

FCC FACT SHEET*

Universal Service Reform – Mobility Fund

Second Order on Reconsideration – WC Docket No. 10-90; WT Docket No. 10-208

Background: In February 2017, the Commission adopted, in the *Mobility Fund Phase II (MF-II) Report & Order*, rules to move forward with the MF-II auction, which will provide up to \$4.53 billion in high-cost support over 10 years to extend mobile voice and broadband coverage to unserved areas.

The Commission received seven petitions for reconsideration of the *MF-II Report & Order*. In the August 2017 *MF-II Challenge Process Order*, the Commission resolved the petitions for reconsideration to the extent they raised issues related to the MF-II challenge process, but it deferred consideration of the remaining issues. This order addresses those remaining issues.

What the Second Order on Reconsideration Would Do:

- Resolve petitions challenging the Commission’s decisions as follows:
 - Grant requests for clarification that the collocation requirement for MF-II applies to all newly constructed towers;
 - Grant in part and deny in part requests regarding MF-II recipients’ obligation to obtain and maintain a letter of credit (LOC) by modifying LOC requirements to be consistent with those for recipients of subsidies from Connect America Fund Phase II (the fixed broadband counterpart to this mobile broadband program);
 - Deny requests to modify the MF-II budget and disbursement schedule;
 - Deny requests to modify performance metrics, bidding credits, and the treatment of equipment exclusivity agreements, and;
 - Deny requested changes seeking to limit the Universal Service Administrative Corporation’s role in testing recipients’ compliance with MF-II performance metrics, public interest obligations, or other program requirements.

* 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 and WT Docket No. 10-208, 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
Universal Service Reform – Mobility Fund) WT Docket No. 10-208

SECOND ORDER ON RECONSIDERATION*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. In this Second Order on Reconsideration, we address the remaining issues raised by parties in petitions for reconsideration of the Commission’s MF-II Report & Order.1 That order adopted the framework for Mobility Fund Phase II (MF-II) and Tribal Mobility Fund Phase II. These universal service funding mechanisms will provide on-going high-cost support to extend mobile voice and broadband coverage to unserved and underserved areas. Resolving these petitions is another significant step toward holding an MF-II auction in which service providers will compete for support to offer 4G Long Term Evolution (LTE) service in primarily rural areas of the country that lack qualified unsubsidized 4G LTE service.

II. BACKGROUND

2. In February 2017, the Commission adopted rules to move forward expeditiously to an MF-II auction.2 The Commission received seven petitions for reconsideration of the MF-II Report & Order, including two petitions that addressed only issues for the MF-II challenge process,3 two that

* This document has been circulated for tentative consideration by the Commission at its February 22, 2018 open meeting. The issues referenced in this document and the Commission’s ultimate resolutions 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 Commission’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 CFR §§ 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.

1 Connect America Fund; Universal Service Reform – Mobility Fund, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152 (2017) (MF-II Report & Order).

2 Id. at 2243-57.

3 See Comments and Petition for Reconsideration of CTIA, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 26, 2017); Petition for Reconsideration of Panhandle Telephone Cooperative, Inc. and Pine Belt Cellular, Inc., WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 27, 2017); see also Reply to Opposition of Panhandle/Pine Belt, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 26, 2017).

sought reconsideration only of issues outside of the challenge process,⁴ and three that sought reconsideration of challenge process issues as well as other substantive aspects of the decision.⁵ In the August 2017 *MF-II Challenge Process Order*, the Commission resolved the petitions for reconsideration, or the portions thereof, that sought reconsideration of issues related to the MF-II challenge process, but it deferred consideration of the remaining issues concerning the *MF-II Report & Order* until later.⁶ On September 22, 2017, the Rural Broadband Auctions Task Force (Task Force) and the Wireline Competition Bureau and the Wireless Telecommunications Bureau (Bureaus) issued a Public Notice announcing filing instructions, data specifications, and other necessary technical parameters for mobile service providers to file propagation maps and other information with the Commission indicating their current qualified 4G LTE coverage.⁷ Subsequently, pursuant to our direction,⁸ the Task Force and the Bureaus released a Public Notice proposing and seeking comment on the specific parameters and procedures to implement the MF-II challenge process.⁹

III. DISCUSSION

3. We now resolve the remaining issues raised by petitioners.¹⁰ We grant the requests of petitioners, insofar as we amend the rules to apply the collocation requirement for MF-II recipients to “all

⁴ See Petition for Reconsideration of T-Mobile USA, Inc., WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 27, 2017) (T-Mobile Petition); Petition for Reconsideration of Buffalo-Lake Erie Wireless Systems, L.L.C. (Blue Wireless), WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 27, 2017) (Blue Wireless Petition).

⁵ See Rural Wireless Association, Inc. Petition for Reconsideration and/or Clarification, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 12, 2017) (RWA Petition); Petition for Reconsideration and/or Clarification of Blooston Rural Carriers, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 27, 2017) (Blooston Petition); Petition for Reconsideration and Clarification of Rural Wireless Carriers, WC Docket No. 10-90, WT Docket No. 10-208 (filed Apr. 27, 2017) (RWC Petition).

⁶ *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6284, 6285-96, paras. 3 n.13, 4-26 (2017) (*MF-II Order on Reconsideration* or *MF-II Challenge Process Order*). There were no petitions for reconsideration of this decision.

⁷ *Instructions for Filing 4G LTE Coverage Data to Determine Areas Presumptively Eligible for Mobility Fund II Support*, Public Notice, 32 FCC Rcd 7023, 7024-28 (WCB/WTB 2017) (*4G LTE Collection Instructions Public Notice*); see also *Responses to the Mobility Fund Phase II 4G LTE Data Collection Are Due by January 4, 2018*, Public Notice, 32 FCC Rcd 7431, 7431 (WCB/WTB 2017) (*4G LTE Data Collection Deadline Public Notice*). For purposes of MF-II, “qualified 4G LTE service” is defined as mobile wireless service provided using 4G LTE technology with download speeds of at least 5 Mbps at the cell edge with 80 percent probability and a 30 percent cell loading factor. *MF-II Challenge Process Order*, 32 FCC Rcd at 6298-6303, paras. 34-40.

⁸ See *MF-II Challenge Process Order*, 32 FCC Rcd at 6298, para. 33.

⁹ *Comment Sought on Mobility Fund Phase II Challenge Process Procedures and Technical Implementation*, Public Notice, 32 FCC Rcd 7596, 7597-7607, paras. 3-30 (WCB/WTB 2017).

¹⁰ We address herein the petitions or portions thereof, as well as other related pleadings, requesting reconsideration of aspects of the *MF-II Report & Order* that were not resolved during the establishment of the MF-II challenge process. See RWA Petition; RWC Petition; Blooston Petition; T-Mobile Petition; Blue Wireless Petition; Verizon Opposition to Petitions for Consideration, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 16, 2017) (Verizon Opposition); Opposition to Petitions for Reconsideration of RWA, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 16, 2017) (RWA Opposition); RWA Comments in Support of Petitions for Reconsideration, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 16, 2017) (RWA Supporting Comments); Reply to Opposition to Petition for Reconsideration of RWA, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 26, 2017) (RWA Reply); RWC Reply to Opposition, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 26, 2017) (RWC Reply); Reply to Opposition to Petition for Reconsideration of T-Mobile, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 26, 2017) (T-Mobile Reply); Replies to Oppositions to Petitions for Reconsideration of NTCA–The Rural Broadband Association, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 26, 2017) (NTCA Reply); Reply Comments of Competitive Carriers Association, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 26, 2017) (CCA Reply).

newly constructed” towers.¹¹ We affirm our decision to require that MF-II recipients obtain a letter of credit (LOC), but grant the petitions insofar as we modify the LOC requirements to align our MF-II rules with recent changes made in the Connect America Fund Phase II (CAF-II) proceeding.¹² These modifications should provide MF-II support recipients with some additional relief from the costs of maintaining an LOC and alleviate some of the concerns raised by petitioners and commenters.¹³ Additionally, for the reasons explained below, we deny the petitions seeking reconsideration of the Commission’s decisions to: (i) establish an MF-II budget of \$4.53 billion over a term of ten years;¹⁴ (ii) disburse annual support on a monthly basis;¹⁵ (iii) adopt performance metrics for supported networks requiring a median data speed of 10/1 megabits per second (Mbps) and data latency of 100 milliseconds (ms) round trip;¹⁶ (iv) not adopt bidding credits for the auction;¹⁷ and (v) not prevent MF-II support recipients from entering into equipment exclusivity arrangements.¹⁸ We also decline to clarify or limit the role of the Universal Service Administrative Company (USAC) in testing winning bidders’ compliance with MF-II performance metrics, public interest obligations, or other program requirements.¹⁹

A. Tower Collocation

4. First, we clarify that the MF-II collocation rule should require a recipient of MF-II funds to allow for reasonable collocation by other providers of services that meet the technological requirements of MF-II on all towers that the MF-II recipient owns or manages that it “newly constructed” to satisfy MF-II performance obligations in the areas for which it receives support.²⁰ The Commission, in the *MF-II Report & Order*, stated that it was “adopt[ing] the same collocation and voice and data roaming obligations for MF-II winning bidders as [it] adopted for MF-I with certain minor, non-substantive

¹¹ Blooston Petition at 8-9; RWA Petition at 15-17; NTCA Reply at 6-7.

¹² Blue Wireless Petition at 1-5; Blooston Petition at 5-7; CCA Reply at 4-6; NTCA Petition at 4-5; RWA Supporting Comments at 10-12; RWC Petition at 22-23. In addition, we deny requests to: (i) eliminate LOCs for rural carriers (Blooston Petition at 6; RWA Supporting Comments at 11-12); (ii) use the Commission’s forfeiture, spectrum licensing and revocation authority instead of LOCs to require compliance with MF-II (RWC Petition at 22-23); and (iii) add additional deployment milestones and permit post-milestone payments to avoid LOC (Blue Wireless Petition at 1-4). See also *Connect America Fund et al.*, Order on Reconsideration, FCC 18-5 at 26-27, paras. 63-65 (Jan. 30, 2018) (*CAF-II Order on Reconsideration*).

¹³ See Blue Wireless Petition at 1-5; Blooston Petition at 5-7; CCA Reply at 4-6 (seeking reductions in the value of the LOC and greater connections between the value of the LOC and the amount of deployment accomplished). While the amendments adopted herein to the MF-II LOC requirements do address concerns raised by these petitioners, for the reasons stated, the decrease in the required value of an MF-II LOC mirrors the reduction granted in the CAF-II process rather than the specific proposals of the petitioners.

¹⁴ RWC Petition at 9-12; RWA Supporting Comments at 12-13; CCA Reply at 2-4.

¹⁵ RWC Petition at 18-19.

¹⁶ T-Mobile Petition at 1-9. *But see* RWA Opposition at 1-8; NTCA Reply at 3 n.10.

¹⁷ Blooston Petition at 4-5; RWA Supporting Comments at 14-16.

¹⁸ Blooston Petition at 7.

¹⁹ T-Mobile Petition at 9-10; CCA Reply at 7.

²⁰ Blooston Petition at 8-9; RWA Petition at 15-17; NTCA Reply at 6-7. The collocation rule adopted in MF-II used the word “all” to describe the towers to which the rule applies. See *MF-II Report & Order*, 32 FCC Rcd at 2196, para. 102; 47 C.F.R. § 54.1015(f) (“[T]he recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on all towers it owns or manages in the area for which it receives support...”). The rule adopted in MF-I applies only to “newly constructed” towers. See *id.* § 54.1006 (d) (“[T]he recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase I on newly constructed towers that the recipient owns or manages in the area for which it receives support . . .”).

changes.”²¹ However, as Blooston correctly observes, the rule in MF-I required reasonable collocation by other providers of services that met the technological requirements of MF-I on “all newly constructed towers that the recipient owns or manages in the area for which it receives support,” while the language of the rule adopted in the *MF-II Report & Order* applies to “all towers.”²² Similarly, RWA and NTCA note that the language of the MF-II collocation requirement is substantively different from what was adopted for MF-I and proposed for MF-II.²³ We make this clarification in order to promote our goal of ensuring that publicly funded investments can be leveraged by other service providers. Accordingly, consistent with the Commission’s stated intent in the *MF-II Report & Order* to conform the MF-II requirement to the MF-I requirement, we amend the language of section 54.1015(f) to provide that the MF-II collocation requirement applies to “all newly constructed” towers that the MF-II recipient owns or manages in the areas for which it receives support.²⁴

B. Letters of Credit

5. We affirm the Commission’s decision to require an MF-II recipient to obtain an LOC before it begins receiving support disbursements,²⁵ but we modify the Commission’s rules to provide some additional relief from the burden associated with maintaining an LOC. Specifically, we will permit an MF-II recipient to reduce the value of an LOC 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 MF-II recipient has met the 80 percent service milestone for the area(s) covered by the LOC. This modification should alleviate some of the concerns raised by petitioners and commenters²⁶ and aligns our MF-II requirements with recent changes made to the CAF-II requirements.²⁷ We also clarify, consistent with the Commission’s stated intent in the *MF-II Report & Order*, that an MF-II recipient may further reduce its costs by canceling the LOC as soon as USAC, in coordination with the Commission, verifies that the

²¹ *MF-II Report & Order*, 32 FCC Rcd at 2196, para. 102.

²² Blooston Petition at 8-9.

²³ RWA Petition at 15-17; NTCA Reply at 6-7 (arguing that requiring collocation for “all” towers rather than just “newly constructed” towers is not a minor, non-substantive rule change). In the 2014 *CAF Further Notice*, the Commission proposed to adopt the same “newly constructed” language for the MF-II rule as it had adopted for the MF-I rule. See, *Connect America Fund; Universal Service Reform – Mobility Fund*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7184 (Appx. B, proposed Section 54.1016(c)) (2014) (*CAF Further Notice*). In the *MF-II Report & Order*, the Commission also recognized that some commenters cautioned against increasing the obligations further for MF-II. *MF-II Report & Order*, 32 FCC Rcd at 2196, para. 102 (citing PCIA Comments at 2 (“[T]he Commission should not impose additional, specific collocation practices, including a set number of collocation spaces.”)).

²⁴ Any tower collocations will be subject to the terms of the Nationwide Programmatic Agreement. See *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073, (2004); see also 47 CFR § 1.1307(a)(4); *id.* pt. 1, Appx. B.

²⁵ See *MF-II Report & Order*, 32 FCC Rcd at 2216, 2218, 2250, paras. 167, 171-72, Appx. (47 CFR § 54.1016(a)). A similar requirement has been established for CAF-II. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5990, 5991, 5997-98, paras. 119, 122, 135-36 (2016) (*Connect America Phase II Auction Order*).

²⁶ See Blue Wireless Petition at 2 (“The adopted [LOC] reduction is so modest, however, that it does not meaningfully ‘reduce the cost of maintaining a letter of credit.’”); Blooston Petition at 5 (“[LOC’s] costs can be substantial.”); CCA Reply at 5 (“[F]actoring the LOC’s administrative costs into a bid likely will increase unnecessary costs and reduce the amount of funds spent on rural broadband deployment.”); NTCA Reply at 5 (“[T]he costs of complying with the LOC requirement can be extraordinary.”); RWA Supporting Comments at 11 (“[T]he Commission should revisit the modest reduction track implemented for milestone achievements and replace it with something more aggressive.” (internal quotation marks omitted)); RWC Petition at 22 (“[T]he cost to recipients of complying with the LOC requirements is extraordinary.”).

²⁷ *CAF-II Order on Reconsideration* at 26-27, paras. 63-65.

recipient has met the final performance milestone (i.e., we do not require that the LOC be maintained after its purpose is no longer served).²⁸ We deny the petitions for reconsideration to the extent they seek other changes to our LOC requirements.²⁹

6. In the *MF-II Report & Order*, the Commission adopted an LOC requirement for all winning bidders.³⁰ Specifically, before a winning bidder can be authorized to receive MF-II support, it must obtain an irrevocable stand-by LOC(s) from an eligible bank that covers the first year of support for all of the winning bids in the state.³¹ Before a recipient can receive its MF-II support for the coming year, the recipient must modify, renew, or obtain a new LOC to ensure that it is valued at a minimum at the total amount of support that has already been disbursed plus the amount of support that is going to be provided in the next year.³² Once the MF-II recipient has met its 60 percent service milestone, its LOC may be valued at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.³³ Once the MF-II recipient has met its 80 percent service milestone, it may reduce the value of the LOC to 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.³⁴ The LOC must remain open until USAC, in coordination with the Commission, has verified that the MF-II recipient has met its final benchmark: deployment to a minimum of 85 percent of the required coverage area by state and at least 75 percent by each census block group or census tract in a state.³⁵ If an MF-II recipient fails to meet a 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 USAC seeks to recover, either the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter evidencing the failure and declaring a default. USAC will then draw on the LOC(s) to recover 100% of the support that has been disbursed to the ETC for that state.³⁶ The *MF-II Report & Order* provides that if service ceases after the final deployment milestone has been reached and the LOC has been terminated, the Commission will cease payment of ongoing support until service resumes.³⁷ At the time these MF-II rules were adopted, they were consistent with the requirements for CAF-II recipients.³⁸

7. We are convinced by claims that the Commission's existing MF-II LOC requirements may warrant additional relief on reconsideration.³⁹ We continue to conclude that MF-II bidders will take into account the costs associated with program requirements, including an LOC, as they formulate their

²⁸ See *MF-II Report & Order*, 32 FCC Rcd at 2218, para. 172; see 47 CFR § 54.1016(a)(1).

²⁹ See generally Blue Wireless Petition at 1-5; Blooston Petition at 5-7; CCA Reply at 4-6; NTCA Reply at 4-5; RWA Supporting Comments at 10-12; RWC Petition at 22-23.

³⁰ *MF-II Report & Order*, 32 FCC Rcd at 2216, para. 167.

³¹ *Id.* at 2216, 2218, 2219, paras. 167, 171, 174.

³² *Id.* at 2218, para. 171.

³³ 47 CFR § 54.1016(a)(1)(i); *MF-II Report & Order*, 32 FCC Rcd at 2218, para. 172.

³⁴ 47 CFR § 54.1016(a)(1)(ii); *MF-II Report & Order*, 32 FCC Rcd at 2218, para. 172.

³⁵ *MF-II Report & Order*, 32 FCC Rcd at 2218, para. 172; see 47 CFR § 54.1016(a)(1).

³⁶ *MF-II Report & Order*, 32 FCC Rcd at 2230-32, paras. 215-17.

³⁷ *MF-II Report & Order*, 32 FCC Rcd at 2232-33, para. 218.

³⁸ Compare *MF-II Report & Order*, 32 FCC Rcd 2219, 2230, paras. 173, 215, with *Connect America Fund Phase II Auction Order*, 31 FCC Rcd at 5991, 6016-18, paras. 122-23, 189-94, and 47 CFR § 54.315(c)(1).

³⁹ See, e.g., CCA Reply at 5 (citing unnamed CCA members as having calculated that, at current interest rates, the *MF-II Order* LOC requirements could cost nearly 5% of the total ten-year bid value, thereby reducing the funds available for support.); see also RWC Petition at 22-23 & n.61.

bids,⁴⁰ and that many bidders can do so without the consequences alleged by Blooston and NTCA.⁴¹ We nonetheless recognize that the costs associated with maintaining an LOC may pose a greater financial burden on those bidders that lack the resources of larger, more established companies. Such bidders may have to factor relatively higher LOC-related costs into their bids. One purpose of using competitive bidding to select support recipients is that it promotes providing support to those parties that can accomplish the MF-II program goals in the most cost-effective manner.⁴² However, we recognize that the exact cost of any requirement, including obtaining and maintaining an LOC, will affect each prospective bidder in the MF-II auction differently. A bidder's LOC-related costs will likely vary based on the amount of support that it is authorized to receive, and the impact of those costs on the bidder will also vary based on its size and creditworthiness. Thus, we cannot reasonably predict the costs of our LOC requirements for each potential winning bidder and weigh them relative to the benefit to the public of protecting the funds from default.⁴³ The fees associated with maintaining an LOC can range by several percentage points and, when applied to the sizable amounts of support that may be awarded to bidders here, the costs may become substantial over time, particularly for winning bidders that are small businesses and new entrants.⁴⁴

8. Accordingly, consistent with the rule modifications we recently adopted in the *CAF-II Order on Reconsideration*, we modify our LOC requirements to permit an MF-II recipient to reduce the value of an LOC 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 MF-II recipient has met the 80 percent service milestone for the area(s) covered by the LOC.⁴⁵ In the *MF-II Report & Order*, the Commission indicated that it would require MF-II recipients to demonstrate compliance with our coverage requirements by submitting data consistent with the evidence we determined to be necessary in the MF-II challenge process.⁴⁶ Once USAC is able to verify that a recipient's 80 percent service milestone has been met, the recipient will be able to reduce the value of its LOC.

9. By increasing the amount by which an LOC may be reduced after verification that an MF-II recipient has met a significant portion of its performance obligations, we can provide MF-II recipients with a measure of relief from the costs of maintaining an LOC without posing undue risks to the Universal Service Fund. As the Commission stated in the *MF-II Report & Order*, we expect that the risk of default will decrease as an MF-II recipient meets its deployment milestones.⁴⁷ We therefore conclude that the benefits of providing additional relief from some of the costs associated with maintaining an LOC outweigh the risk that we will not be able to recover an additional portion of the

⁴⁰ See *MF-II Report & Order*, 32 FCC Rcd at 2216, para. 167.

⁴¹ Blooston Petition at 6 (“Including such costs in bids artificially inflates the bids of small companies, which hinders their ability to be successful bidders, and conflicts with the Commission’s repeated statements that it seeks to maximize limited MF-II funding.”); NTCA Reply at 5 (“[T]he requirement requires small providers to artificially inflate their bids, which in turn further limits the reach of limited MF-II funding and hinders small providers’ ability to compete and succeed as low bidders.”).

⁴² *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17663, para. 1 (2011) (*USF/ICC Transformation Order* or *FNPRM*).

⁴³ None of the petitioners have quantified or substantiated their arguments by providing actual cost data regarding the letter of credit.

⁴⁴ *CAF-II Order on Reconsideration* at 27, para. 65.

⁴⁵ *Id.*, paras. 63-65.

⁴⁶ *MF-II Report & Order*, 32 FCC Rcd at 2195, para. 100. The Commission further directed the Bureaus to precisely define these requirements in the pre-auction process, *id.*, and to determine more precisely the content and format of the information, including substantiation that MF-II recipients are required to include in their Milestone Reports, *id.* at 2226-27, para. 198.

⁴⁷ *MF-II Report & Order*, 32 FCC Rcd at 2218, para. 172.

support if the recipient is unable to repay the Commission in the event of a default.⁴⁸ Moreover, as we discuss below, an MF-II recipient that is affected by high LOC-related costs may also choose to build out its network more quickly so that its LOC can be terminated sooner. We therefore find it reasonable to grant the petitions for reconsideration, in part, to reduce the burden associated with maintaining an LOC until the final performance benchmark has been met and verified by USAC.

10. We are not, however, persuaded by arguments that we should eliminate the requirement for an MF-II recipient to obtain an LOC because they are unnecessary to protect the public interest.⁴⁹ Our obligation to safeguard the disbursement of universal service support justifies requiring an LOC and outweighs the limited burden incurred by winning bidders.⁵⁰ For this same reason, we are not convinced by the contentions that an MF-II LOC requirement is unnecessary for rural telephone companies based on their history of providing service and using universal service support without default.⁵¹ Our responsibility to protect universal service funds does not diminish based on a support recipient's past performance, the nature of its business, or its size.⁵² We are equally unpersuaded by Blooston's suggestion that because the Commission has not yet had to draw on any LOC, it is unnecessary for us to require one for MF-II.⁵³ To the contrary, we find that Blooston's premise supports our conclusion that an LOC requirement deters defaults and fulfills its intended purpose of protecting the public funds.

11. Similarly, we disagree with RWC's assertion that the Commission should eliminate the LOC requirement and instead ensure the security of program funds by imposing a monetary forfeiture on the defaulting MF-II recipient or using the threat of revocation or non-renewal of its licenses as leverage to demand repayment of the funds.⁵⁴ The exercise of our forfeiture, revocation, and licensing authority requires additional procedures and standards that are not well suited to the prompt action required in enforcing our milestones because, among other reasons, such authority does not effectively address the regulatory purpose behind our adoption of the LOC—making the Universal Service Fund whole if a support recipient failed to fulfill its MF-II performance requirements.⁵⁵ Without an LOC, the Commission has no security to protect itself against the risks of default. As RWC acknowledges, an LOC “provid[es] the Commission the ability to retrieve program funds more quickly than it could if it levied a

⁴⁸ *CAF-II Order on Reconsideration* at 26-27, paras. 63-65.

⁴⁹ See Blue Wireless Petition at 1-3; Blooston Petition at 5-6; CCA Reply at 4-6; NTCA Reply at 4-5; RWA Supporting Comments at 10-12; RWC Petition at 22-23.

⁵⁰ *MF-II Report & Order*, 32 FCC Rcd at 2216-17, 2219, paras. 167-69, 173.

⁵¹ Blooston Petition at 6; RWA Supporting Comments at 11; NTCA Reply at 5.

⁵² The Commission considered and rejected comments advocating for an exception from LOC requirements for rural telephone companies. *MF-II Report & Order*, 32 FCC Rcd at 2216, para. 168 & n.398, 171; *id.* at 2219, para. 173 (“[W]e decline to adopt suggestions from commenters that we remove the LOC requirement entirely . . . for established rural carriers.”).

⁵³ Blooston Petition at 6; see also NTCA Reply at 5; RWC Petition at 22.

⁵⁴ RWC Petition at 23. The purpose of the LOC is to ensure the security of the universal service funds. Although we acknowledge that MF-II recipients may be subject to other sanctions for auction defaults, see *MF-II Report & Order*, 32 FCC Rcd at 2228-30, 2234, paras. 206-12, 221, nothing in our discussion of RWC's arguments diminishes the potential applicability of those consequences.

⁵⁵ For example, as a practical matter, the imposition of a forfeiture provides no guarantee of its payment. There are many instances where the Commission is required to bring a de novo recovery action to enforce a forfeiture, and even if there are funds available to pay the forfeiture, such funds must be remitted to the U.S. Treasury, as opposed to the Universal Service Fund. See 47 U.S.C. § 504(a). Forfeitures are also subject to monetary limits that could preclude the goal of making the Universal Service Fund whole. See *id.* § 503(b)(2)(A); 47 CFR § 1.80. Similarly, RWC does not demonstrate how use of our revocation and/or conditional licensing authority provides a clear path toward making the Universal Service Fund whole.

forfeiture . . . or demanded repayment with the threat of license revocation or non-renewal.”⁵⁶ Accordingly, we affirm the Commission’s prior conclusion that the LOC requirement is necessary to ensure the recovery of a significant amount of MF-II support should such a need arise, and we find that, on balance, our commitment to fiscal responsibility supports the limited burden faced by support recipients.⁵⁷

12. We also decline to grant requests in the petitions for reconsideration to take further steps to modify our LOC requirements. In the *MF-II Report & Order*, the Commission already took a number of steps to help lessen LOC costs, including expanding the number and types of banks eligible to issue LOCs so that winning bidders can obtain LOCs from banks with which they have existing relationships.⁵⁸ Although some entities may still find that participating in the MF-II auction is cost-prohibitive or that they are less likely to place winning bids, we are not convinced that we should jeopardize our ability to recover a significant amount of support if such entities were to participate and later become unable to meet the MF-II performance milestone obligations and to repay the Commission for their compliance gap. While we have not implemented any of the specific proposals of Blue Wireless, Blooston, or CCA, we conclude that, on balance, the relief provided above should adequately address the nature of the concerns they raise.⁵⁹ The approaches suggested by petitioners’ would add greater complexity and testing expenses for support recipients and would impose increased verification burdens on USAC without the corresponding benefit of significantly speeding the completion of MF-II performance requirements.⁶⁰ Finally, we decline to adopt the request by Blue Wireless to accelerate the service milestones, eliminate the LOC requirement, and pay a recipient only after compliance with a milestone has been verified. Such an approach, like the other suggestions we reject above, would require us to disburse universal service funds without being able to recoup support from a recipient if the recipient subsequently defaulted on its remaining performance requirements.⁶¹

13. In reviewing arguments regarding the costs of maintaining an LOC, we also emphasize that the Commission’s LOC requirements already include an incentive for a recipient to meet its final performance milestone as soon as possible, because once it has been verified that a support recipient has met its final performance milestone, the recipient can further reduce costs by no longer maintaining that LOC.⁶² In this regard, we note that the Commission provided in the *MF-II Report & Order* that the LOC must “remain in place until USAC, in conjunction with the Commission, verifies that a[n] MF-II winning

⁵⁶ RWC Petition at 23.

⁵⁷ See *MF-II Report & Order*, 32 FCC Rcd at 2216, 2219, paras. 167, 173.

⁵⁸ *MF-II Report & Order*, 32 FCC Rcd at 2219-22, paras. 174-81.

⁵⁹ Blue Wireless Petition at 1-5 (advocating for complete discharge of all LOC amounts covering previously disbursed support after each deployment milestone in conjunction with a new 24-month deployment milestone); Blooston Petition at 6-7 (arguing that “[t]he Commission could easily line up the reductions with the actual benchmarks – 10% off at 40%, 20% off at 60%, and 30% off at 80% – to provide greater flexibility for participants”); CCA Reply at 6 (seeking that “the relevant LOC should (1) be proportionate to the amount of support received only; and/or (2) be permitted to be discharged after certifying to meeting the construction buildout”).

⁶⁰ Blue Wireless Petition at 1-5; Blooston Petition at 6-7; CCA Reply at 4-6.

⁶¹ Blue Wireless Petition at 5 (advocating for an optional alternative process by which participants do not receive any funding until proof of completion of each deployment milestone, after which they receive the portion of funding tied to that milestone). We note that even if we were to interpret Blue Wireless’s proposal to refrain from providing any disbursements of MF-II support until a recipient completes its final deployment requirements, only the best-funded service providers would be able to take advantage of such an option, and we do not see a benefit in providing an incentive for such a limited pool of service providers.

⁶² See *MF-II Report & Order*, 32 FCC Rcd at 2218, para. 172; 47 CFR § 54.1016(a)(1); see also *Connect America Fund Phase II Auction Order*, 31 FCC Rcd at 5967, 5991, paras. 50, 123.

bidder has met its minimum coverage and service requirements at the end of the six-year milestone.”⁶³ We interpret this language to allow the MF-II recipient to further reduce its costs by no longer maintaining the LOC as soon as USAC, in coordination with the Commission, verifies that the recipient has met the final performance milestone (i.e., we do not require that the LOC be maintained after its purpose is no longer served).⁶⁴ We anticipate that this clarification, together with the rule modification we adopt above, should provide MF-II recipients with additional relief from the burden of maintaining an LOC.

C. Mobility Fund Phase II Budget

14. We affirm the MF-II total budget amount of \$4.53 billion that the Commission adopted in the *MF-II Report & Order*,⁶⁵ and we deny RWC’s petition seeking to increase it.⁶⁶ RWC and the two other parties addressing the budget contend that this amount is insufficient to achieve ubiquitous availability of mobile services and reasonable comparability of service between urban and rural areas.⁶⁷ They also argue that the budget was not supported by “actual carrier cost data” related to coverage needs.⁶⁸ The Commission established the amount of the MF-II budget by starting with the \$483 million of current annual legacy high-cost support received by wireless providers, excluding Alaska.⁶⁹ It multiplied that amount over the ten-year term of MF-II and then subtracted \$300 million, representing the estimated amount needed for the phase-down of competitive eligible telecommunications carrier (CETC) support in areas already fully covered with unsubsidized 4G LTE, for a total budget of \$4.53 billion over ten years.⁷⁰ The Commission reasoned that basing its budget upon this amount best balanced its goal of preserving and advancing mobile broadband service with its obligation to be fiscally responsible with limited universal service funds.⁷¹

⁶³ *MF-II Report & Order*, 32 FCC Rcd at 2218, para. 170; *accord id.* at 2219, para. 172 n.415 (“In any case, the MF-II LOC requirements allow a support recipient to relinquish its LOC upon meeting its final benchmark for deployment at year six, alleviating concerns that recipients would be required to maintain an LOC long after construction.”).

⁶⁴ This interpretation is consistent with the codified rules and other statements in the *MF-II Report & Order*. See 47 CFR § 54.1016(a)(1) (requiring MF-II recipients to maintain an LOC “until the Universal Service Administrative Company has verified that the recipient met the final service milestone as described in § 54.1016(d) of this chapter”); *MF-II Report & Order*, 32 FCC Rcd at 2218, para. 172 (“After USAC, in coordination with the Commission, has determined that the recipient has met its final benchmark for deployment to a minimum of 85 percent of the required coverage area by state and at least 75 percent by each census block group or census tract in a state included in the LOC, the recipient may relinquish its LOC.”).

⁶⁵ *MF-II Report & Order*, 32 FCC Rcd at 2160, para. 23.

⁶⁶ RWC Petition at 9-12; *see also* RWA Supporting Comments at 12-13; CCA Reply at 2-4.

⁶⁷ RWC Petition at 10-12; RWA Supporting Comments at 12-13; CCA Reply at 2-4.

⁶⁸ RWA Supporting Comments at 13; *see also* RWC Petition at 11-12; CCA Reply at 3.

⁶⁹ *MF-II Report & Order*, 32 FCC Rcd at 2160, para. 23.

⁷⁰ *Id.*

⁷¹ *Id.* at 2157, 2160-62, 2163, paras. 15, 23-25, 29; *see also* *USF/ICC Transformation Order*, 26 FCC Rcd at 17682-83, 17711, paras. 57, 124. Since the inception of the Mobility Fund, the Commission first recognized that, in many instances, CETC support was being misallocated to multiple wireless carriers in the same geographic area and then decided, consistent with its general reforms of universal service, to redirect and distribute the support in a more targeted and cost-effective manner. *USF/ICC Transformation Order*, 26 FCC Rcd at 17824-25, para. 495; *see also* *CAF Further Notice*, 29 FCC Rcd at 7126, para. 236 (citing *USF/ICC Transformation Order* at 17772-73, para. 298 (“The Commission also made clear the importance of ensuring that universal service funding that furthers this goal be ‘cost-effective and targeted to areas that require public funding to receive the benefits of mobility.’”)).

15. We are not persuaded that we should reconsider that decision and base the MF-II budget on carriers' projected costs for deployment as some parties advocate.⁷² Phase II of the Mobility Fund is a considerable departure from the prior method of distributing CETC funding, and we anticipate that a \$4.53 billion budget, distributed in a more efficient and targeted manner, will lead to significant expansion and improvement in the provision of mobile voice and broadband services to areas that would otherwise be underserved or unserved without support. After the Commission has the opportunity to evaluate the impact of the MF-II auction, it can determine whether additional funding (and if so, how much) is needed. Furthermore, while we believe that the total budget of \$4.53 billion will be sufficient to address a more targeted set of eligible areas, we reiterate that MF-II is only one component of our broader universal reform efforts,⁷³ and we need not wait until the end of the MF-II support term to determine if additional funding is necessary.⁷⁴

16. Moreover, the proposal to base the MF-II budget on carriers' projected costs for providing service to all census blocks throughout the U.S. unserved by 4G LTE fails to address the Commission's long-standing commitment to fiscal responsibility and would be inconsistent with extensive 4G LTE deployment through private investment in recent years.⁷⁵ As a responsible steward of the Universal Service Fund, the Commission adopted a budget that reflected its priorities in allocating finite funds to areas of greatest need to maintain and expand critical mobile voice and broadband services.⁷⁶ To increase the size of the MF-II budget significantly above the amount of legacy support currently provided to mobile CETCs would improperly ignore the burden on those paying for the fund, thereby abandoning one of the main concerns the Commission sought to address through universal service reform.⁷⁷ Indeed, if the Commission were to adopt RWC's proposal, consumers and businesses would shoulder the burden of potentially increasing the MF-II budget by tens of billions of dollars.⁷⁸ This

⁷² RWC Petition at 10-12; RWA Supporting Comments at 13; CCA Reply at 3.

⁷³ To the extent that any areas remain unserved after the MF-II auction, we can address coverage gaps through the Remote Areas Fund. See *MF-II Report & Order*, 32 FCC Rcd at 2207, para. 135; *Connect America Fund Phase II Auction Order*, 31 FCC Rcd at 6018-20, paras. 196-204 (recognizing that all CAF-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); *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15674, para. 81 (2014) (*December 2014 Connect America Order*) (noting that "any areas left unserved after the [CAF-II] competitive bidding process will be addressed through the Remote Areas Fund"); *USF/ICC Transformation Order*, 26 FCC Rcd at 17837-39, paras. 533-38 (establishing Remote Areas Fund to provide support for extremely high-cost areas).

⁷⁴ *MF-II Report & Order*, 32 FCC Rcd at 2160-62, paras. 24-25. We also disagree with RWC's assertion that such a statement is "no consolation for rural customers." RWC Petition at 12. Since a 2016 analysis by the Wireless Telecommunications Bureau suggests that conservatively three-quarters of support currently distributed to mobile providers is being directed to areas where it is not needed, we anticipate that this funding – distributed through the more efficient mechanism of competitive bidding and redirected to areas that would not be served without subsidy – will make a considerable impact in advancing mobile broadband coverage in underserved and unserved areas. *MF-II Report & Order*, 32 FCC Rcd at 2156, 2160, paras. 10, 23 (citing FCC, Wireless Telecommunications Bureau, *Working Toward Mobility Fund II: Mobile Broadband Coverage Data and Analysis* (2016) at 15, 16, 25, para. 28, Tables 3-i, 4b, https://apps.fcc.gov/edocs_public/attachmatch/DOC-341539A1.pdf) (*Working Toward Mobility Fund II*).

⁷⁵ See *MF-II Report & Order*, 32 FCC Rcd at 2156-57, 2159, 2160-62, 2163-64, paras. 13-15, 19, 23-25, 29-30; *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, 17682-83, paras. 11, 57.

⁷⁶ *MF-II Report & Order*, 32 FCC Rcd at 2161-62, para. 25.

⁷⁷ *MF-II Report & Order*, 32 FCC Rcd at 2157, 2159, 2160-62, 2167-68, 2186, paras. 15, 19, 24-25, 38, 81; *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, 17682-83, paras. 11, 57.

⁷⁸ See RWC Petition at 10-11 (claiming that the on-going costs for operating and maintaining networks in rural areas would be approximately five times the amount budgeted for MF-II); RWA Supporting Comments at 12-13; CCA Reply at 2-4. These parties cite to a cost study commissioned by one of RWC's members that estimates that to achieve MF-II's service goals will require the construction of approximately 37,000 new cellular towers, at a cost of \$12.5 billion upfront, and \$2.13 billion in annual maintenance and operation expenses, for a total of \$33.8 billion

increase would not be consistent with the Commission's stated intention to limit universal service expenditures in light of extensive 4G LTE deployment in recent years.⁷⁹

17. Recognizing that the Universal Service Fund is limited, the Commission has consistently determined the amount of the MF-II budget by starting with the amount of existing CETC support, subtracting the support going to areas where support is not needed, and redirecting that amount to the areas in need.⁸⁰ By weighing the need to distribute support to areas that would otherwise be unserved against the burden that consumers and businesses must bear by contributing to the Universal Service Fund, the Commission has demonstrated a commitment to fiscal responsibility while acknowledging that its efforts are needed to supplement private investment. Taking this type of balanced approach has been previously upheld by the Tenth Circuit Court of Appeals, which noted that, in challenging the sufficiency of the MF-II budget, the petitioners in *In re FCC 11-161* had failed to discredit (i) the Commission's reliance on its finding that then-current CETC funding was being misallocated or (ii) the Commission's predictive judgment that redirecting those funds would be sufficient to sustain and expand mobile broadband service.⁸¹ In the *MF-II Report & Order*, the Commission similarly relied on staff analysis of data that continued to reveal that current mobile CETC funds remain misallocated,⁸² and it again exercised its predictive judgment in determining that an MF-II budget of \$4.53 billion, when distributed cost effectively, should "make meaningful progress in eliminating the lingering coverage gaps."⁸³ The petitioners have failed to convince us that this decision to apply a balanced approach in setting the MF-II budget is in error. We continue to maintain that using the current level of mobile CETC support, minus the phase-down amount needed for areas where support is not needed, and redirecting funding to areas unserved by qualified 4G LTE will provide a significant improvement in mobile coverage while not increasing the burden on those contributing to universal service funding.

18. For similar reasons, we further conclude that the claim that the amount of the MF-II budget is not supported by data related to coverage needs is equally flawed.⁸⁴ While it is true that, for the reasons explained above, the Commission did not base the amount of its MF-II budget upon carrier cost deployment data, it did use data regarding the provision of service to eligible areas when establishing the

over ten years of MF-II. RWC Petition at 10-11 (citing *Ex Parte* Letter from David LaFuria, Counsel for U.S. Cellular, to Marlene H. Dortch, Secretary, FCC, WC Docket 10-90, et al. (filed Feb. 17, 2017), Enclosure, CostQuest Associates, "Cost Study for 4G Unserved Areas" (Feb. 15, 2017)); RWA Supporting Comments at 13; CCA Reply at 3. This study, however, included Alaska, which is not part of MF-II.

⁷⁹ *MF-II Report & Order*, 32 FCC Rcd at 2156-57, paras. 13-15.

⁸⁰ *MF-II Report & Order*, 32 FCC Rcd at 2156-57, 2161-62, 2173-74, 2186-88, paras. 14-15, 24-25, 51-54, 81-83; see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17824-25, paras. 494-96.

⁸¹ *In re FCC 11-161*, 753 F.3d 1015, 1098-1100 (10th Cir. 2014); see also *Qwest Corporation v. FCC*, 258 F.3d 1191, 1200 (5th Cir. 2001) (holding that the FCC may exercise its discretion to balance competing universal service principles); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2001) (finding that excessive funding in the universal service context may itself violate the sufficiency requirement, as it results in higher rates and thus fewer customers able to afford it); *Qwest Commc'ns Int'l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005); *Rural Cellular Ass'n v. FCC*, 588 F.3d 1095, 1102-03 (D.C. Cir. 2009) (noting that the FCC has broad discretion when balancing competing universal service principles, such as advancing universal service balanced against the principle of affordability for consumers). In adopting the budget in the *USF/ICC Transformation Order*, the Commission noted that "establishing a [Connect America Fund] budget ensures that individual consumers will not pay more in contributions due to the reforms" adopted. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17710, para. 124. The Commission also noted that were the Connect America Fund to "significantly raise the end-user cost of services, it could undermine [the Commission's] broader policy objectives to promote broadband and mobile deployment and adoption." See *id.*

⁸² *MF-II Report & Order*, 32 FCC Rcd at 2156, 2160, paras. 10, 23.

⁸³ *Id.* at 2161-62, para. 25.

⁸⁴ RWC Petition at 11-12; RWA Supporting Comments at 13; CCA Reply at 3.

budget. Specifically, the Commission relied on a 2016 analysis by the Wireless Telecommunications Bureau (Wireless Bureau) of mobile broadband providers, which revealed that, conservatively, three quarters of support currently distributed to mobile providers is being directed to areas where it is not needed.⁸⁵ Moreover, the Wireless Bureau's analysis showed that, as of 2016, 1.4 million people in the U.S. have no LTE coverage and another 1.7 million live in areas where LTE coverage is provided only on a subsidized basis, so that 3.1 million people (or approximately 1 percent of the U.S. population) live in areas with no LTE or only subsidized LTE.⁸⁶ Thus, staff analysis of data regarding the provision of service revealed that, despite extensive private investment spurring 4G LTE deployment generally, certain areas remain unserved without government subsidies, which the Commission took into consideration when it chose to reallocate current CETC support and derive greater coverage from the limited amount of funding.

19. In addition, to ensure that the MF-II support is directed specifically to areas that lack unsubsidized qualifying 4G LTE coverage, we have adopted a challenge process that is administratively efficient and fiscally responsible, and will enable us to resolve eligible area disputes quickly and expeditiously, so that limited funds are focused on the areas that need it the most.⁸⁷ As part of the challenge process, we have also undertaken a new, one-time collection of standardized, up-to-date 4G LTE coverage data from mobile wireless providers.⁸⁸ These actions, taken together with the use of competitive bidding to distribute support, will focus MF-II funds on areas that lack unsubsidized qualified 4G LTE service, thereby providing additional funds for those targeted areas that warrant such funding. These actions also will ensure the budget is used to minimize service disparities between rural and urban areas, while continuing our obligation to be a fiscally responsible steward of universal service funding.⁸⁹ Therefore, we decline to revise the MF-II budget at this time.⁹⁰

D. Monthly Disbursement Schedule

20. We decline to alter the Commission's monthly disbursement schedule for MF-II.⁹¹ The Commission, in deciding to provide support in monthly disbursements as it had adopted for the CAF program, including CAF-II,⁹² reasoned that such an approach would provide MF-II recipients with reliable and predictable support payments that conform to a variety of business cycles.⁹³ We are not

⁸⁵ *MF-II Report & Order*, 32 FCC Rcd at 2156, 2160, paras. 10, 23 (citing *Working Toward Mobility Fund II* at 15, 16, 25, para. 28, Tables 3-i, 4b).

⁸⁶ *Working Toward Mobility Fund II* at 15.

⁸⁷ *MF-II Challenge Process Order*, 32 FCC Rcd at 6282-83, para. 1.

⁸⁸ *MF-II Challenge Process Order*, 32 FCC Rcd at 6287-88, 6296, 6298-6303, paras. 10-11, 28, 34-40; *4G LTE Data Collection Instructions Public Notice*, 32 FCC Rcd at 7024-28; see generally *Comment Sought on Mobility Fund Phase II Challenge Process Procedures and Technical Implementation*, Public Notice, 32 FCC Rcd 7596 (WCB/WTB 2017).

⁸⁹ *MF-II Report & Order*, 32 FCC Rcd at 2161-62, para. 25. Moreover, the 10/1 Mbps minimum baseline performance requirement for a MF-II recipient's network will help "assure that service in eligible areas is reasonably comparable to urban offerings in the future." *MF-II Challenge Process Order*, 32 FCC Rcd at 6291-92, para. 17.

⁹⁰ Moreover, using different types of data for calculating the MF-II budget would likely cause considerable delay in starting the MF-II auction and disbursing needed support to underserved and unserved areas.

⁹¹ RWC Petition at 18-19; see also CCA Reply at 6-7; RWA Supporting Comments at 14.

⁹² *Connect America Phase II Auction Order*, 31 FCC Rcd. at 5967, para. 50.

⁹³ *MF-II Report & Order*, 32 FCC Rcd at 2223-24, paras. 186-87. The Commission also noted that the record supported monthly disbursements. *Id.* at 2224, para. 187 (citing Blooston *Further Inquiry Public Notice* Comments at 13 ("[M]onthly disbursements are consistent with the business operations and cash flow needs of mobile broadband carriers."); T-Mobile Feb. 2017 *Ex Parte* Letter at 3 (agreeing that support should be disbursed monthly)).

persuaded that, instead of monthly disbursements of MF-II support to winning bidders, the program should provide larger installment payments early in the construction process that are more closely matched to some providers' expected outlays.⁹⁴ Although the Commission recognized that some MF-II support recipients might incur higher up-front project costs, it also observed that the timing of project expenses varies.⁹⁵ Thus, it is administratively burdensome, if not impossible, for the Commission, USAC, and the winning bidders to try to match payments to expenses in a manner that would synchronize precisely with the budgetary needs of all bidders.⁹⁶ Further, the Commission observed that, in Mobility Fund Phase I (MF-I), even with support payments based on deployment milestones, disbursements were not tied to the timing of expenditures,⁹⁷ as petitioners request. A shift to a front-loaded disbursement mechanism or a cost reimbursement process, as requested by petitioners, would place undue strains on the universal service budget, and would thereby undermine the ability of the Commission to ensure continued program compliance over the entire 10-year term.⁹⁸ We note that the Commission also purposefully aligned its disbursement schedule with the schedule adopted for CAF-II, which established regular and predictable monthly payments that would not exceed the budget in any one year of the term.⁹⁹ We believe that this approach best balances the burdens on the Commission and USAC with the budgetary needs of recipients.

E. Minimum Baseline Performance Requirements for Data Speeds and Latency

21. We also decline to reconsider the minimum baseline performance requirements for recipients of MF-II funding.¹⁰⁰ In the *MF-II Report & Order*, the Commission decided that a recipient of MF-II support must provide a minimum level of service with a median data speed of 10 Mbps download speed or greater and 1 Mbps upload speed or greater, with at least 90 percent of the required download speed measurements being not less than a certain threshold speed to be specified as part of the pre-auction process.¹⁰¹ In addition, an MF-II support recipient must provide reports of speed and latency demonstrating that at least 90 percent of the required measurements have a data latency of 100 milliseconds (ms) or less round trip.¹⁰² The Commission determined that recipients of MF-II support must provide service that meets the minimum baseline performance requirements of 4G LTE or better,¹⁰³ and concluded that these requirements will ensure that finite universal service funds are used efficiently to

⁹⁴ RWC Petition at 18-19; CCA Reply at 6-7; RWA Supporting Comments at 14.

⁹⁵ *MF-II Report & Order*, 32 FCC Rcd at 2224, paras. 187-88.

⁹⁶ *Id.* at 2224, para. 188.

⁹⁷ *Id.*

⁹⁸ See *Connect America Phase II Auction Order*, 31 FCC Rcd at 5967, para. 50. Moreover, a front-loaded disbursement mechanism could result in burdensome reporting requirements to ensure that recipients' cost-based payment schedules are justified.

⁹⁹ See *MF-II Report & Order*, 32 FCC Rcd at 2223-24, paras. 186-88 & n.463.

¹⁰⁰ T-Mobile "urges the Commission to reconsider the speed and latency thresholds adopted in the [*MF-II Report & Order*], which are out of sync with the realities of providing mobile service in rural and hard-to-serve areas." T-Mobile Petition at 2. Specifically, T-Mobile argues that "the Commission should revise the speed requirement . . . to a more prevalent threshold of 5/1 [Mbps], with at least 90 percent of the required measurements at 0.5 Mbps downlink and 0.15 Mbps uplink . . . [and] revise the latency standard where 90% of measurements are equal or superior to 220 milliseconds." *Id.*

¹⁰¹ *MF-II Report & Order*, 32 FCC Rcd at 2189, para. 87. The Commission determined that at least 90 percent of the required data speed measurements must not be less than a certain threshold speed, to be defined more precisely during the pre-auction process. *Id.*; 47 CFR § 54.1015(a)(1). We direct the Bureaus to seek comment on and establish this threshold in subsequent public notices.

¹⁰² *MF-II Report & Order*, 32 FCC Rcd at 2189, para. 87. Support recipients also must offer at least one service plan that includes a data allowance comparable to mid-level service plans offered by nationwide providers. *Id.*

¹⁰³ *Id.* at 2188, para. 86.

provide rural consumers access to robust mobile broadband service at speeds reasonably comparable to the 4G LTE service being offered in urban areas.¹⁰⁴

22. We are not persuaded that the minimum baseline performance requirement for median data speeds should be reduced to 5/1 Mbps, as T-Mobile urges. The Commission seeks to ensure that the performance of broadband service in rural and high-cost areas is reasonably comparable to that in urban areas,¹⁰⁵ and the Commission's own analysis at the time the *MF-II Report & Order* was adopted indicated that customers of nationwide carriers were receiving data at median speeds of around 10/1 Mbps or faster.¹⁰⁶ Furthermore, in our more recent *MF-II Order on Reconsideration*, we explained that, in contrast to the 5 Mbps eligibility benchmark in the challenge process, which serves to target support where it is currently needed most, the 10 Mbps minimum baseline performance requirement "assure[s] that service in eligible areas is reasonably comparable to urban offerings *in the future*."¹⁰⁷ This forward-looking approach is consistent with past Commission decisions in the universal service context¹⁰⁸ and recognizes that consumer demand for faster mobile wireless services is growing.¹⁰⁹ Moreover, MF-II funding provides on-going, long-term support over a 10-year period, and reducing the performance requirement to a 5 Mbps download speed increases the risk of directing funds to areas that are already receiving download speeds just below the 5 Mbps eligibility threshold because such areas could require very little investment to meet the lowered performance requirement and would, accordingly, be more competitive at auction. Awarding funds to such areas increases the risk of only marginally benefiting consumers in those areas by not significantly improving the status quo download speeds for a decade. Further, a lowered performance requirement would reduce the final performance milestone for median data speeds in all areas, thereby increasing the likelihood that those areas will not receive service that is reasonably

¹⁰⁴ *Id.* at 2189, para. 86; *see also id.* at 2157, para. 15 (reaffirming the Commission's commitment to "minimizing the overall burden of universal service contributions on consumers and businesses by expending the finite funds we have available in the most efficient and cost effective manner"); 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including . . . those in rural, insular, and high cost areas, should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.").

¹⁰⁵ *See* 47 U.S.C. § 254(b)(3).

¹⁰⁶ *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Nineteenth Report, 31 FCC Rcd 10534, 10610-14, Tables IV.B.1-6 (WTB 2016). Subsequently, the Commission adopted the *20th Mobile Competition Report*, which shows that customers of nationwide carriers are currently receiving data at median speeds of around 10/3 Mbps or faster. *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Twentieth Report, 32 FCC Rcd 8968, 9035-37, 9054-55, Tables III.E.1-3, Appx III, Tables III.E.i-ii, iv (2017) (*20th Mobile Competition Report*).

¹⁰⁷ *MF-II Order on Reconsideration*, 32 FCC Rcd at 6291, para. 17 (emphasis added); *see also* RWA Opposition at 3-7 (arguing that performance requirements should be forward-looking and that a 5 Mbps standard does not meet the needs of most consumers). *But see* T-Mobile Reply at 3-4 (contending that a forward-looking approach is inconsistent with the goal of MF-II to support the highest level of service available today).

¹⁰⁸ *See, e.g., Connect America Fund et al.*, Report and Order, 29 FCC Rcd 15644, 15655, para. 29 (2014) (concluding that 10 Mbps should not be the end goal for CAF Phase II support recipients) (*December 2014 Connect America Order*); *USF/ICC Transformation Order*, 26 FCC Rcd at 17673, paras. 23-24 (adopting a "forward-looking broadband cost model and competitive bidding" for CAF-II to efficiently subsidize "robust, scalable broadband in high-cost areas").

¹⁰⁹ *See 20th Mobile Competition Report*, 32 FCC Rcd at 8972, para. 5; *December 2014 Connect America Order*, 29 FCC Rcd at 15655, para. 29 ("Given the historical and anticipated trajectory of broadband speeds, we anticipate that consumers will increasingly demand greater upstream speeds as well as downstream speeds."). The 10/1 Mbps standard the Commission adopted is forward-looking and is particularly important in light of the current pace of the market and given that the performance metrics will not increase over the 10-year term of MF-II support. *See MF-II Report & Order*, 32 FCC Rcd at 2191-92, para. 92.

comparable to urban areas by the end of the support term, despite the distribution of potentially significant MF-II support. We therefore conclude that reducing the performance benchmark to a median data speed of only 5/1 Mbps would risk relegating rural areas with the greatest need to a lower standard of service that is not comparable to urban LTE service.¹¹⁰

23. Similarly, with respect to latency, the Commission has noted that latency is important for a variety of real-time, interactive applications, including Voice over Internet Protocol (VoIP), video calling, and distance learning, which “may be effectively unusable over high latency connections, regardless of the download/upload speeds being offered.”¹¹¹ Contrary to T-Mobile’s assertion that the Commission failed to account for the inherent differences between wireless and wireline technologies in adopting the 100 ms latency standard,¹¹² the Commission established the performance metrics, including latency, to ensure reasonably comparable service.¹¹³ According to T-Mobile’s own data analysis, the majority (approximately 75 percent) of existing networks already meet the 100 ms standard with 90 percent probability in Metropolitan Statistical Areas (MSAs).¹¹⁴ Further, technological improvements, including newly available 600 MHz spectrum, will likely enable more carriers to exceed this performance requirement in the near future.¹¹⁵ Thus, reducing the performance benchmark for data latency to 220 ms would risk relegating rural areas to a lower standard of service that is not comparable to urban LTE service, which includes support for advanced mobile applications. Accordingly, in light of the statutory mandate with respect to reasonably comparable service, we affirm that the minimum baseline performance requirement for data latency is that at least 90 percent of all required measurements must be at or below 100 ms round trip.¹¹⁶

¹¹⁰ See *MF-II Report & Order*, 32 FCC Rcd at 2188-89, para. 86 (adopting the 4G LTE standard to “ensure that we do not relegate rural areas to substandard service that is not comparable to urban LTE service, and that the supported service is technologically capable of supporting roaming on the industry LTE standard, including the networks of the four nationwide mobile wireless service providers”). For these same reasons, we reject T-Mobile’s contention that the current benchmark will force bidders to “overdesign” their networks, leading to increased bid prices and significantly less new coverage. See T-Mobile Petition at 4. To the extent that bidders invest in more robust, evolving infrastructure, this outcome is consistent with the Commission’s forward-looking approach to ensure reasonably comparable service in rural, insular, and high cost areas, as described above. See *December 2014 Connect America Order*, 29 FCC Rcd at 15650, para. 18 (“We encourage recipients of funding to deploy to the extent possible future proof infrastructure that will be capable of meeting evolving broadband performance obligations over the longer term. That will ensure that our policies will continue to support an evolving level of universal service in the future.”).

¹¹¹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, 2016 Broadband Progress Report, 31 FCC Rcd 699, 725, para. 62 (2016).

¹¹² See T-Mobile Petition at 7. *But see* RWA Opposition at 8 (“A network on which 90% of latency measurements equal 220 ms would be an LTE network in name only, and would not support the Commission’s goal of 4G LTE deployment.”).

¹¹³ See *MF-II Report & Order*, 32 FCC Rcd at 2189, para. 86 (“Our standards for supported service should ensure that our finite universal service funds are used efficiently to provide consumers access to robust mobile broadband service that is comparable to the 4G LTE service being offered today in urban areas.”); *accord* RWA Opposition at 7-8 (arguing that the 220 ms standard proposed by T-Mobile would not support many applications on an LTE network).

¹¹⁴ T-Mobile Petition at 8.

¹¹⁵ See generally *Policies Regarding Mobile Spectrum Holdings; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6133 (2014) (describing efforts to increase deployment of mobile broadband through spectrum auctions, including the 600 MHz band).

¹¹⁶ T-Mobile suggests that an overly burdensome latency requirement will increase the risk that support recipients will default on their performance obligations. T-Mobile Petition at 9. We disagree. We are confident that the

F. Bidding Credits

24. We decline to reconsider the Commission's decision not to adopt bidding preferences for the MF-II auction. In the *MF-II Report & Order*, the Commission rejected the notion that small and rural carriers needed targeted assistance to secure MF-II support based, in part, on its observation that numerous smaller carriers had placed winning bids in the Mobility Fund Phase I (MF-I) auction without the aid of bidding credits.¹¹⁷ Contrary to petitioners' assertions,¹¹⁸ the Commission specifically noted that commenters had advocated for bidding preferences for other entities, including rural carriers, for the MF-II auction.¹¹⁹ The Commission also reasoned that small business bidding credits would potentially decrease the reach of MF-II funding, and thereby decrease additional coverage expansion or preservation.¹²⁰ This rationale is equally applicable to any type of bidding preference, including those for rural service providers.¹²¹

25. We reject Blooston's and RWA's claim that the Commission has a statutory obligation under section 309(j) of the Act to promote small business and rural carrier participation in the universal service context.¹²² The Commission's authority to award universal service support through competitive bidding is not derived from section 309(j),¹²³ which authorizes the use of competitive bidding for granting spectrum licenses or construction permits,¹²⁴ not for reverse auctions to award universal service funding.

Commission's enforcement mechanisms, including the ability to draw on letters of credit, are sufficient to deter participants from bidding on areas in which they are incapable of meeting the minimum baseline performance requirements.

¹¹⁷ *MF-II Report & Order*, 32 FCC Rcd at 2209-10, paras. 139-140. When first considering Phase II of the Mobility Fund, the Commission sought comment on whether small businesses should be eligible for some type of bidding preference in the auction for MF-II support. *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18077-78, paras. 1157-60. After the MF-I auction (Auction 901), where numerous small carriers placed winning bids without the aid of any type of bidding preference, see *Mobility Fund Phase I Auction Closes; Winning Bidders Announced for Auction 901*, Public Notice, 27 FCC Rcd 12031, 12045-46 (WTB 2012) (*Auction 901 Winning Bidders Public Notice*), the Bureaus sought further comment on employing bidding preferences in light of the results of Auction 901. See *Further Inquiry into Issues Related to Mobility Fund Phase II*, Public Notice, 27 FCC Rcd 14798, 14803-04, para. 18 (WTB/WCB 2012) (*MF-II Further Inquiry Public Notice*). Several commenters argued for bidding credits despite those results, while others opposed bidding credits, arguing that they are unnecessary and detrimental to the efficient use of finite universal service funds. See *MF-II Report & Order*, 32 FCC Rcd at 2209, para. 139.

¹¹⁸ See Blooston Petition at 4 (arguing that the Commission neglected considering bidding preference for rural carriers, regardless of size); see also RWA Supporting Comments at 14-15.

¹¹⁹ See *MF-II Report & Order*, 32 FCC Rcd at 2209-10, para. 139 & n.354; see also *MF-II Further Inquiry Public Notice*, 27 FCC Rcd 14803-04, para. 18 & n.44.

¹²⁰ *MF-II Report & Order*, 32 FCC Rcd at 2210, para. 140.

¹²¹ Moreover, the Commission's focus on small business bidding credits was consistent with the requests for comment. See *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18077-78, paras. 1157-60 ("Potential Bidding Preference for Small Businesses"); *MF-II Further Inquiry Public Notice*, 27 FCC Rcd 14803-04, para. 18 ("Small Business Participation.").

¹²² Blooston Petition at 4 (citing 47 U.S.C. § 309(j)); RWA Supporting Comments at 15-16 (citing 47 U.S.C. § 309(j)(4)).

¹²³ The Commission found that it has the authority to award MF-II support by auction under section 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17683-91, 17775-77, paras. 60-73, 306-312 (citing 47 U.S.C. §§ 254, 1302).

¹²⁴ Section 309(j), to which Blooston and RWA cite, provides that in identifying classes of licenses and permits to be issued by competitive bidding and in designing the methodologies for competitive bidding, the Commission shall promote certain objectives, including, among other things, disseminating licenses among a wide variety of applicants, including small businesses and rural telephone companies. 47 U.S.C. § 309(j)(3)(B). Section 309(j) also provides that in prescribing regulations pursuant to section 309(j)(3), the Commission shall ensure that small

Moreover, even in spectrum auctions, where section 309(j) does apply, the Commission does not always provide bidding credits,¹²⁵ and courts have held that the statutorily prescribed objectives in section 309(j)(3) are not mandatory.¹²⁶ Additionally, the Commission's primary goal in using competitive bidding in MF-II is to maximize the impact of the funding to increase and preserve mobile coverage.¹²⁷ Since bidding preferences for any entities (be they small businesses or rural service providers) would hamper that goal by effectively decreasing the number of eligible areas covered by the finite level of funding, the Commission chose not to award bidding preferences in lieu of greater coverage.¹²⁸ Accordingly, we are not persuaded that section 309(j) obligates us to overlook this concern and adopt bidding preferences for the MF-II auction.¹²⁹

26. Likewise, we reject Blooston's assertion that the Commission should not have factored into its decision for MF-II the fact that numerous small and rural carriers participated successfully in the

businesses and rural telephone companies are given the opportunity to participate in the provision of spectrum-based services. 47 U.S.C. § 309(j)(4)(D).

¹²⁵ See, e.g., *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Ninth Report and Order, 11 FCC Rcd 14769, 14791, para. 45 (1996) (deciding against adopting small business bidding credits for cellular unserved authorizations because they were valued primarily by a discrete group of small businesses); *Amendment of Part 22 of the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, et al.*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4403, 4466, para. 173 (2005) (adopting bidding credits in the particular service but noting that, in the past, the Commission has declined to adopt provisions for designated entities for certain services).

¹²⁶ See *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C. Cir. 1999). Moreover, the legislative history of the designated entity provisions of section 309(j) demonstrates that Congress did not necessarily intend that the Commission adopt special measures for designated entities in all services. See H.R. Rep. No. 103-111, at 254-55 (1993) (stating that “[t]he characteristics of some services are inherently national in scope, and are therefore ill-suited for small businesses.”).

¹²⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17771-72, para. 295 (“To increase the availability of current generation mobile broadband, as well as mobile voice, across the country, universal service funding for mobile networks must be deployed in a more targeted and efficient fashion than it is today.”), 17781, para. 322 (adopting competitive bidding for MF-I); *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18070, para. 1122 (“Assigning support in this way would be consistent with our general decision to use market-driven policies to maximize the value of limited USF resources, and should enable us to identify those providers that will make most effective use of the budgeted funds, thereby benefiting consumers as widely as possible.”); see also *MF-II Report & Order*, 32 FCC Rcd at 2159, para. 20 (“...[O]ur decision to utilize a reverse auction to award support to only one provider per area is the best approach to target support to where it is truly needed, eliminates inefficiencies, and helps limit the cost to consumers and businesses.”).

¹²⁸ *MF-II Report & Order*, 32 FCC Rcd at 2210, para. 140. The Commission has repeatedly held that universal service funding is meant to subsidize the expansion and preservation of coverage, not marketplace competition or certain competitors. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17663, 17780, para. 319 (“Based on the experience of a decade . . . we conclude that this prior policy of supporting multiple networks may not be the most effective way of achieving our universal service goals. In this case, we choose not to subsidize competition through universal service in areas that are challenging for even one provider to serve.”); see also *MF-II Challenge Process Order*, 32 FCC Rcd at 6292-93, para. 18 (“Our objective in MF-II, in accordance with the *USF/ICC Transformation Order*, is to subsidize reasonably comparable service in unserved areas, not to subsidize competition.”); *Adak Eagle Enterprises, LLC and Windy City Cellular, LLC Petitions for Waiver of Certain High-Cost Universal Service Rules*, Order on Reconsideration and Memorandum Opinion and Order, 30 FCC Rcd 5080, 5089, para. 22 (2015) (“[T]he universal service program . . . is not a guarantee of support to all carriers or a guarantee of support to every cell site.”).

¹²⁹ Moreover, if, as RWA contends, “regional and nationwide carriers are able to internally subsidize less populated areas . . . and benefit from economies of scale,” see RWA Supporting Comments at 15, rather than viewing such economies of scale as a problem to be remedied, we view them as a benefit to consumers when mobile coverage is expanded because our finite funding could be applied to other unserved areas.

MF-I auction without bidding credits.¹³⁰ We find it reasonable, and certainly useful, to consider past auction participation in formulating our policy concerning bidding preferences in future auctions.¹³¹ Moreover, even if we were to accept Blooston's claim that MF-II is "fundamentally different" from MF-I because it involves "ongoing support for more significant projects,"¹³² Blooston has failed to demonstrate that small and rural carriers would be less inclined, or able, to compete effectively in the auction absent bidding preferences.¹³³ In the absence of such a demonstration, and in light of our concerns about the most efficient use of limited universal service funds, we affirm the decision in the *MF-II Report & Order* not to provide bidding credits in the MF-II auction.

G. Equipment Exclusivity Arrangements

27. We dismiss Blooston's request to impose a new requirement on all MF-II support recipients "to certify that they do not and will not participate in equipment exclusivity arrangements."¹³⁴ Blooston's Petition relies on comments that Blooston filed in this proceeding in 2014;¹³⁵ however, those 2014 comments make no reference to exclusivity arrangements.¹³⁶ Thus, to the extent that Blooston raises this argument for the first time in its Petition, we dismiss it as untimely.¹³⁷ Further, in its 2012 *Fourth Order on Reconsideration* in the MF-I proceeding, the Commission previously considered and rejected Blooston's request for adoption of a bar on equipment exclusivity arrangements, noting that "such restrictions could impede our primary goals for USF reform and ... the Mobility Fund."¹³⁸ In the *MF-II Report & Order*, the Commission again rejected proposals to restrict participation in an MF-II auction through additional eligibility requirements and confirmed its intention to encourage participation by the

¹³⁰ Blooston Petition at 5. Blooston first takes issue with the Commission's reliance on comments that noted that "non-national wireless providers" won most of the Phase I support, arguing that the Commission should consider that a "non-national carrier is not necessarily a small or rural carrier." *Id.*, citing *MF-II Report & Order*, 32 FCC Rcd at 2209, para. 139. We disagree with Blooston's criticism and note that, in addition to citing the record, the Commission also specifically considered the fact that in the MF-I auction, "numerous smaller carriers placed winning bids," including mostly small and rural carriers. *MF-II Report & Order*, 32 FCC Rcd at 2210, para. 140; see also *Auction 901 Winning Bidders Public Notice*, 27 FCC Rcd at 12045-46 ("Attachment A: Bidder Summary").

¹³¹ See *Council Tree Investors, Inc. v. FCC*, 863 F.3d 237, 241 (3d Cir. 2017) (upholding bidding credit caps established in reliance on data from prior auctions).

¹³² Blooston Petition at 5.

¹³³ In fact, small and rural carriers may even have an advantage in areas where they already provide service in neighboring areas, and therefore, have the experience and networks in place to expand into unserved areas. See, e.g., *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, et al.*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10091-92, para. 114 (1999) (declining to adopt bidding credits for rural carriers noting that "rural telcos may be able to benefit from the use of their existing infrastructure in the provision of some services, and that such economies of scale give rural telcos an advantage in bidding for licenses"). Blooston also fails to provide any specific reason for us to question the potential level of participation by small and rural carriers in the MF-II auction, particularly given the fact that many of these entities have extensive experience participating in FCC spectrum auctions, in addition to the MF-I auction.

¹³⁴ Blooston Petition at 7.

¹³⁵ See *id.* at 7 n.22.

¹³⁶ See Blooston Aug. 8, 2014 Comments. In any case, "using incorporation by reference to reprise arguments already made and rejected is improper." *Dennis J. Kelly, Esq.*, Letter Order, 23 FCC Rcd 2646, 2648 (MB 2008).

¹³⁷ See 47 CFR § 1.429(b).

¹³⁸ *Connect America Fund et al.*, Fourth Order on Reconsideration, 27 FCC Rcd 8814, 8828, para. 36 (2012); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17802, para. 407 ("We conclude that . . . we will not impose any additional eligibility requirements to participation in the Mobility Fund.").

widest range of applicants.¹³⁹ Blooston has identified no substantive basis upon which to reconsider the Commission's prior decisions not to restrict participation in the Mobility Fund by adopting additional requirements, including a bar on equipment exclusivity arrangements.¹⁴⁰

H. USAC's Role in Testing Winning Bidder Buildout Performance

28. We decline to limit USAC's role in testing winning bidders' compliance with MF-II performance metrics, public interest obligations, or other program requirements as requested by T-Mobile.¹⁴¹ We find no merit in contentions that we should limit USAC's responsibility for conducting compliance reviews in order to ensure a cost-efficient process.¹⁴²

29. In the *MF-II Report & Order*, the Commission determined that it would require MF-II support recipients to submit data sufficient to demonstrate compliance with the MF-II coverage requirements.¹⁴³ Specifically, section 54.1015 of our rules requires an MF-II support recipient to provide the data necessary to support its certifications, and that "[a]ny data submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the applicable public notice."¹⁴⁴ In our role as a responsible steward of public funds, we are obligated to ensure that the funds disbursed through universal service programs are used for the purposes for which they were intended and that the recipients of support have met the terms and conditions under which the funds were awarded.¹⁴⁵ Accordingly, in the *USF/ICC Transformation Order*, the Commission directed USAC to test the accuracy of certifications made pursuant to the new reporting requirements, noting that any oversight program to assess compliance should be designed to ensure that support recipients are reporting accurately to the Commission.¹⁴⁶ The Commission specifically stated that such oversight should be designed to test some of the underlying data that form the basis for a recipient's certification of compliance with various requirements.¹⁴⁷

30. In the case of MF-I, USAC's compliance reviews did not entail duplication of a recipient's drive tests as T-Mobile contends, but rather verification of data transmission rates and transmission latency for a statistically valid random sample of a small portion of the total road miles for which a recipient claimed it was entitled to a support payment. Although T-Mobile argues that USAC's

¹³⁹ *MF-II Report & Order*, 32 FCC Rcd at 2205-06, para. 131.

¹⁴⁰ *See supra* notes 138, 139.

¹⁴¹ T-Mobile Petition at 9-10.

¹⁴² *Id.* (requesting that we clarify that winning bidders are responsible for compliance testing and that we minimize USAC's responsibilities for validation and auditing of winning bidders' submissions). CCA agrees that the Commission should prohibit drive testing by USAC to validate the data submitted by MF-II recipients. CCA Reply at 7.

¹⁴³ *MF-II Report & Order*, 32 FCC Rcd at 2195, para. 100 (noting consistency with "the *USF/ICC Transformation Order* in which the Commission directed the Bureaus and the Office of Engineering and Technology to refine the methodology for broadband performance testing. *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 112.").

¹⁴⁴ 47 CFR § 54.1015(e).

¹⁴⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17726, para. 161 (The Commission retained its authority to look behind recipients' program certifications and take action to address any violations that develop).

¹⁴⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17866, para. 628. MF-II recipients are subject to the same accountability and oversight requirements in section 54.320 of our rules, including the same audit and record retention requirements as all other recipients of high-cost support. *MF-II Report & Order*, 32 FCC Rcd at 2234, para. 223; *see* 47 CFR § 54.320(a) ("Eligible telecommunications carriers authorized to receive universal service high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.").

¹⁴⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17866, para. 628.

role was redundant because USAC's drive tests ultimately validated the data T-Mobile had already submitted for MF-I,¹⁴⁸ we are not persuaded by T-Mobile's claim that the benefits of USAC compliance review testing in the context of MF-I were "outweighed by the time and expense associated with conducting" such testing.¹⁴⁹ We decline to draw a conclusion about the overall value of USAC's compliance testing based only on the experience of one MF-I participant, T-Mobile. Further, we find it lacking in logic to argue that it serves no purpose to attempt to verify, even by sampling, recipients' compliance with program requirements, merely because some recipients have been found, through such testing, to be in compliance. Compliance reviews, like audits, are an essential tool for the Commission and USAC to ensure program integrity and to detect and deter waste, fraud, and abuse.¹⁵⁰ Therefore, we will not limit USAC's role in verifying the data that recipients submit to demonstrate compliance with our MF-II coverage requirements.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

31. This Second Order on Reconsideration contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It 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 107-198,¹⁵¹ 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.

32. In this present document, we have assessed the effects of the modifications that the Commission is making to the letter of credit rule and the collocation rule adopted by the Commission in the *MF-II Report & Order*¹⁵² regarding the information collection burdens on small business concerns. We find that these modifications have no impact on the information collection burden of the MF-II program specific to businesses with fewer than 25 employees.

B. Congressional Review Act

33. The Commission will send a copy of this Second Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁵³

C. Supplemental Final Regulatory Flexibility Act Certification

34. The Regulatory Flexibility Act of 1980, as amended (RFA),¹⁵⁴ requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."¹⁵⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms

¹⁴⁸ T-Mobile Petition at 9 n.14.

¹⁴⁹ *Id.* at 9.

¹⁵⁰ We further note that any determinations made by USAC are subject to Commission staff, and ultimately the Commission's, review.

¹⁵¹ 44 U.S.C. § 3506(c)(4).

¹⁵² *MF-II Report & Order*, 32 FCC Rcd 2150-52, Appx. A.

¹⁵³ *See* 5 U.S.C. § 801(a)(1)(A).

¹⁵⁴ The RFA, *see* 5 U.S.C. § 601-12, 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).

¹⁵⁵ 5 U.S.C. § 605(b).

“small business,” “small organization,” and “small governmental jurisdiction.”¹⁵⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹⁵⁷ 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).¹⁵⁸

35. This Second Order on Reconsideration modifies the letter of credit and collocation rules adopted by the Commission in the *MF-II Report & Order*.¹⁵⁹ These modifications do not create any burdens, benefits, or requirements that were not already addressed by the Final Regulatory Flexibility Analyses and Certification attached to that order, and may benefit small businesses by creating more flexibility in letters of credit and a reduced requirement for collocation on towers.¹⁶⁰ Therefore, we certify that the requirements of this Second 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 Second Order on Reconsideration, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress, pursuant to the Congressional Review Act.¹⁶¹ In addition, the Second Order on Reconsideration and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.¹⁶²

D. Additional Information

36. *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).

37. *Additional Information.* For additional information on this proceeding, contact Audra Hale-Maddox of the Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, Audra.Hale-Maddox@fcc.gov, (202) 418-0600.

V. ORDERING CLAUSES

38. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 155, 160, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, and sections 1.1, 1.427, and 1.429 of the Commission’s rules, 47 CFR §§ 1.1, 1.427, and 1.429, that this Second Order on Reconsideration IS ADOPTED.

39. 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 amendments WILL BECOME EFFECTIVE thirty (30) days from the date of publication in the Federal Register, except for those rule amendments containing new or modified information collection requirements that require review by the OMB under the PRA. The rules that contain new or modified information collection requirement subject to PRA

¹⁵⁶ *Id.* § 601(6).

¹⁵⁷ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

¹⁵⁸ Small Business Act, 15 U.S.C. § 632.

¹⁵⁹ *MF-II Report & Order*, 32 FCC Rcd 2150-52, Appx. A.

¹⁶⁰ *Id.* at 2239-40, 2258-68, para. 250, Appx. B.

¹⁶¹ *See* 5 U.S.C. § 801(a)(1)(A).

¹⁶² *See id.* § 605(b).

review WILL BECOME EFFECTIVE after OMB review and approval, on the effective date specified in a notice that the Commission will publish in the Federal Register announcing such approval and effective date.

40. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Second 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).

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

42. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429 the Petition for Reconsideration and/or Clarification filed by Rural Wireless Association, Inc. on April 12, 2017, is GRANTED IN PART and DENIED IN PART to the extent described herein.

43. 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 Blooston Rural Carriers on April 27, 2017, is GRANTED IN PART AND DENIED IN PART to the extent described herein.

44. 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 Rural Wireless Carriers on April 27, 2017, is GRANTED IN PART and DENIED IN PART to the extent described herein.

45. 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 T-Mobile USA, Inc. on April 27, 2017, is DENIED to the extent described herein.

46. 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 Buffalo-Lake Erie Wireless Systems L.L.C. dba Blue Wireless on April 27, 2017, is GRANTED IN PART AND 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. Revise § 54.1015(f) to read as follows:

§ 54.1015 Public Interest Obligations.

(f) Collocation Obligations. During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on all newly constructed towers it owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

3. Revise § 54.1016 (a)(1) (ii) as follows:

§ 54.1016 Letter of Credit.

(ii) Once the recipient has met its 80 percent service milestone as described in § 54.1015(c) of this chapter, it may, subject to the consent of the Universal Service Administrative Company, 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 amount already disbursed plus the amount that will be disbursed in the coming year.