et al.*, Order, 30 FCC Rcd 2022 (WCB 2015); *Connect America Fund et al.*, Order, 30 FCC Rcd 6257 (WCB 2015) (denying various petitions for waiver of the rural broadband experiment post-selection review process requirements).

¹⁶⁶ Broad Valley Micro Fiber Networks Inc. Petition for Reconsideration, WC Docket No. 10-90 et al., at 1 (filed July 20, 2016) (Broad Valley Petition). Broad Valley was provisionally selected as a winning bidder, but then withdrew from consideration after determining that it was “not comfortable with the technical performance and scalability of the solution” it had proposed to use to meet the rural broadband experiment public interest obligations. Letter from Joseph T. DuFresne, Chief Financial Officer, Broad Valley Micro Fiber Networks Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 17, 2014). See also USTelecom Opposition at 2 (noting that “after its selection Broad Valley declined to offer any financial and technical information”).

(continued....)

broadband experiments are necessarily qualified for the Phase II auction.¹⁶⁷ Because provisionally-selected bidders that were not ultimately authorized to receive support did not submit all of the required technical and financial information at the post-selection review stage, Commission staff did not fully assess their qualifications once they were named as winning bidders.¹⁶⁸

59. Furthermore, we are not convinced that we should permit provisionally-selected bidders that were ultimately authorized to receive rural broadband experiment support to participate in the Phase II auction without meeting the eligibility requirements for the Phase II auction.¹⁶⁹ Although we acknowledge that such entities underwent more extensive vetting than defaulting provisionally-selected bidders, eligibility requirements for applicants seeking to bid in the rural broadband experiments were not as rigorous as those proposed and adopted for the Phase II auction. As the Commission previously indicated,¹⁷⁰ the eligibility considerations for participation in the rural broadband experiments bidding were different than they are for the Phase II auction. The rural broadband experiments were intended to award support to discrete experiments, and if the bidder defaulted, the area that was included in the bid would be eligible for the Phase II auction if it remained unserved. By contrast, the Commission seeks to balance maximizing coverage with its preference for supporting higher speeds, higher usage allowances, and lower latency through the Phase II auction, and if a bidder defaults, it would thwart these objectives by leaving the relevant area unserved when another qualified bidder may have been able to serve the area if it had won the support.

60. Moreover, because the obligations for the Phase II auction are not the same as those of the rural broadband experiment, we conclude that it serves the public interest to independently assess the qualifications of rural broadband experiment recipients seeking to participate in the Phase II auction. The Commission has adopted different speed, capacity, and latency requirements and a different build-out timeline for the Phase II auction.¹⁷¹ When the Commission authorized provisionally-selected bidders to receive rural broadband experiment support, it was authorizing those entities based on the specific technologies and networks they intended to use to meet their rural broadband experiment obligations. For the Phase II auction, the Commission has proposed to determine an applicant's eligibility to bid for the performance tier and latency combinations it selects in part based on information regarding how it intends to meet the Phase II obligations,¹⁷² which may differ from how it intended to meet its rural broadband experiment obligations. Finally, the Commission began authorizing rural broadband experiment recipients in 2015, and the last rural broadband experiment recipient was authorized in 2016.¹⁷³ Because

¹⁶⁷ Broad Valley Petition at 1 (suggesting that provisionally-selected winning bidders were already “thoroughly” vetted, and that such bidders “already spent the effort and money to prove eligibility”).

¹⁶⁸ See USTelecom Opposition at 2-3 (stating that such bidders “had only provided minimal information that does not justify an automatic presumption of qualification to participate in the” Phase II auction and that automatically granting eligibility to such bidders “would reward applicants that have affirmatively demonstrated an inability to comply with [Commission] requirements and would unnecessarily risk the [Commission’s] limited [Connect America] resources by potentially awarding them to unqualified candidates”).

¹⁶⁹ USTelecom Opposition at 2 (noting that they “agree that arguably those provisional [rural broadband experiment] winners that went on to receive [rural broadband experiment] funding after meeting the [Commission’s] financial and technical requirements have made enough of a showing that they should be qualified for the auction”).

¹⁷⁰ *Phase II Auction FNRPM Order*, 32 FCC Rcd at 1640-41, para. 39.

¹⁷¹ *Compare Phase II Auction Order*, 31 FCC Rcd at 5956-64, paras. 14-37, 40, with *Rural Broadband Experiments Order*, 29 FCC Rcd at 8779-80, 8794, paras. 24-29, 74-75.

¹⁷² *Phase II Auction Comment Public Notice*, 32 FCC Rcd at 6247-55, paras. 29-54.

¹⁷³ See, e.g., *Rural Broadband Experiment Support Authorized for Winning Bid Submitted by Lake County, Minnesota d/b/a Lake Connections*, Public Notice, 31 FCC Rcd 13133 (WCB 2016); *Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc, Delta*

(continued....)

the Phase II auction will not be held until 2018, an applicant's technical and financial qualifications may have changed since the Commission last had the opportunity to review them.¹⁷⁴

G. Letters of Credit Requirements

61. *Background.* In the *Phase II Auction Order*, the Commission adopted a letter of credit requirement for all winning bidders.¹⁷⁵ Specifically, before a winning bidder can be authorized to receive Phase II auction support, it must obtain an irrevocable stand-by letter(s) of credit from an eligible bank that covers the first year of support for all of the winning bids in the state.¹⁷⁶ Before the Phase II auction recipient can receive its next year's support, it must modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year.¹⁷⁷ Once the Phase II auction recipient has met its 60 percent service milestone, its letter of credit may be valued at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.¹⁷⁸ Once the Phase II auction recipient has met its 80 percent service milestone, its letter of credit may be valued at 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.¹⁷⁹

62. The letter of credit must remain open until the Phase II auction recipient has certified that it has deployed broadband and voice services meeting the Commission's requirements to 100 percent of the required number of locations, and the Universal Service Administrative Company (USAC) has validated that the entity has fully deployed its network.¹⁸⁰ If a Phase II auction recipient fails to meet the required service milestone after it begins receiving support, then fails to cure within the requisite time period, and is unable to repay the support that is associated with its default in a timely manner, the Bureau will issue a letter evidencing the failure and declaring a default.¹⁸¹ Broad Valley and Crocker Telecommunications request that the Commission reconsider these letter of credit requirements by further reducing the amount of the support that the letter of credit is required to cover as Phase II auction recipients meet their buildout milestones.¹⁸²

63. *Discussion.* We grant Broad Valley and Crocker Telecommunications' petition for

Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc., Public Notice, 30 FCC Rcd 8283 (WCB 2015).

¹⁷⁴ Because rural broadband experiment recipients were required to submit the most recent three consecutive years of audited financial statements within 10 days of being announced as provisionally-selected bidders, they submitted financial statements ranging from 2011 to 2014. *Rural Broadband Experiment Order*, 29 FCC Rcd at 8787, para. 54.

¹⁷⁵ 47 CFR § 54.315(c); *Phase II Auction Order*, 31 FCC Rcd at 5989-99, paras. 119-40. The Commission also adopted a letter of credit requirement for Mobility Fund Phase I, the rural broadband experiments, and Mobility Fund Phase II. See 47 CFR §§ 54.1007, 54.1016; *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-93, paras. 54-71.

¹⁷⁶ 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5997, para. 135.

¹⁷⁷ 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5997, para. 135.

¹⁷⁸ 47 CFR § 54.315(c)(1)(i); *Phase II Auction Order*, 31 FCC Rcd at 5997-98, para. 136.

¹⁷⁹ 47 CFR § 54.315(c)(1)(ii); *Phase II Auction Order*, 31 FCC Rcd at 5998, para. 136.

¹⁸⁰ 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 123.

¹⁸¹ 47 CFR § 54.315(c)(4)(i); *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94.

¹⁸² Broad Valley Petition at 2-3; Crocker Telecommunications Petition at 4-5. Broad Valley proposes that the "letter of credit should match the buildout requirements." Broad Valley Petition at 3. Crocker Telecommunications proposes two approaches for decreasing the value of the letter of credit as a percentage of the annual disbursement. Crocker Telecommunications Petition at 4-5.

(continued....)

reconsideration in part by permitting Phase II auction recipients to reduce the value of their letter of credit to 60 percent of the total support already disbursed plus the amount of support that will be disbursed in the coming year once it has been verified that the Phase II auction recipient has met the 80 percent service milestone. However, we also deny Broad Valley and Crocker Telecommunications' petition for reconsideration in part by declining to make further reductions in the value of the letter of credit.¹⁸³

64. We are persuaded by commenters that claim that the Commission's existing letter of credit rules may impose significant costs on Phase II auction recipients, particularly on small providers.¹⁸⁴ We find that it is reasonable to provide some additional relief from these costs by permitting Phase II recipients to reduce further the amount of support that a letter of credit must cover for Phase II recipients offering the required service to 80 percent of the required number of locations in a state. Because we require recipients to submit the geocoded locations that count towards their service obligations in an online portal with built-in validations, USAC will be able to quickly verify that a recipient's 80 percent service milestone has been met, thereby enabling the recipient to reduce the value of its letter of credit.¹⁸⁵ As the Commission acknowledged in the *Phase II Auction Order*,¹⁸⁶ we expect that the risk of default will lessen as a Phase II auction recipient makes progress towards meeting its Phase II auction service milestones because, as recipients offer service to more locations, they have the opportunity to offset more of their deployment costs with revenues.

65. The letter of credit requirement applies to all winning bidders, which simplifies the administration of the letter of credit rules. However, the exact costs of obtaining and maintaining a letter of credit will affect each potential bidder in the Phase II auction differently. The letter of credit costs will likely vary based on the amount of support that a Phase II auction winning bidder is authorized to receive, and the impact of those costs is likely to vary based on the size and creditworthiness of the Phase II recipient.¹⁸⁷ Therefore, we cannot reasonably predict the cost of the requirement for each potential bidder relative to the benefit to the public of protecting the funds from default. However, the costs for a letter of credit in the range of several percentage points, when applied to the sizable amounts that may be awarded to bidders here, could well be considerable, particularly for smaller bidders. We conclude on reconsideration that, on balance, the benefits of relieving all Phase II auction recipients of some additional costs of maintaining a letter of credit later in the term of support, after the recipient has met significant deployment milestones, outweigh the risk that we will not be able to recover an additional portion of the support already disbursed if the recipient is unable to repay the Commission in the event of a default. Moreover, as we discuss below, an applicant that is affected by high letter of credit costs may choose to build out its network more quickly so that it can close out its letter of credit sooner.

66. We are not persuaded by claims that we should take further steps to reduce the cost of a letter of credit for Phase II auction recipients. While Broad Valley and Crocker Telecommunications present new proposals that would further reduce costs for recipients, we are not convinced that these cost

¹⁸³ Broad Valley Petition at 3-4; Crocker Telecommunications at 4-5.

¹⁸⁴ Broad Valley Petition at 2-3 (claiming that it would be "challenging for the newest entrants" to cover the letter of credit costs in high-cost areas); Crocker Telecommunications at 4-5 (claiming that the Commission's letter of credit "represent a challenge for non-incumbent, small rural focused enterprises seeking to expand existing networks in rural America"). See also WISPA Sept. 2016 Opposition at 9-10 (explaining the costs Skybeam incurs for the letter of credit it is required to maintain as a rural broadband experiment winning bidder and supporting "rules that would further ease the carrying cost of letters of credit").

¹⁸⁵ See *Location Guidance Public Notice*, 31 FCC Rcd at 12906.

¹⁸⁶ *Phase II Auction Order*, 31 FCC Rcd at 5997, para. 136.

¹⁸⁷ See, e.g., WISPA Sept. 2016 Opposition at 9 (explaining that the letter of credit costs for one rural broadband experiment recipient included a percent annual fee along with funded debt that "is offset by only a single year of the company's cash flow"). Broad Valley and Crocker Telecommunications have not quantified or substantiated their claims regarding the costs of the letter of credit requirement.

reductions would outweigh the associated risks to the public's funds. Under the Commission's rules, the Commission is able to recover the full amount of support that has been disbursed in prior years and support that will be disbursed in the coming year until the fourth year service milestone has been met, with only modest adjustments to the value of the letter of credit after a recipient has met the significant deployment milestones in the fourth and fifth years.¹⁸⁸ In contrast, under Broad Valley's and Crocker Telecommunications' proposals, for the first three years of support, and prior to a recipient significantly deploying its network, the letter of credit would only cover support that had been disbursed in the previous year(s).¹⁸⁹ Accordingly, the Commission would not be able to recover support that is disbursed in the year that a recipient defaults. Moreover, under Broad Valley's and Crocker Telecommunications' proposals, more drastic reductions would be made in the value of the letter of credit earlier in the support term. As a result, throughout the build-out period, the Commission would not be able to recover more than two years of disbursements if a recipient defaults.¹⁹⁰

67. Under these proposed approaches, the Commission would recover far less support if the recipient stops offering service and could not repay the Commission for the support associated with the locations that remain unserved. The Commission noted that the letter of credit will be drawn only in situations where the Phase II auction recipient does not repay the Commission for the support associated with its compliance gap, and that the recipients unable to repay the support are also more likely to be at risk for going into bankruptcy and ceasing operation of their networks.¹⁹¹ Without a letter of credit, the Commission has no security to protect itself against the risks of default. Accordingly, the Commission found that it was necessary to ensure it could recover a significant amount of support in such situations.¹⁹² Broad Valley and Crocker Telecommunications do not address these concerns in their petitions.

68. We expect that our decision to make a further modest reduction in the required value of the letter of credit for Phase II auction recipients that have substantially met their obligations will help address some of the cost concerns of potential bidders, including small entities and new entrants. But we are not persuaded that we should address these concerns by further reducing the value of the letter of credit.¹⁹³ We acknowledge that each winning bidder will have to certify in its long-form application that it will have available funds for all projects costs that exceed Phase II support.¹⁹⁴ We also recognize that small entities and new entrants, which often lack the resources of larger and established companies so that letter of credit costs have more of an impact on their budgets, may have to factor more of these letter of credit costs in their bids, potentially leading to less competitive bids.¹⁹⁵ However, all participants in the

¹⁸⁸ 47 CFR § 54.315(c)(1) (requiring a recipient to maintain a letter of credit in an amount equal to at a minimum the amount of Phase II auction support that has been disbursed and that will be disbursed in the coming year).

¹⁸⁹ Broad Valley Petition at 3; Crocker Telecommunications Petition at 4-5.

¹⁹⁰ Under Broad Valley's proposal, after the third year 40% service milestone the letter of credit would only cover 60% of the support that had been disbursed over three years, with a 20% drop each subsequent year of the total amount of support that will have been disbursed. Broad Valley Petition at 3. Crocker Valley Telecommunication's proposals would also result in a significant decrease in the percentage of the annual support amount that would be covered each year, based on either the service milestones or the recipient's actual deployment, and the number of years the recipient has been receiving support. Crocker Telecommunications Petition at 5. *See also* WISPA Sept. 2016 Opposition at 10 (requesting that the Commission "permit the value [of the letter of credit] to decline to the extent recipients meet their annual" service milestones").

¹⁹¹ *Phase II Auction Order*, 31 FCC Rcd at 5992, para. 124.

¹⁹² *Id.*

¹⁹³ *See* WISPA Sept. 2016 Opposition at 9-10 (claiming that the Commission did not fully consider the costs of requiring a letter of credit for all recipients).

¹⁹⁴ 47 CFR § 54.315(b)(2)(v); WISPA Sept. 2016 Opposition at 9-10.

¹⁹⁵ Broad Valley Petition at 2 (suggesting that the Commission's letter of credit requirements "is an unfair and tremendously onerous approach; particularly for small and medium sized rural carriers, which is the largest segment

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Phase II auction will have to factor in the various costs of meeting the Phase II auction obligations when deciding whether to participate in the auction and how much to bid to ensure they can cover all of the costs. The Commission took a number of steps at the request of small entities to help lessen these costs, including expanding the number and types of banks eligible to issue letters of credit so that small entities can obtain letters of credit from banks with which they have existing partnerships.¹⁹⁶ Although some entities may still find that participating in the auction is cost-prohibitive or that they are unable to place competitive bids, we are not convinced that we should put our ability to recover a significant amount of support at risk if these same entities were to participate and later discover that they are unable to meet the Phase II auction obligations and unable to repay the Commission for their compliance gap.

69. We are not persuaded that making large reductions in the required value of the letter of credit when a recipient meets its service milestones would encourage recipients to build out their networks faster.¹⁹⁷ Instead, we expect that the letter of credit requirements we adopt today may encourage more rapid deployment. By making only modest adjustments for the fourth- and fifth-year service milestones, and requiring a recipient to maintain a letter of credit only until it has been verified that the recipient has met the final service milestone, we expect that recipients will move faster to meet the final service milestone so that they no longer have to maintain a letter of credit.¹⁹⁸ Indeed, smaller bidders, which might be most affected by letter of credit costs, are also more likely to have winning bids that can be completed in less than the full six-year deployment term. Moreover, if the recipient could instead significantly reduce the value of its letter of credit when it reaches earlier milestones, it may not have as much of an incentive to meet the final service milestone as quickly.

H. Bidding Weight for Phase II Auction Bids in Pennsylvania

70. *Background.* In the *Rural Broadband Experiments FNPRM*, the Commission explained that it wished to further explore how to best maximize the reach of its existing Connect America budget and leverage non-federal funding to extend broadband to as many households as possible.¹⁹⁹ Accordingly, it sought comment on creating inducements for state action to assist in the expansion of broadband by adopting bidding credits for bidders that are leveraging governmental support from non-federal sources or for states that are net donors to the fund.²⁰⁰

71. In the *Phase II Auction Order*, the Commission noted concerns that had been raised by states regarding the need for an efficient and equitable allocation of Phase II funds, particularly where Phase II support was declined.²⁰¹ The Commission also recognized and applauded state-based initiatives to advance broadband deployment.²⁰² In the *Phase II Auction FNPRM*, the Commission sought comment on measures to achieve the public interest objective of ensuring appropriate support for all of the states, including establishing weights that would provide a preference to declined states.²⁰³

72. In the *Phase II Auction FNPRM Order*, the Commission adopted bidding weights for the performance tiers and latency levels, adopted a formula for applying those weights, and declined to adopt

of potential participants in the auction” and that the requirements “place[] these new competitive entrants at a distinct disadvantage”); WISPA Sept. 2016 Opposition at 10.

¹⁹⁶ 47 CFR § 54.315(c)(2); *Phase II Auction Order*, 31 FCC Rcd at 5992-97, paras. 127-33.

¹⁹⁷ WISPA Sept. 2016 Opposition at 10.

¹⁹⁸ *Phase II Auction Order*, 31 FCC Rcd at 5991, 5997-98, paras. 123, 136.

¹⁹⁹ *Rural Broadband Experiments FNPRM*, 29 FCC Rcd at 8801, para. 97.

²⁰⁰ *Id.* at 8801-02, paras. 97-101.

²⁰¹ *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 86.

²⁰² *Id.*

²⁰³ *Phase II Auction FNPRM*, 31 FCC Rcd at 6023-25, paras. 217-24.

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other types of weights.²⁰⁴ The Commission also declined to adopt state-based preferences for the Phase II auction, including weights, preferring to award Phase II auction support to cost-effective bids and to wait until the Remote Areas Fund auction to prioritize unserved areas in states where the Phase II offer of support to price cap carriers was declined.²⁰⁵ The Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and Economic Development (jointly Pennsylvania) request that the Commission reconsider its decisions or waive the Phase II auction rules “by adding a negative weight” to the Commission’s formula for bids in census blocks where Verizon declined Phase II support in Pennsylvania “to reflect additional resources brought to the auction” by Pennsylvania.²⁰⁶

73. *Discussion.* We decline to reconsider the formula the Commission adopted for applying the weights for performance tier and latency combinations to give bids placed in Pennsylvania, in areas where Verizon declined Phase II support, an advantage over other bids by adding an additional negative weight for such bids. We also decline to waive the Phase II auction rules to add such a weight to Pennsylvania bids.

74. Pennsylvania has not persuaded us that its proposal would more effectively balance our Phase II objectives in furtherance of our section 254 obligations and the public interest.²⁰⁷ The Commission balanced its interest in ensuring that consumers in declined states get access to broadband services with its objective of maximizing the finite Phase II budget by deciding to award support to cost-effective and higher service quality bids through the Phase II auction and then prioritize unserved areas in declined states in the Remote Areas Fund.²⁰⁸ As part of this balancing, the Commission determined that its adopted framework may encourage bidders to bid in declined areas and incentivize states to offer complementary support, so that declined states may still have a strong possibility of being served through the Phase II auction absent a preference.²⁰⁹ Bidders might be more interested in bidding in the declined areas in the state through the Phase II auction because those areas are lower cost. While the ranking of

²⁰⁴ *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1627-28, 1639, paras. 15-16, 35-36.

²⁰⁵ *Id.* at 1641-44, paras. 43-50.

²⁰⁶ Pennsylvania Petition for Reconsideration, Modification, or Waiver, WC Docket Nos. 10-90, 14-58, at 1 (filed Apr. 19, 2017) (Pennsylvania Petition). Pennsylvania proposes modifying the Commission’s formula of $S = 100 \times B/R + T + L$ to include “the value added by the bidder’s premium as a percentage of the reserve price (converted to a negative weight)” so that the formula would be $S = 100 \times B/R + T + L - (P/R)$ where P equals the bidder’s premium (i.e., the amount of support that the bidder “identified and secured for use in Pennsylvania prior to the auction”) and R equals the reserve price. *Id.* at 12-13. A number of Pennsylvania entities filed ex partes supporting Pennsylvania’s petition. *See, e.g.*, Letter from Douglas E. Hill, Executive Director, County Commissioners Association of Pennsylvania, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 15, 2017) (CCAP May 15, 2017 *Ex Parte* Letter); Letter from Richard J. Schuettler, Executive Director, Pennsylvania Municipal League, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al. (filed July 19, 2017) (PML July 19, 2017 *Ex Parte* Letter); Letter from Richard J. Schuettler, Executive Director, Pennsylvania State Association of Township Commissioners, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al. (filed July 19, 2017) (PSATC July 19, 2017 *Ex Parte* Letter); Letter from David M. Sanko, Executive Director, Pennsylvania State Association of Township Supervisors, Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al. (filed July 19, 2017) (PSATS July 19, 2017 *Ex Parte* Letter); Letter from William S. Rossey, President, Pennsylvania State Association of Boroughs, WC Docket No. 10-90 et al. (filed July 19, 2017) (PSAB July 19, 2017 *Ex Parte* Letter); Letter from John J. Bell, Senior Government Affairs Counsel, Pennsylvania Farm Bureau, WC Docket No. 10-90 et al. (filed July 24, 2017) (PFB July 24, 2017 *Ex Parte* Letter); Letter from Fred Gaffney, President, Columbia Montour Chamber of Commerce, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Nov. 15, 2017) (Columbia Montour Chamber of Commerce Nov. 15, 2017 *Ex Parte* Letter).

²⁰⁷ 47 U.S.C. § 254(b) (requiring that the Commission “base policies for the preservation and advancement of universal service” on certain principles).

²⁰⁸ *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1641-42, paras. 43-44.

²⁰⁹ *Id.* at 1642-43, paras. 45, 48.

bids on a bid-to-reserve price basis, rather than on a dollar-per-location basis, may remove a potential bidding advantage for bidders in lower cost areas because those areas tend to have more locations,²¹⁰ bidders may nonetheless be more likely to make a business case to serve such areas because they are lower cost. Bidders might also be more attracted to declined areas, and may have a higher likelihood of winning such areas, if a state such as Pennsylvania made available support that bidders could leverage to reduce the amount of Connect America support they were requesting, therefore making their bids more cost-effective when compared to other bidders nationwide.²¹¹

75. We are not convinced by Pennsylvania and the National Association of Regulatory Utility Commissioners' (NARUC) claims that Pennsylvania's proposal would "provide significant cost effectiveness and financial synergies that may not be available absent modification."²¹² In fact, we find that adopting a negative weight could actually thwart the Commission's objectives of maximizing the Phase II auction budget and incentivizing states to contribute support. First, the negative weight would effectively double count the support that Pennsylvania offers to bidders because bidders would be able to reduce their bids by the amount of Pennsylvania support in addition to a negative weight applied to their Connect America bids in proportion to the amount of Pennsylvania support they receive. This could result in bidders asking for more Connect America support than they might if they could only use Pennsylvania support to reduce their bids (i.e., without the additional negative weight). With the negative weight applied to a Connect America bid that already accounts for Pennsylvania support, they could potentially win even though their bid is not as cost-effective as other bidders. Second, the negative weight could result in Pennsylvania making less support available than it would without this factor because the weight would give Pennsylvania bidders at least some advantage over other bidders, regardless of the amount of support provided by Pennsylvania.

76. We also are not persuaded that the negative weight that Pennsylvania proposes would permit the Commission to effectively leverage the funds that Pennsylvania does make available to meet our Phase II auction objectives.²¹³ Pennsylvania's petition does not describe with specificity the amount of funding that will be made available,²¹⁴ and how the Commission will have assurance that the funding

²¹⁰ Verizon Comments, WC Docket No. 10-90 et al., at 3 (filed May 18, 2017) (Verizon Comments); *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 85.

²¹¹ While there is "no certainty" that there will be bidders in Pennsylvania regardless of the methodology that the Commission uses to allocate support, for the reasons described we are not persuaded by Pennsylvania's claim that "[t]here is no certainty that the broadband providers will submit bids for the eligible census blocks in Verizon's service territories in Pennsylvania during the auction absent the modification requested . . ." Pennsylvania Petition at 23.

²¹² See Pennsylvania Petition at 2, 18-20 ("[I]n order to maximize cost-effectiveness and encourage state engagement in the deployment process, the approach adopted by the [Commission] in the [*Phase II Auction Order*] should provide an *explicit* incentive for Pennsylvania to provide and for carriers to take advantage of the availability of additional complementary broadband support within its borders"). See also Letter from James Bradford Ramsay, General Counsel, National Association of Regulatory Utility Commissioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Feb. 26, 2017) (NARUC Feb. 26, 2017 *Ex Parte* Letter).

²¹³ See also Letter from Stephen E. Coran, Counsel to Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2-3 (filed June 20, 2017) (WISPA June 20, 2017 *Ex Parte* Letter) (noting "the lack of certainty and details" in Pennsylvania's proposal). The Commission also declined to adopt state-specific weights in the *Phase II Auction FNPRM Order*, noting that among other reasons the "record is not well developed on . . . what should constitute a sufficient amount of state support that a state would need to offer for the [weight] to apply, and what kind of commitment we should require of states that intend to co-invest funds." *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1643, para. 48 & n.114.

²¹⁴ Pennsylvania Petition at 8-10 (noting that the "PADCED currently has several economic development initiatives through which complementary funding *may* be available for application") (emphasis added); Pennsylvania Reply to the Wireless Internet Service Providers Association Opposition to Pennsylvania's Petition for Reconsideration, Modification, or Waiver, WC Docket Nos. 10-90, 14-58, at 5-6 (filed May 30, 2017) (Pennsylvania Reply)

(continued....)

Pennsylvania makes available will actually be provided to the applicant.²¹⁵ And although Pennsylvania's proposal would allocate federal support through the Phase II auction rather than establishing a separate allocation mechanism for Pennsylvania,²¹⁶ the results of the auction may be skewed in a way that conflicts with Phase II objectives if a preference is given to bidders based on state support that is allocated in a manner that is inconsistent with decisions the Commission made for the Phase II auction.²¹⁷ For example, Pennsylvania does not describe what specific restrictions will be placed on its funding to ensure it is used in areas that are eligible for the Phase II auction,²¹⁸ how Pennsylvania will ensure that its funding is made available on a technology-neutral basis,²¹⁹ and whether Pennsylvania will be using market-based mechanisms to allocate support.²²⁰ Without such information and safeguards, the Commission risks giving Pennsylvania bidders an advantage in the Phase II auction to the detriment of other cost-effective bidders even though state funding may ultimately not be made available, be spent to overbuild areas that already have broadband service, or be allocated in a manner that conflicts with the Commission's Phase II objectives. Unlike New York's NY Broadband Program, where the Commission found it could align its stated Phase II objectives with New York's existing broadband-funding program by adopting specific conditions to its waiver of the Phase II auction rules,²²¹ here we do not have enough specific information about the various programs Pennsylvania intends to use to allocate support in order to consider any

(explaining that it had identified “[m]any existing economic development programs support initiatives through which complementary funding for broadband buildout *may* be available) (emphasis added); Letter from Regina L. Matz, Legal Counsel to Pennsylvania Public Utility Commissioner David W. Sweet, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 et al, at 2 (filed July 20, 2017) (Pennsylvania July 20, 2017 *Ex Parte* Letter) (“In addition to direct funding made available, Pennsylvania will also offer financial assistance for economic development, including broadband, through grants and low-cost financing options that will be available at the local level”). *See also* Wireless Internet Service Providers Association Opposition to and Comments on Petitions for Reconsideration, WC Docket Nos. 10-90, 14-58, at 11-12 (filed May 18, 2017) (WISPA May 2017 Opposition) (noting that “the Commission is essentially urged to take comfort in the fact that ‘Pennsylvania is positioned to act’”).

²¹⁵ *See* WISPA June 20, 2017 *Ex Parte* Letter at 3 (“Who would bear the consequences if state appropriations are subsequently reduced or withdrawn entirely?”).

²¹⁶ Pennsylvania Reply at 4 (“With the exception of the single modification to the formula to recognize additional state-harnessed resources identified by the bidder in the bid, Pennsylvania’s proposal adheres to the [Commission’s] auction process.”).

²¹⁷ In the *New York Auction Waiver Order*, the Commission acknowledged that “even if coordinating our efforts with New York’s program results in some differences in how the federal support may be allocated in one state [the] public interest benefits outweigh the potential harm.” *Connect America Fund et al.*, Order, 32 FCC Rcd 968, 978-79, para. 28 (2017) (*New York Auction Waiver Order*). For the reasons explained, we find that the public interest benefits do not outweigh the potential harm in this instance.

²¹⁸ Pennsylvania Petition at 13 (stating that “[s]upport will have to be used in the same eligible census blocks in Verizon’s territory to which the CAF Phase II funding was originally offered”).

²¹⁹ Pennsylvania explains that “[t]he PA DCED programs enable any potential broadband provider . . . to reach out to and partner with applicants . . . to obtain state resources to complement a bid,” but does not explain how it will be determined which applicants will receive state support or how it will ensure that other funding programs will be technology-neutral. Pennsylvania Reply at 5-6. *But see* WISPA June 20, 2017 *Ex Parte* Letter at 2 (noting that Pennsylvania’s claims that its funding programs will be technology-neutral “cannot bind a state legislature that has not adopted any relevant law and is free to make different policy choices”).

²²⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17667, para. 1 (explaining that the Commission’s Connect America reforms were intended “to distribute universal service funding in the most efficient and technologically neutral manner possible, through market-based mechanisms . . .”).

²²¹ *See, e.g., New York Auction Waiver Order*, 32 FCC Rcd at 982-84, paras. 38-43 (imposing conditions on how New York will allocate support).

(continued....)

appropriate conditions that might address our concerns.

77. In addition, we are not convinced by Pennsylvania's claims that the negative weight would not "detract[]" from the Commission's goals of deploying broadband nationwide and would not "negatively impact[]" support that is available to other declined states.²²² Due to the finite Phase II auction budget, there is a potential that not all interested bidders will ultimately be awarded support. Accordingly, any mechanism that would give Pennsylvania bidders an opportunity to make less cost-effective bids than other bidders in other states, but still win, has the potential to unreasonably skew support to the state at the expense of other areas that may be served more cost-effectively. Such a mechanism also could result in fewer consumers receiving broadband.²²³ For New York, the Commission knew the *maximum* amount of support that could be allocated through New York's program and it adopted certain measures that could stretch that support beyond the census blocks in New York that were eligible for the Phase II auction.²²⁴ Because Pennsylvania has not provided specific information regarding how much support it intends to make available, and the value of the negative weight is based on how much state support a Pennsylvania bidder will receive, we are unable to assess the potential impact of the negative weight on our nationwide broadband deployment objectives.²²⁵

78. We also disagree with Pennsylvania's claims that such a negative weight will not add complexity to the Phase II auction.²²⁶ First, a process must be created to determine and verify how much support each applicant has received or will receive from Pennsylvania state programs to determine how much negative weight to apply. Second, an auction system must be designed that uses a different formula for calculating bids in only the declined Pennsylvania areas. These steps add a significant layer of complexity to the auction and could potentially lead to a delay in commencing the Phase II auction.

79. We acknowledge that Pennsylvania's proposed approach could reduce the possibility that Pennsylvania will have to wait "until the finalization of the Remote Areas Fund to make progress on its "intra-county digital divides,"²²⁷ may make it more likely that an amount equivalent to the support that Verizon declined is allocated to Pennsylvania through the Phase II auction rather than through the Remote Areas Fund,²²⁸ and would give Pennsylvania recognition for its past and future contributions to broadband

²²² Pennsylvania July 20, 2017 *Ex Parte* Letter at 2. See also PFB July 24, 2017 *Ex Parte* Letter at 2.

²²³ See *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1642-43, para. 46 ("Instead, the possibility that state preferences in the Phase II auction could divert funding from more cost-effective and higher service quality bids in the Phase II auction, and the added complexity they would introduce to the Phase II auction, outweigh the potential benefits.").

²²⁴ *New York Auction Waiver Order*, 32 FCC Rcd at 979-80, para. 30.

²²⁵ See WISPA June 20, 2017 *Ex Parte* Letter at 2 ("Nor has any amount of funds been allocated so that the impact of [Pennsylvania's] proposal can be assessed.").

²²⁶ Pennsylvania Petition at 14, 17-18. See also Comments of the Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and Economic Development, AU Docket No. 17-182, WC Docket No. 10-90 (filed Sept. 18, 2017) (suggesting how to implement Pennsylvania's proposal using the Commission's proposed short-form application); Institute for Local Self-Reliance et al. Reply at 12-13.

²²⁷ Pennsylvania Petition at 4, 10-11, 17, 23 (claiming that "to minimize the amount of funding that may be required from the [Remote Areas Fund] and to help ensure that Pennsylvania, with *high cost areas*, receives a timely and equitable distribution of funds to deploy broadband in those areas, the Commission should reconsider its determination for Pennsylvania"); Verizon Comments at 2-3. See also CCAP May 15, 2017 *Ex Parte* Letter at 1; PML July 19, 2017 *Ex Parte* Letter at 2; PSATC July 19, 2017 *Ex Parte* Letter at 1; PSATS July 19, 2017 *Ex Parte* Letter at 1; PSAB July 19, 2017 *Ex Parte* Letter at 1; PFB July 24, 2017 *Ex Parte* Letter at 2.

²²⁸ Pennsylvania Petition at 4, 13-14, 16 (claiming that if the Commission adopts Pennsylvania's proposal, "a score that may have lost and resulted in resources being diverted outside of Pennsylvania contrary to the [Commission's] original model becomes less likely"); Verizon Comments at 4. See also CCAP May 15, 2017 *Ex Parte* Letter at 1;

(continued....)

deployment.²²⁹ However, the benefits of adopting the approach Pennsylvania recommends are outweighed by the drawbacks we have discussed, and we are not persuaded that altering the balance already achieved by the Commission through its existing Phase II auction and Remote Areas Fund framework would serve the public interest.²³⁰ Pennsylvania is one of a number of states, including other states where Phase II model-based support was declined, that have supported and continue to support broadband deployment.²³¹ We conclude the most effective way to accomplish our Phase II objectives and leverage these state programs is to have bidders factor any state support that they have received or will receive into their bids so that they can place cost-effective bids within the existing Phase II auction and Remote Areas Fund auction framework.

80. We disagree with the assumption that states are entitled to receive the amount of support that the price cap carrier declined in the respective states.²³² The Commission has made several decisions that contradict this assumption, including comparing all bids nationwide,²³³ making extremely high-cost census blocks nationwide eligible for the Phase II auction,²³⁴ adopting a limited budget,²³⁵ and deciding to

PML July 19, 2017 *Ex Parte* Letter at 1; PSATC July 19, 2017 *Ex Parte* Letter at 1; PSATS July 19, 2017 *Ex Parte* Letter at 1; PSAB July 19, 2017 *Ex Parte* Letter at 1; PFB July 24, 2017 *Ex Parte* Letter at 2.

²²⁹ Pennsylvania Petition at 2-4 (claiming that “absent modification of the auction formula as requested, Pennsylvania will receive no recognition of the complementary roles its additional contributions have played and will continue to play in ensuring broadband access to Verizon’s CAF Phase II eligible census blocks in Pennsylvania”). See also Letter from Regina L. Matz, Counsel to Commissioner David W. Sweet, Pennsylvania Public Utility Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed June 1, 2017) (“[P]ennsylvania simply sought recognition in the [Commission’s] auction for additional support Pennsylvania may bring to the process”); PML July 19, 2017 *Ex Parte* Letter at 1-2; PSATC July 19, 2017 *Ex Parte* Letter at 1-2; PSATS July 19, 2017 *Ex Parte* Letter at 2; PSAB July 19, 2017 *Ex Parte* Letter at 1-2 (citing Pennsylvania’s past contributions to broadband deployment).

²³⁰ See *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1642, para. 45 (“We acknowledge that this approach may mean that some areas in declined states have to wait longer to get service than if support was awarded through the Phase II auction. Nevertheless, on balance we conclude this approach serves the public interest because it reasonably enables us to achieve our objectives by first using the Phase II auction to maximize our budget by prioritizing cost-effective bids and then targeting support to areas that remain unserved in the Remote Areas Fund”).

²³¹ See, e.g., Letter from the Honorable Gregg C. Sayre, State Chair of the State Members of Federal-State Joint Conference on Advanced Services, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-245 (filed Dec. 2, 2016) (attaching a survey of the “current status of State programs that promote broadband deployment”).

²³² Pennsylvania Reply at 8 (“Designed and offered on a state-by-state census block basis, [Pennsylvania] reasonably expected that declined funds would remain available within the state for auction to another provider.”); NARUC Feb. 26, 2017 *Ex Parte* Letter at 2 (notifying the Commission that NARUC had adopted a resolution that “specifically supports States’ retention of [Phase II] declined funds”); PML July 19, 2017 *Ex Parte* Letter at 1; PSATC July 19, 2017 *Ex Parte* Letter at 1; July 19, 2017; PSATS *Ex Parte* Letter at 1; PSAB July 19, 2017 *Ex Parte* Letter at 1 (claiming that the support declined in Pennsylvania “was objectively designed on the basis” of the Commission’s cost model “to be used in underserved areas of Pennsylvania” and that “[i]t is critical that these funds remain in Pennsylvania”); Columbia Montour Chamber of Commerce Nov. 15, 2017 *Ex Parte* Letter at 1 (asking the Commission “to keep the allocated funds in Pennsylvania to provide opportunities for growth”). But see WISPA May 2017 Opposition at 16 (“As is clear, the ‘original model’ was *not* to give price cap carriers support, but to *offer* support to price cap carriers on defined terms. In cases where the offer of support was declined, the resources would be available on a nationwide basis, a process put in motion in 2011 and confirmed in 2014.”).

²³³ *Phase II Auction Order*, 29 FCC Rcd at 5976, para. 84.

²³⁴ *April 2014 Connect America Order*, 29 FCC Rcd at 7060-61, paras. 30-31 (“We believe it would be the most efficient use of Phase II funding to provide support to areas above the specified funding threshold and then target the discrete budget for the Remote Areas Fund to those areas that remain unserved after the competitive bidding process.”)

²³⁵ *Phase II Auction Order*, 31 FCC Rcd at 5975, para. 79.

(continued....)

score bids against each other nationwide on a ratio-to-reserve price basis.²³⁶ Instead, the Commission has acknowledged the importance of connecting a similar number of unserved consumers in the states that would have been reached had the Phase II offer been accepted and has committed to provide sufficient support to do so through both the Phase II auction and the Remote Areas Fund, to the extent possible.²³⁷

81. We also find that Pennsylvania has not demonstrated good cause for waiving the Phase II auction scoring formula.²³⁸ First, Pennsylvania has not established special circumstances that warrant deviation from the Phase II auction scoring formula. When the Commission waived the Phase II auction program rules for New York, the Commission found that the state was uniquely situated to quickly and efficiently further our goal of broadband deployment. The state had committed a significant portion of its own support as matching support, and demonstrated that there were unique timing considerations given that it had already implemented its own broadband program and had aggressive service deadlines.²³⁹ Such conditions are not present here. As explained above, the Commission already intends to address Pennsylvania's status as a declined state through the existing framework it adopted for the Phase II auction and the Remote Areas Fund, and it is able to leverage any support that Pennsylvania makes available through that same framework. And while we acknowledge and appreciate Pennsylvania's past efforts to encourage broadband deployment in the state,²⁴⁰ Pennsylvania has not demonstrated why its past state contributions warrant waiver of rules for the future allocation of federal support.

82. Second, even if we were to find that Pennsylvania had established special circumstances, for the reasons explained above, Pennsylvania has not demonstrated the public interest would be served by waiving the Phase II auction formula to add a negative weight for bids placed in declined areas in the state. New York was able to demonstrate that waiver of the Phase II auction program rules would serve the public interest for a number of reasons including that it would result in accelerated broadband deployment,²⁴¹ it would enable the Commission to use Phase II support efficiently and effectively by

²³⁶ *Id.* at 5976-77, paras. 84-85 (concluding that the Commission's decision "is more likely to ensure winning bidders across a wide range of states than selecting bids based on the dollar per location, which could result in support disproportionately flowing to those states where the cost to serve per location is, relatively speaking, lower than other states").

²³⁷ The Commission also reserved the right to modify the approach on a state-by-state basis if it determines that the Phase II auction resulted at a minimum in supporting service to the percentage of the consumers in the state that would have been served if the Phase II offer had been accepted. *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1642, para. 44 & n.105.

²³⁸ Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

²³⁹ See *New York Auction Waiver Order*, 32 FCC Rcd at 972-73, paras. 14-17; Pennsylvania Petition at 8 (acknowledging that "Pennsylvania does not have the structure or funding of a large, uncommitted broadband appropriation like New York"). New York's deadline for submission of its Phase 3 applications was August 31, 2017. See also New York State, New NY Broadband Program- Phase 3, <https://nysbroadband.ny.gov/new-ny-broadband-program/phase-3> (last visited Sept. 13, 2017).

²⁴⁰ See Pennsylvania Petition at 5-8, 15 (claiming that "[t]he special circumstances arising from Pennsylvania's extensive historic and continuing prospective public/private model for facilitating broadband deployment, which will cover the same territories in advance of the [Connect America Fund] auction, also warrants grant of this request").

²⁴¹ *New York Auction Waiver Order*, 32 FCC Rcd at 974-75, para. 19.

leveraging matching New York support in Connect America Phase II-eligible areas and avoiding overbuilding areas served by New York's program,²⁴² and support would be awarded in a technology-neutral manner using a market-based mechanism consistent with Phase II auction objectives.²⁴³ Such conditions are not present here. For the reasons we already discussed, although Pennsylvania's proposed approach could result in more declined areas in Pennsylvania being served through the Phase II auction, Pennsylvania has not demonstrated that its requested modification would necessarily further our objectives of using the finite Phase II auction budget efficiently or fully explained how its request would result in a more effective federal-state partnership.²⁴⁴ Instead, we conclude that the framework the Commission has adopted for the Phase II auction and the Remote Areas Fund will more effectively balance all of these objectives, while still leading to widespread broadband deployment across Pennsylvania's high-cost areas with complementary state support. Thus, we conclude it would not serve the public interest to grant Pennsylvania a waiver.

IV. ORDER

83. We take this opportunity to amend the Commission's rules to reflect a change made in the *Phase II Auction FNPRM Order* that was not codified at that time due to an oversight. In the *Phase II Auction FNPRM Order*,²⁴⁵ the Commission reconsidered its decision to require bidders in the Above Baseline and Gigabit tiers to offer an unlimited monthly usage allowance.²⁴⁶ On reconsideration, following notice and comment, the Commission decided to require bidders in these two tiers to offer a monthly usage allowance of at least two terabytes per month rather than an unlimited monthly usage allowance.²⁴⁷ This change to the requirements for bidders in those two tiers inadvertently failed to include a conforming change to the applicable regulation in the Code of Federal Regulations. In connection with our consideration of remaining reconsideration issues in the same proceeding, we amend section 54.309 of the Commission's rules to reflect this previous decision.²⁴⁸ Because this amendment to the Commission's rules simply conforms them to the changes made in the earlier *Phase II Auction FNPRM Order*, following notice and opportunity to comment in response to petitions for reconsideration on this question, we find that good cause exists under 5 U.S.C. § 553(b)(3)(B) for dispensing with further notice and further procedures thereon as unnecessary.²⁴⁹

V. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

84. This Order and Order on Reconsideration contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It

²⁴² *Id.* at 975-76, paras. 20-21.

²⁴³ *Id.* at 976, 979-80, paras. 22, 29-30.

²⁴⁴ Pennsylvania Petition at 20-24.

²⁴⁵ *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1651, paras. 71-73.

²⁴⁶ *Phase II Auction Order*, 31 FCC Rcd at 5960, paras.26-27.

²⁴⁷ *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1651, paras. 71-73; see *Petitions for Reconsideration of Action in Rulemaking Proceeding*, WC Docket Nos. 10-90, 14-58 & 14-259, Public Notice, Report No. 3050 (CGB rel. Aug. 12, 2016) (setting pleading cycle for petition filed by Verizon requesting that the Commission reconsider the unlimited usage requirement for the Above Baseline and Gigabit performance tiers); *April 2014 Connect America FNPRM*, 29 FCC Rcd 7051, 7103-05, paras. 149-54 (2014) (seeking comment on usage and latency standards applicable to services supported through competitive bidding).

²⁴⁸ 47 CFR § 54.309(a)(2)(iii) & (iv).

²⁴⁹ Section 553(b)(3)(B) of the Administrative Procedure Act permits agencies to issue rule changes without notice and comment upon a finding that notice and associated procedures are "impracticable, unnecessary, or contrary to the public interest." See 5 U.S.C. § 553(b)(3)(B).

(continued....)

will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

85. The Commission will send a copy of this Order and Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²⁵⁰

C. Final Regulatory Flexibility Act Certification

86. The Regulatory Flexibility Act of 1980, as amended (RFA),²⁵¹ 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.”²⁵² The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”²⁵³ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.²⁵⁴ 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).²⁵⁵

87. This Order and Order on Reconsideration modifies the letter of credit rules adopted by the Commission in the *Phase II Auction Order*.²⁵⁶ This modification does not create any burdens, benefits, or requirements that were not already addressed by the Final Regulatory Flexibility Analysis attached to the *Phase II Auction Order*.²⁵⁷ Therefore, we certify that the requirements of this Order and Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order and Order on Reconsideration including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.²⁵⁸ In addition, the Order and Order on Reconsideration 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.²⁵⁹

²⁵⁰ See 5 U.S.C. § 801(a)(1)(A).

²⁵¹ 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).

²⁵² 5 U.S.C. § 605(b).

²⁵³ 5 U.S.C. § 601(6).

²⁵⁴ 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.”

²⁵⁵ Small Business Act, 15 U.S.C. § 632.

²⁵⁶ *Phase II Auction Order*, 31 FCC Rcd at 5997-98, para. 136.

²⁵⁷ *Phase II Auction Order*, 31 FCC Rcd at 6050-77, paras. 1-83.

²⁵⁸ See 5 U.S.C. § 801(a)(1)(A).

²⁵⁹ See 5 U.S.C. § 605(b).

D. Additional Information

88. *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).

89. *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.

VI. ORDERING CLAUSES

90. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), 403, and 405, and sections 1.1, 1.3, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.3, 1.427, and 1.429, that this Order and Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

91. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 CFR Part 54, IS AMENDED as set forth in Appendix A, and such rule amendment SHALL BE EFFECTIVE thirty (30) days after publication of the rule amendment in the Federal Register, except to the extent they contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act. The rules that contain new or modified information collection requirements subject to PRA review SHALL BECOME EFFECTIVE after the Commission publishes a notice in the Federal Register announcing such approval and the relevant effective date.

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

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

94. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429 the Petition for Clarification or Reconsideration filed by ADTRAN, Inc. on July 5, 2016 is DENIED to the extent described herein.

95. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429 the Petition for Reconsideration filed by Broad Valley Micro Fiber Networks Inc. on July 20, 2016 is GRANTED IN PART AND DENIED IN PART to the extent described herein.

96. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429 the Petition for Reconsideration filed by Crocker Telecommunications, LLC on July 18, 2016 is GRANTED IN PART AND DENIED IN PART to the extent described herein.

97. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429 the Petition for Reconsideration filed by Hughes Network Systems, LLC on April 20, 2017 is DENIED to the extent described herein.

98. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429 the Petition for Reconsideration filed by the National Rural Electric Cooperative Association and the Utilities Technology Council on July 21, 2016 is DISMISSED IN PART AND DENIED IN PART to the extent described herein.

99. IT IS FURTHER ORDERED that, pursuant to sections 1.3 and 1.429 of the Commission's rules, 47 CFR §§ 1.3, 1.429 the Petition for Reconsideration, Modification, or Waiver filed by the Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and

Economic Development on April 19, 2017 is DENIED to the extent described herein.

100. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429 the Petition for Reconsideration filed by Southern Tier Wireless, Inc. on July 20, 2016 is DISMISSED IN PART AND DENIED IN PART to the extent described herein.

101. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429 the Petition for Reconsideration filed by Verizon on August 8, 2016 is DENIED IN PART to the extent described herein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

Appendix A

Final Rules

For the reasons discussed in the Order, the Federal Communications Commission amends 47 CFR part 54 to read as follows:

Part 54- Universal Service

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.309 to revise paragraph (a) to read as follows:

(a) * * *

(2) * * *

(iii) Winning bidders meeting the above-baseline performance tier standards are required to offer broadband service at actual speeds of at least 100 Mbps downstream and 20 Mbps upstream and offer at least 2 terabytes of monthly usage.

(iv) Winning bidders meeting the Gigabit performance tier standards are required to offer broadband service at actual speeds of at least 1 Gigabit per second downstream and 500 Mbps upstream and offer at least 2 terabytes of monthly usage.

* * * * *

3. Amend § 54.315 to revise paragraph (c) to read as follows:

(c) * * *

(1) * * *

(ii) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 60 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

* * * * *