

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

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Rural Broadband Experiments	)	WC Docket No. 14-259
	)	
Connect America Fund Phase II Auction	)	AU Docket No. 17-182

**ORDER ON RECONSIDERATION**

**Adopted: January 30, 2018**

**Released: January 31, 2018**

By the Commission: Chairman Pai and Commissioners Clyburn, Carr, and Rosenworcel issuing separate statements; Commissioner O’Rielly approving in part, concurring in part, and issuing a statement.

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## I. INTRODUCTION

1. Today, we consider the remaining issues raised by parties challenging the Commission's orders implementing the Connect America Phase II (Phase II) auction (Auction 903), in which service providers will compete to receive support of up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas.<sup>1</sup> Specifically, we resolve petitions challenging the Commission's decisions on the following issues: how to compare bids of different performance levels, standalone voice requirements, Phase II auction deployment and eligibility, and state-specific bidding weights, among other matters. We also adopt a process by which a support recipient that sufficiently demonstrates that it cannot identify enough actual locations on the ground to meet its Phase II obligations can have its total state location obligation adjusted and its support reduced on a pro rata basis. Additionally, we modify the Commission's letter of credit rules to provide some additional relief for Phase II auction recipients by reducing the costs of maintaining a letter of credit. By resolving these issues, we move the Commission a step closer to holding the Phase II auction and, in turn, to the goal of closing the digital divide for all Americans, including those in rural areas of our country.

## II. BACKGROUND

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

3. On August 4, 2017, the Commission adopted a public notice seeking comment on specific details regarding the mechanics of the Phase II auction, including the auction format and reserve prices.<sup>5</sup> After consideration of the record, the Commission announced in a public notice the final details for the Phase II auction, including the Phase II auction-specific deadlines and dates.<sup>6</sup>

## III. ORDER ON RECONSIDERATION

### A. Comparing Bids of Different Performance Levels

4. *Background.* In the *Phase II Auction Order*, the Commission concluded that it would accept bids for four performance tiers with varying speed and usage allowances, and with respect to each

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

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

<sup>3</sup> See generally *Phase II Auction Order*, 31 FCC Rcd 5949.

<sup>4</sup> See generally *Phase II Auction FNPRM Order*, 32 FCC Rcd 1624.

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

<sup>6</sup> *Connect America Fund Phase II Auction Scheduled for July 24, 2018 Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, FCC 18-6 (Jan. 31, 2018) (*Phase II Auction Procedures Public Notice*).

tier, it would provide for bids at either low or high latency.<sup>7</sup> The Commission stated a preference for higher speeds over lower speeds, higher over lower usage allowances, and low latency over high latency, and decided that weights would be used to account for these preferences.<sup>8</sup> The Commission also decided that bids in all tiers would be considered simultaneously, so that bidders that propose to meet one set of performance standards will compete directly against bidders that propose to meet other performance standards, taking into account the weights adopted by the Commission for each performance tier and latency level.<sup>9</sup> Specifically, the Commission adopted weights so that Minimum performance tier (10/1 Mbps) bids will have a 65 weight; Baseline performance tier (25/3 Mbps) bids will have a 45 weight; Above Baseline performance tier (100/20 Mbps) bids will have a 15 weight; and Gigabit performance tier (1 Gbps/500 Mbps) bids will have zero weight.<sup>10</sup> In addition, high-latency bids will have a 25 weight and low-latency bids will have zero weight added to their respective performance tier weight.<sup>11</sup>

5. Hughes Network Systems, LLC (Hughes) petitioned for reconsideration asking the Commission to reconsider the weights it adopted and, instead, to adopt a bid weighting matrix that provides a high-latency weight of no more than 10 and maximum weights of 25 for 10/1 Mbps service, 15 for 25/3 Mbps service, 10 for 100/20 Mbps service and zero for Gigabit service.<sup>12</sup> Hughes claims that the weighting matrix adopted by the Commission “places such a heavy thumb on the scales in favor of low-latency, high-speed bids that such bids will always ‘necessarily win.’”<sup>13</sup>

6. *Discussion.* We decline to reconsider the weights the Commission adopted for bids in the Phase II auction for the varying performance tiers and latency levels. In adopting these weights, which the Commission found to be within a reasonable range of the increments proposed in the record, the Commission appropriately recognized the value of higher-speed and lower-latency services to consumers.<sup>14</sup> The Commission sought to balance its preference for higher-quality services with its objective to use the finite universal service budget effectively. Based on its predictive judgment, the Commission concluded that its approach is likely to promote competition within and across areas by giving all service providers the opportunity to place competitive bids, regardless of the technology they intend to use to meet their obligations.<sup>15</sup>

7. We disagree with Hughes’ contention that low-latency, high-speed bids will always necessarily win. Bids will be scored relative to the reserve price and therefore bids placed for lower speeds and high latency will have the opportunity to compete for support, but will have to be particularly cost-effective to compete with higher tier bids.<sup>16</sup>

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<sup>7</sup> *Phase II Auction Order*, 31 FCC Rcd at 5956-63, paras. 14-37 (adopting the standards for the Minimum, Baseline, Above Baseline, and Gigabit performance tiers and for High and Low latency bids). The Commission subsequently reconsidered the monthly usage allowances for the Above Baseline and Gigabit performance tiers. *See Phase II Auction FNPRM Order*, 32 FCC Rcd at 1651, paras. 71-73.

<sup>8</sup> *Phase II Auction Order*, 31 FCC Rcd at 5976-77, paras. 84-85.

<sup>9</sup> *Id.* at 5957, 5976-77, paras. 17, 84-85.

<sup>10</sup> *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1628, paras. 16-17.

<sup>11</sup> *Id.*

<sup>12</sup> Petition for Reconsideration of Hughes Network Systems, LLC, WC Docket Nos. 10-90, 14-58 (filed Apr. 20, 2017) (Hughes Petition).

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1630, 1633-34, paras. 23, 27.

<sup>15</sup> *Id.* at 1633-34, para. 27.

<sup>16</sup> *See id.* at 1633-34, 1637-38, paras. 27, 33.

8. Hughes presents a hypothetical example that only reinforces the conclusion that adopting minimal weights would be inappropriate. Even if the Commission were to adopt Hughes' proposed weights, it is unclear from Hughes' own statements in the record whether Hughes could place winning bids. Hughes argues that the Commission failed to take into account record evidence that "the lower bound for satellite providers' bids will be above \$185 per customer per month in the 25/3 Mbps tier," and that there was no data in the record to contradict its showing.<sup>17</sup> Assuming that Hughes could receive from subscribers a reasonably comparable rate of \$88 per month for offerings at 25/3 Mbps, Hughes claims that the lower bound for satellite providers' bids in this tier will be above \$185 per customer per month.<sup>18</sup> In the example, Hughes compares a fiber-based provider bidding a reserve price of \$250 in the Gigabit tier to a satellite provider bidding \$187 in the Baseline tier under two scenarios.<sup>19</sup> Under the hypothetical, the Gigabit bid would win using the Commission's adopted weights; using Hughes' proposed weights, the satellite provider would win. If the fiber-based provider and the satellite provider required \$250 and \$187 in support per location, respectively, neither would win given the Commission's decision to adopt a per location funding cap of \$146.10.<sup>20</sup> Notwithstanding the reserve price, we are not convinced that awarding \$187 per customer for high-latency, lower-speed satellite service would be the preferred outcome, or particularly cost-effective, if we could fund a Gigabit network for only \$63 more per customer. Lowering support amounts is not the Commission's only goal. Rather, the Commission must balance—within a finite budget—its goal of lower support amounts and wider coverage with its goal of service at higher speeds and lower latency.

9. Hughes has not presented any analysis or data that persuades us that we should alter the balance the Commission sought to achieve with the adopted weights. The Commission previously concluded that adopting smaller weight differences between tiers, as Hughes advocates, would be inappropriate.<sup>21</sup> The Commission was concerned that minimal weighting could deprive rural consumers of the higher-speed, lower-latency services that consumers value and that are common in urban areas.<sup>22</sup> The Commission predicted that minimal weight differences would likely result in bids in lower tiers prevailing, leaving all consumers with minimum service even though some service providers might be able to offer increased speeds for marginally more support.<sup>23</sup>

10. We are not persuaded that we should reconsider the weights adopted by the Commission to reflect the consumer preference data cited by Hughes. In the *Phase II Auction FNPRM Order*, the

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<sup>17</sup> Hughes Petition at 11. See also Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 2 (filed Feb. 14, 2017) (Hughes Feb. 14, 2017 *Ex Parte* Letter) ("Hughes has analyzed pricing for enterprise and other higher-capacity satellite broadband offerings and determined that satellite providers will require total revenue in the range of \$275 per customer per month in order to provide a [Connect America] compliant broadband offering, given appropriate traffic management practices."); Opposition of the Rural Coalition, WC Docket Nos. 10-90, 14-58, at 5-6 (filed May 18, 2017) (Rural Coalition Opposition) (arguing that "Hughes . . . never explains the factual basis for a monthly support of \$187 per month per household" and "merely asserts" its claim "without justification or evidence").

<sup>18</sup> Hughes Feb. 14, 2017 *Ex Parte* Letter at 2.

<sup>19</sup> Hughes Petition at 4-5.

<sup>20</sup> In the *Phase II Auction Order*, the Commission decided to cap the amount of support per location provided to extremely high-cost areas and, in the *Phase II Auction Comment Public Notice*, proposed imposing a \$146.10 per-location, per-month funding cap, which is the maximum amount of support per-location offered to price cap carriers that accepted model-based support. See *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90; *Phase II Auction Comment Public Notice*, 32 FCC Rcd at 6258, para. 67 & n.103. In the *Phase II Auction Procedures Public Notice*, the Commission adopted its proposal. *Phase II Auction Procedures Public Notice* at 69-70, para. 211.

<sup>21</sup> *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1630-32, para. 24.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

Commission concluded that “establishing weights based on specific data is likely to be a drawn out and complicated process that may further delay the Phase II auction and may not produce an improved outcome in the auction.”<sup>24</sup> Hughes argues that the Commission adopted weights that provide “too great of a bidding advantage to high-speed, high-capacity, low-latency services,”<sup>25</sup> and claims that “[s]atellite broadband customers are just as satisfied as the customers of other types of broadband providers, notwithstanding the inevitable latency resulting from the data travel time to and from a geostationary satellite.”<sup>26</sup> Hughes now claims that “changing the bidding weights would require simply changing numeric values in the Commission’s existing auction software and result in no delay.”<sup>27</sup> Even if it were true that changing the auction software would be easy, there would only be no delay if the Commission simply accepted Hughes values and ignored data cited by other parties.<sup>28</sup> Nothing in Hughes’ reply comments fundamentally changes the Commission’s prior conclusion.

11. The Commission previously rejected arguments that it should adopt a narrower weight for latency than for speed tiers to account for claims that consumers value higher speed over latency.<sup>29</sup> The Commission emphasized that “these claims do not address the concerns raised by commenters about the inherent limitations of high latency services—particularly for interactive, real-time applications and voice services given that high latency providers may be the only voice providers in the area.”<sup>30</sup> Hughes does not address the inherent limitations of satellite voice service, particularly in rural areas, and argues that there is no valid policy reason to provide such an advantage to low-latency bids.<sup>31</sup> We disagree. In areas where winning bidders begin receiving Phase II support, the incumbent price cap carriers not receiving such support will be immediately relieved of their federal high-cost eligible telecommunications carrier (ETC) obligation to offer voice telephony in those census blocks, and the winning bidder will have the responsibility of providing the supported service: voice telephony.<sup>32</sup> The potential savings to the Fund of supporting non-terrestrial broadband services must be balanced with the fact that providers of such services will have the obligation to provide the supported service—voice telephony—to rural consumers as well.<sup>33</sup>

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<sup>24</sup> *Id.* at 1634, para. 28.

<sup>25</sup> Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Aug. 29, 2017) (citing results of empirical research on the relative value that consumers place on speed, bandwidth, and latency in purchasing broadband).

<sup>26</sup> Hughes Petition at 9 (footnotes omitted). Hughes cites a statement regarding Consumer Reports data in a Hughes *Ex Parte* Letter, and Comments filed by ViaSat including a chart based on Consumer Reports data showing consumer satisfaction ratings for WildBlue/ViaSat at the same level as cable services in 2014. The chart also shows consumer satisfaction ratings for other satellite service to be considerably lower. *Id.* at n.22. *See also* Letter from L. Charles Keller, Counsel to Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Jan. 19, 2018).

<sup>27</sup> Reply Comments of Hughes Network Systems, AU Docket No. 17-182, WC Docket No. 10-90, 4 (filed Oct. 18, 2017). *But see* Comments of the Rural Coalition, AU Docket No. 17-182, WC Docket No. 10-90, at 5 (filed Sept. 18, 2017).

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

<sup>29</sup> *Id.* at 1638, para. 34.

<sup>30</sup> *Id.*

<sup>31</sup> *See e.g., Rural Coalition Opposition* at 12-13 (arguing that high latency adversely impacts voice communications and is particularly problematic in rural communities where delay for local calls is compounded because of the “double-hop” of the signal traveling up and down to the satellite).

<sup>32</sup> *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15670, para. 69 (2014) (*December 2014 Connect America Order*).

<sup>33</sup> 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101.

12. We also are not persuaded by Hughes' argument that we should reduce the speed and latency weights to "account for satellite broadband systems' more expedited deployment capabilities."<sup>34</sup> Hughes argues that satellite service is "quicker to market" because it is not affected by obstacles faced by terrestrial broadband providers such as lengthy permitting processes, construction delays, limited consumer demand, or geographical isolation.<sup>35</sup> Although satellite service may theoretically be available sooner in rural areas, it is not clear that satellite providers will be meeting the needs of rural and underserved communities any sooner than other providers. The Commission granted a petition for reconsideration regarding re-auctioning areas served by high-latency service providers, filed by ViaSat and supported by Hughes, because it agreed that it may be difficult for high-latency service providers to obtain enough subscribers to meet a 35 percent subscription threshold by the end of the third year of support.<sup>36</sup> In doing so, the Commission was persuaded by comments suggesting that many of the factors related to low adoption are likely to be present in more rural high-cost areas of the country.<sup>37</sup> We have no reason to think these factors have changed and decline to modify the weights to account for "speed to market."<sup>38</sup>

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

#### **B. Latency Performance Testing**

14. *Background.* In the *Phase II Auction Order*, the Commission required bidders submitting low-latency bids to meet the same 100 millisecond (ms) latency standard that applies to price cap carriers that accepted the Phase II offer of model-based support and rate-of-return carriers that elect the voluntary path to the model.<sup>39</sup> Recognizing that some bidders may not be able to meet that latency standard, the Commission adopted an alternative standard. Bidders submitting high-latency bids are required to meet a two-part standard for the latency of both their voice and broadband service: (1) the Commission requires that 95 percent or more of all peak period measurements of network round trip latency must be at or below 750 ms, and (2) with respect to voice performance, the Commission requires high-latency bidders to demonstrate a score of four or higher using the Mean Opinion Score (MOS), similar to the standard that the Commission adopted for one category of rural broadband experiments.<sup>40</sup>

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<sup>34</sup> Reply Comments of Hughes Network Systems, LLC, WC Docket Nos. 10-90, 14-58, at 8-9 (filed May 30, 2017) (Hughes Reply).

<sup>35</sup> *Id.*

<sup>36</sup> *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1649, para. 67.

<sup>37</sup> *Id.* & n.162 (citing Petition for Reconsideration and Clarification of ViaSat, Inc., WC Docket No. 10-90 et al., at 3-4 (filed Aug. 8, 2016) (noting low adoption rates due to low incomes, age, education and disability); Opposition and Comments of Hughes Network Systems, WC Docket No. 10-90 et al., at 2-3 (filed Sept. 2, 2016) (Hughes Opposition) (explaining that "the most rural and remote parts of the country" have "the lowest adoption rates nationwide").

<sup>38</sup> After the time for filing petitions for reconsideration, or amendments thereto, had passed, Hughes proposed incorporating additional weighting to account for speed to market. See Letter from Jennifer A. Manner, Senior Vice President, Regulatory Affairs, Hughes, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 22, 2017) (attaching "A Proposal to Incorporate Time-to-Deployment into CAF Phase II Auction Scoring" by Scott Wallsten, June 19, 2017). Even if this proposal were not untimely filed, we would decline to adopt additional weighting for speed to market.

<sup>39</sup> *Phase II Auction Order*, 31 FCC Rcd at 5960, para. 29 (adopting a minimum latency requirement that 95 percent or more of all peak period measurements of network round trip latency are at or below 100 milliseconds). See also *Connect America Fund*, Report and Order, 28 FCC Rcd 15060, 15068-72, paras. 19-25 (WCB 2013) (*Phase II Service Obligations Order*).

<sup>40</sup> *Phase II Auction Order*, 31 FCC Rcd at 5960-61, para. 30.

15. ADTRAN, Inc. (ADTRAN) filed a petition for clarification or reconsideration seeking to clarify that an applicant selecting the high-latency option must be prepared to demonstrate that its service meets the MOS of four or higher under the International Telecommunication Union's ITU-T Recommendation P.800 using the conversational-opinion tests and not the listening-opinion tests.<sup>41</sup> Alternatively, if the Commission intended to allow an applicant to demonstrate compliance using either conversational-opinion tests or listening-opinion tests, ADTRAN asks that we reconsider that decision.

16. *Discussion.* As an initial matter, we clarify that the Commission has not yet specified which of the methods for subjective determination of transmission quality identified in ITU-T Recommendation P.800 should be used to demonstrate compliance with the second part of the two-part standard (MOS of four or higher). Based on the sparse record before us, we decline to do so at this time.<sup>42</sup> ADTRAN proposes that the Commission specify use of a conversational-opinion test and argues that this is preferable to a listening-opinion test, or the ITU's other recommended option: interview and survey tests.<sup>43</sup> We find that there is insufficient information in the record to specify which of the ITU's recommended options applicants should be prepared to use to demonstrate an MOS of four or higher. We expect that the specific methodology will be adopted by the Bureaus and Office of Engineering and Technology (OET) by June 2018, consistent with the Commission's previous direction to refine a methodology to measure the performance of ETCs' services subject to general guidelines adopted by the Commission.<sup>44</sup>

17. We also clarify that recipients of Phase II support awarded through competitive bidding should use the same testing methodologies for measuring peak period roundtrip latency adopted for price cap carriers accepting model-based Phase II support.<sup>45</sup> That is, the same testing methodologies should be used by Phase II recipients whether they are demonstrating compliance with the 100 ms requirement or the 750 ms requirements. As set forth in the *Phase II Service Obligations Order*, providers can rely on existing network management systems, ping tests, or other commonly-available measurement tools, or on the alternative Measuring Broadband America (MBA) program results if they have deployed at least 50 white boxes in funded areas throughout the state.<sup>46</sup>

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<sup>41</sup> Petition for Clarification or Reconsideration of ADTRAN, Inc., WC Docket No. 10-90 et al. (filed July 5, 2016) (ADTRAN Petition). *See also* Comments of ADTRAN, Inc., AU Docket No. 17-182, WC Docket No. 10-90, at 2-4 (filed Sept. 18, 2017); Reply Comments of the Rural Coalition, AU Docket No. 17-182, WC Docket No. 10-90, at 18-19 (filed Oct. 18, 2017); Reply Comments of the Institute for Local Self-Reliance et al., AU Docket No. 17-182, WC Docket No. 10-90, at 7-8 (filed Oct. 18, 2017) (Institute for Local Self-Reliance et al. Reply).

<sup>42</sup> Only WISPA supported ADTRAN on this issue. Opposition to Petitions for Reconsideration of the Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 6-7 (filed Sept. 2, 2016) (WISPA Sept. 2016 Opposition). ViaSat said it had no objections to the Commission clarifying that MOS must be established based on "live communications" but does not explain what it means by this. *See* Letter from John P. Janka, Counsel to ViaSat, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3, n.5 (filed Feb. 2, 2016). In commenting on the *Phase II Auction Comment Public Notice*, the Institute for Local Self-Reliance urged the Commission to conduct the MOS tests and to make such results public, and "only accept bids from entities that can guarantee a [MOS] of 4.0 or greater when latency in a call is .5 to 1.5 seconds long." Comments of the Institute for Local Self-Reliance, AU Docket No. 17-182, WC Docket No. 10-90, at 2 (filed Sept. 18, 2017).

<sup>43</sup> *See* Letter from Stephen L. Goodman, Counsel to ADTRAN, Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 10-90 et al. (filed Jan. 19, 2018).

<sup>44</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 112; 47 CFR § 54.313(a)(11).

<sup>45</sup> *See Comment Sought on Performance Measures for Connect America High-Cost Universal Service Support Recipients*, Public Notice, 32 FCC Rcd 9321 (WCB, WTB, OET 2017) (seeking to update the record regarding performance measures).

<sup>46</sup> *Phase II Service Obligations Order*, 28 FCC Rcd at 15070-72, paras. 23-25.

### C. Standalone Voice Requirement

18. In the *USF/ICC Transformation Order*, the Commission required that, as a condition of receiving Connect America Fund support, ETCs must offer voice telephony as a standalone service throughout their designated service area.<sup>47</sup> Consistent with section 254(b) of the Communications Act of 1934, as amended, the Commission emphasized that ETCs must offer voice telephony services at rates that are reasonably comparable to urban rates.<sup>48</sup> In the *December 2014 Connect America Order*, the Commission adopted a similar reasonable comparability rate certification requirement for broadband performance obligations.<sup>49</sup>

19. Three parties state that they would provide voice using voice over Internet protocol (VoIP) and ask the Commission to clarify or remove the requirement that broadband service providers provide standalone voice service.<sup>50</sup>

20. *Discussion.* The Commission adopted the standalone voice requirement in 2011.<sup>51</sup> When it adopted the separate standalone broadband reasonable comparability requirement in 2014, the Commission explained that “high-cost recipients are permitted to offer a variety of broadband service offerings as long as they offer at least one standalone voice service plan and one service plan that provides broadband that meets our requirements.”<sup>52</sup> Setting aside the untimeliness of these requests, we would not reconsider the requirement that Connect America Fund recipients offer voice telephony—the supported service—at rates that are reasonably comparable to rates for voice service in urban areas. We are not persuaded by arguments that, because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service.<sup>53</sup> Phase II auction recipients may be the only ETC offering voice in some areas and not all consumers may want to subscribe to broadband service. To comply with Connect America Fund service

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

<sup>48</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17693, para. 81 (“[c]onsumers in all regions of the Nation . . . should have access to telecommunications and information services . . . that are available at rates that are reasonably comparable to rates charged for similar services in urban areas” (quoting 47 U.S.C. § 254(b))).

<sup>49</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15686-87, para. 120.

<sup>50</sup> Request for Clarification or Partial Reconsideration of Southern Tier Wireless, Inc., WC Docket No. 10-90 et al., at 4 (filed July 20, 2016) (Southern Tier Wireless Petition) (requesting that the requirement for a standalone voice service be removed); Petition for Clarification or Reconsideration of Crocker Telecommunications, LLC, WC Docket No. 10-90 et al., at 7 (filed July 18, 2016) (Crocker Telecommunications Petition) (asking Commission to clarify that broadband providers need only provide broadband as a standalone service); Petition for Reconsideration of Broad Valley Micro Fiber Networks, Inc., WC Docket No. 10-90 et al., at 3-4 (filed July 20, 2016) (Broad Valley Petition) (opposing the standalone voice requirement). *See also*, Comments of Space Exploration Technologies Corp., AU Docket No. 17-182, WC Docket No. 10-90, at 6-9 (filed Sept. 18, 2017) (SpaceX Comments) (asking the Commission to clarify that CAF II recipients need not offer standalone voice). Several parties suggest that we dismiss Southern Tier Wireless, Crocker Telecommunications, and Broad Valley’s petitions for reconsideration as improperly filed because they address issues that the Commission sought comment on in the *Phase II Auction FNPRM*. Opposition of ViaSat, Inc., WC Docket No. 10-90 et al., at 2-3 (filed Sept. 2, 2016); Hughes Opposition at 2-3. Instead, the Commission addressed those comments related to issues raised in the *Phase II Auction FNPRM* in the *Phase II Auction FNPRM Order* and only address the portions of the petitions that seek reconsideration or clarification of the Commission’s existing rules in this Order. *See generally Phase II Auction FNPRM Order*, 32 FCC Rcd 1624.

<sup>51</sup> *See USF/ICC Transformation Order*, 26 FCC Rcd at 17693, para. 80.

<sup>52</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 156887, para. 120 (footnote omitted).

<sup>53</sup> Crocker Telecommunications Petition at 7; Broad Valley Petition at 3-4; Southern Tier Wireless Petition at 4; SpaceX Comments at 7-8.



obligations, support recipients can offer VoIP over their broadband network on a standalone basis, but they must offer the service at the reasonably comparable rate for voice services.<sup>54</sup>

#### **D. Phase II Auction Deployment**

21. In the *Phase II Auction Order*, the Commission adopted service milestones for Phase II auction recipients. Specifically, Phase II auction recipients must complete construction and commercially offer service meeting the relevant public interest obligations to 40 percent of the requisite number of locations in a state by the end of the third year of funding authorization, an additional 20 percent in the subsequent years, and 100 percent by the end of the sixth year.<sup>55</sup> The total number of locations that a Phase II auction recipient is required to serve in each state is determined by adding the number of locations that the Connect America Cost Model (CAM) estimated for each eligible census block included in the recipient's winning bids in the state.<sup>56</sup>

##### **1. Required Number of Phase II Auction Locations**

22. *Background.* For the offer of model-based support to price cap carriers, the Commission delegated authority to the Wireline Competition Bureau (Bureau) to address situations where a price cap carrier brings to the Bureau's attention any known disparity between the number of locations identified by the CAM and the number of locations actually on the ground by adjusting the number of funded locations a price cap carrier must serve in the state and the associated funding levels on a pro rata basis.<sup>57</sup> Broad Valley Micro Fiber Networks Inc. (Broad Valley), Crocker Telecommunications, LLC (Crocker Telecommunications) and Southern Tier Wireless, Inc. (Southern Tier Wireless) request that the Commission clarify that Phase II auction winning bidders also will have the opportunity to bring to the Commission's attention after the auction any discrepancy between the number of locations identified by the CAM and the actual number of locations that are found to be located in the eligible census blocks in a recipient's winning bids.<sup>58</sup> They also request that support be adjusted pro rata to account for any discrepancies.<sup>59</sup>

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<sup>54</sup> See *Wireline Competition Bureau Announces Results of 2017 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowances for ETCs Subject to Broadband Public Interest Obligations*, Public Notice, 32 FCC Rcd 1358 (WCB 2017).

<sup>55</sup> *Phase II Auction Order*, 31 FCC Rcd at 5964, paras. 40-41.

<sup>56</sup> See CostQuest Associates, Inc., *Connect America Cost Model: Model Methodology 12-15* (Dec. 22, 2014), <https://transition.fcc.gov/wcb/CAM%20v.4.2%20Methodology.pdf> (CAM Methodology).

<sup>57</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15659, para. 38 n.88. No price cap carrier accepting model-based support had its support adjusted to account for any discrepancies in the required number of locations. While Frontier submitted a letter seeking such an adjustment in seven states where it accepted Phase II model-based support, it later withdrew its letter when it determined that it could locate additional locations. See Letter from Michael Golob, Senior Vice President, Network and Engineering Integration, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 30, 2015) (identifying discrepancies in the number of locations in the states where Frontier accepted Phase II model-based support); Letter from Kathleen Q. Abernathy, Executive Vice President, External Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Mar. 9, 2016) (withdrawing its previous letter because its "additional review efforts continue to identify new or different numbers of locations" and requesting "that the Bureau not take any action regarding reducing Frontier's location counts or associated funding"). See also Crocker Telecommunications Petition at 4; Reply Comments of Vantage Point Solutions, WC Docket No. 10-90, at 3 (filed Sept. 18, 2017) (Vantage Point Reply) (referencing Frontier's initial request).

<sup>58</sup> Broad Valley Petition at 3 (requesting that winning bidders have at least four months to submit a challenge to the number of locations and have their support adjusted on a pro rata basis without any penalties); Crocker Telecommunications Petition at 3-4 (requesting that winning bidders be able to submit the discrepancies within six months of being announced as winning bidders and that the winning bidder's support and/or required totals be increased or decreased to account for such a discrepancy without any penalties); Southern Tier Wireless Petition at

(continued....)

23. *Discussion.* We clarify that we will permit Phase II auction support recipients to bring to the Commission's attention disparities between the number of locations estimated by the CAM and the number of locations actually on the ground in the eligible census blocks within their winning bid areas in a state.<sup>60</sup> If a support recipient can sufficiently demonstrate that it is unable to identify enough actual locations on the ground across all the eligible census blocks to meet its total state requirement, its obligation will be reduced to the total number of locations it was able to identify in the state and its support will also be reduced on a pro rata basis.<sup>61</sup> Specifically, within one year after release of the Phase II auction closing public notice, a recipient that cannot identify enough actual locations must submit evidence of the total number of locations in the eligible areas in the state, including geolocation data (indicating the latitude/longitude and address of each location), in a format to be specified by the Bureau, for all the actual locations it could identify. We direct the Bureau to establish the procedures and specifications for the submission of this information, such as collecting the data through the Universal Service Administrative Company's (USAC) High Cost Universal Service Broadband (HUBB) online location reporting portal. Relevant stakeholders would have the opportunity to review and comment on the information and to identify other locations, following which the Bureau shall issue an order addressing the recipient's showing and any such comments. The evidence submitted by a support recipient will also be subject to potential audit.

24. We direct the Bureau to implement this process, consistent with our prior direction to the Bureau concerning model location adjustments. Specifically, in cases where the Bureau has determined by a preponderance of the evidence that there are no additional locations in the relevant eligible census blocks in the state, we direct the Bureau to adjust the support recipient's required state location total and reduce its support on a pro rata basis for that state.<sup>62</sup> We direct the Bureau to specify the types of information that a support recipient should submit to demonstrate that it could not locate additional locations on the ground, specify the types of evidence that commenters should submit to dispute the evidence provided by the support recipients and set the parameters of this review process, set the parameters for the audits, and adopt any other necessary implementation details. We direct the Bureau to issue a public notice or order (following its issuance of a notice and opportunity for comment) detailing instructions, deadlines, and requirements for filing valid geolocation data and evidence for both support recipients and commenters.

25. We adopt this process because we are persuaded that potential bidders may be reluctant to bid on census block groups if the number of locations estimated by the CAM is substantially different from the number of actual locations currently on the ground, leaving those areas without an opportunity to get served through the Phase II auction. While parties claiming that there are discrepancies between the

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4-5 (requesting a minimum of 15 weeks after notice of winning bidders to bring discrepancies to the Commission's attention and that support be reduced or increased depending on the number of locations identified).

<sup>59</sup> Broad Valley Petition at 3; Crocker Telecommunications Petition at 3-4; Southern Tier Wireless Petition at 5.

<sup>60</sup> See also Vantage Point Reply at 7-8; Reply Comments of the Rural Wireless Association, Inc., WC Docket No. 10-90, AU Docket No. 17-182, at 9-10 (filed Oct. 18, 2017) (RWA Oct. 18, 2017 Reply); Letter from Jonathan Banks, Senior Vice President Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Jan. 19, 2018) (USTelecom Jan. 19, 2018 *Ex Parte* Letter); Michael J. Jacobs, Vice President, Regulatory Affairs, ITTA—The Voice of America's Broadband Providers, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., (filed Jan. 19, 2018) (ITTA et al. Jan. 19, 2018 *Ex Parte* Letter).

<sup>61</sup> Support recipients would also retain the 95 percent flexibility to address unforeseen challenges (i.e., 95 percent of the new location total). See *Phase II Auction Order*, 31 FCC Rcd at 5965-67, paras. 44-48.

<sup>62</sup> The new support amount in the state would be reduced by (total state support/model locations) x number of deficient locations. The Commission has used a preponderance of the evidence standard for its challenge processes. See, e.g., *Connect America Fund et al.*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6312, para. 63 (2017); *Connect America Fund*, Report and Order, 28 FCC Rcd 7766, 7779, para. 33 (2013).

CAM and the facts on the ground have not demonstrated that the data and analyses they are relying on are necessarily more accurate than the CAM,<sup>63</sup> we agree that support recipients should not be penalized if the actual facts on the ground differ from the CAM's estimates. Accordingly, we have decided to require support recipients seeking to adjust their required locations to gather and submit geolocation data to demonstrate that they have done the necessary legwork to identify locations within their service areas. By requiring applicants to submit geolocation data and demonstrate that there are no additional locations in the relevant areas, providing an opportunity for relevant stakeholders to comment on the findings, and conducting audits, we also intend to prevent any cherry picking that might occur if support recipients only identify the easiest-to-serve locations and ignore harder-to-serve locations. We also emphasize that applicants are required to conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications.<sup>64</sup>

26. We decline to permit support applicants to identify additional locations to serve above their required state total with an accompanying increase in support.<sup>65</sup> The Commission has a finite Phase II budget that will be allocated through the auction. Accordingly, the Commission would be constrained from giving support recipients more support.

27. We are also not convinced that we should take the further step of broadening the Commission's existing definition of locations for all Phase II auction recipients so they have more potential locations that they can serve in their winning census blocks.<sup>66</sup> The focus of Phase II has been on serving housing units and businesses that receive mass market service, with areas being designated as high-cost by the CAM based on the cost to serve these types of locations.<sup>67</sup> Moreover, reserve prices are

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<sup>63</sup> USTelecom Jan. 19, 2018 *Ex Parte* Letter at 2 (describing their analysis and noting that they did not "claim that the location counts that resulted from this process are necessarily more 'accurate' than the CAM"); ITTA et al. Jan. 19, 2018 *Ex Parte* Letter at 1 (relying on Vantage Point's "prior analysis"). See Vantage Point Reply at 2-5 (describing case studies where it found that the Alternative Connect America Cost Model (A-CAM) had overestimated the number of locations in wire centers, describing how rate-of-return carriers that accepted A-CAM were finding it difficult to locate enough locations, and explaining how initial due diligence for the Phase II auction has uncovered location disparities). *But see* Letter from Dustin Johnson, Vice President of Consulting, WC Docket No. 10-90, at 1 (filed Oct. 20, 2017) (correcting its comments and explaining that the location gap that it had noted would be "in excess of 25% for one carrier" instead "will likely end up being less than 15%" after further analysis). See also Reply Comments of Illinois Electric Cooperative, AU Docket No. 17-182, WC Docket No. 10-90, at 4 (filed Oct. 18, 2017) (noting that it "shares the general concern of Vantage Point regarding the level of accuracy determining eligible census blocks"). The study Vantage Point cites in its comments analyzed only 144 wire centers, and used subscriber locations from client records, not census housing unit data. Vantage Point Reply at 2 (citing Letter from Larry Thompson, CEO, Vantage Point, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. B, at 4 (filed July 13, 2015)).

<sup>64</sup> 47 CFR § 54.315(a)(2); *Phase II Auction Procedures Public Notice* at 45-46, paras. 112-20.

<sup>65</sup> Crocker Telecommunications Petition at 4; Southern Tier Wireless Petition at 5.

<sup>66</sup> Vantage Point Reply at 6; RWA Reply at 10 (suggesting that the Commission expand the definition of locations and include such locations as "agricultural-based and utility-based facilities"); ITTA et al. Jan. 19, 2018 *Ex Parte* Letter at 2.

<sup>67</sup> *Connect America Fund et al.*, Report and Order, 29 FCC Rcd 3964, 4031-33, paras. 158-63 (2014); *Connect America Fund et al.*, Report and Order, 28 FCC Rcd 5301, 5322-23, paras. 50-55 (2013) (explaining how the Connect America Cost Model calculates support for housing units and businesses receiving mass market services). See also *Wireline Competition Bureau Provides Guidance to Carriers Receiving Connect America Fund Support Regarding their Broadband Location Reporting Obligations*, Public Notice, 31 FCC Rcd 12900 (WCB 2016) (*Location Guidance Public Notice*) (providing guidance on location reporting).

being set using the CAM,<sup>68</sup> and the Commission proposed awarding no more support than the CAM calculates is needed to serve housing units and businesses receiving mass market services in high-cost areas, with a cap on extremely high-cost locations.<sup>69</sup> Accordingly, we decline to permit *all* recipients to divert Phase II support away from housing units and businesses receiving mass market services to other types of locations because *some* recipients may find it difficult to serve the number of locations identified by the model.

28. Finally, we decline to monitor a support recipient's compliance at a census-block level or to allow a support recipient to count toward meeting its deployment obligation locations that do not exist.<sup>70</sup> In comments filed on specific bidding procedures for this auction, several parties propose allowing recipients that make service available to all actual locations in a census block to receive credit for making service available to all model-indicated locations within that census block.<sup>71</sup> For instance, under this proposal, if a census block had only six actual locations to be served, and the CAM indicated there were 14 locations to be served, a recipient would receive credit for serving 14 locations in that census block after serving only six.<sup>72</sup> Such a system could create perverse incentives to focus deployment on the types of census blocks in the example, leading to fewer consumers receiving broadband overall. The Commission already decided it would monitor compliance at the state-level so that a support recipient would have to serve locations in other eligible census blocks in the state if it cannot locate enough actual eligible locations within a census block, and the opportunity to petition the Commission to reconsider this decision has passed.<sup>73</sup> The commenters' challenge to this statewide approach is untimely. To the extent there are discrepancies between the number of actual locations on the ground and the CAM-estimated statewide location totals, a support recipient can take advantage of the process adopted above.

## 2. Flexibility in Meeting Deployment Obligations

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

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<sup>68</sup> *Phase II Auction Order*, 31 FCC Rcd at 5979, para. 90.

<sup>69</sup> *Phase II Auction Comment Public Notice*, 32 FCC Rcd at 6258-59, paras. 65-70.

<sup>70</sup> See Vantage Point Reply at 7; Verizon Reply Comments, WC Docket No. 10-90, AU Docket No. 17-182, at 9 (filed Oct. 18, 2017) (Verizon Oct. 18, 2017 Reply); RWA Reply at 10; ITTA et al. Jan. 19, 2018 *Ex Parte* Letter at 2.

<sup>71</sup> See Vantage Point Reply at 7; Verizon Reply at 9; RWA Reply at 10; ITTA et al. Jan. 19, 2018 *Ex Parte* Letter at 2.

<sup>72</sup> See Vantage Point Reply at 7. While Vantage Point also suggests that such recipients "could be required to build to all new locations as they emerge or request service," there is no guarantee that new locations would appear in these census blocks during the support term and it would be burdensome for the Commission to monitor each census block to track compliance. Vantage Point Reply at 7.

<sup>73</sup> *Phase II Auction Order*, 31 FCC Rcd at 5966, para. 45.

<sup>74</sup> *Id.* at 5965-66, paras. 44-47.

<sup>75</sup> *Id.* at 5966, para. 45.

<sup>76</sup> *Id.*

amount of support that must be refunded is based on one-half the average support for the top five percent of the highest cost funded locations nationwide.<sup>77</sup>

30. In the *Phase II Auction Order*, the Commission also directed the Bureau to average the costs calculated by the CAM for each census block at the census-block level so that all the locations in a census block are high-cost funded locations that count towards a Phase II auction recipient's required location total.<sup>78</sup> For the purposes of model-based support, the CAM calculated the costs associated with each carrier, wire center, or splitter separately, on a sub-census block basis.<sup>79</sup> This approach resulted in some census blocks having a combination of low-cost, high-cost, and/or extremely high-cost locations within the census block, and only the high-cost locations counted towards the total number of locations that the price cap carrier was required to serve in a state. To simplify administration and oversight of compliance with Phase II auction obligations, the Commission directed the Bureau to average costs at the census block level for the Phase II auction.<sup>80</sup>

31. Verizon seeks reconsideration of the Commission's decision to give Phase II auction recipients 95 percent flexibility for their deployment obligations.<sup>81</sup> Instead, Verizon requests that the Commission give Phase II auction recipients "significantly greater location flexibility"—90 percent—and not require recipients that take advantage of this flexibility to return associated support.<sup>82</sup>

32. *Discussion.* We deny Verizon's request. We are not persuaded that we should reduce the service obligation to give recipients 90 percent flexibility. We acknowledge that, because costs will be averaged at the census block level, all the locations the CAM identified in each census block in the authorized bids will count towards Phase II auction recipients' funded location total, unless adjusted using the process adopted above.<sup>83</sup> While this differs from the Phase II model-based support requirements, in which some of the locations in some of the census blocks do not count toward the state-required location totals,<sup>84</sup> Phase II auction bidders will have the advantage of choosing which eligible census blocks to include in their bids. Because compliance will be determined on a state-wide basis,<sup>85</sup> the bidder can identify additional locations in the other eligible census blocks within the census block group or choose to bid on additional census block groups where it is able to identify more locations in eligible census blocks than the CAM had identified to meet its statewide total.<sup>86</sup> As the Commission explained above, if a support recipient sufficiently demonstrates that it is unable to identify enough locations to meet its total support obligation statewide, it can also have its location total adjusted with an accompanying reduction in support.

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<sup>77</sup> *Id.*; *December 2014 Connect America Order*, 29 FCC Rcd at 15660-61, para. 42 (requiring that a Phase II recipient refund an amount based on the number of locations left unserved and the average Phase II support the recipient receives in a state multiplied by 1.89).

<sup>78</sup> *Phase II Auction Order*, 31 FCC Rcd at 5971-72, paras. 64-66.

<sup>79</sup> *Id.* at 5971, para. 62 (citing CAM Methodology at 16 n.16).

<sup>80</sup> *Id.* at 5971-72, paras. 64-65.

<sup>81</sup> Verizon Petition for Reconsideration, WC Docket No. 10-90 et al., at 5-8 (filed Aug. 8, 2016) (Verizon Petition).

<sup>82</sup> *Id.* at 5-8.

<sup>83</sup> *Id.* at 6-7.

<sup>84</sup> *Id.* at 6-7; Verizon Reply to Oppositions, WC Docket No. 10-90 et al., at 5-6 (filed Sept. 12, 2016) (Verizon Reply). *See also* Opposition and Comments of the United States Telecom Association, WC Docket No. 10-90 et al., at 10 (filed Sept. 2, 2016) (USTelecom Opposition).

<sup>85</sup> *Phase II Auction Order*, 31 FCC Rcd at 5966, para. 46.

<sup>86</sup> *See also* WISPA Sept. 2016 Opposition at 3 (stating that "a 95 percent threshold will encourage thoughtful planning and efficient deployment of technology that can serve a higher percentage of locations").

33. If we were to permit Phase II auction recipients to use up to 90 percent flexibility in each state, the result could be as much as an additional five percent of locations potentially remaining unserved in Phase II auction-funded census blocks. Because these unserved locations would be in census blocks where Phase II auction recipients are receiving support, targeting support to these locations through another mechanism could prove difficult.<sup>87</sup> Instead, we conclude that 95 percent flexibility is a more reasonable balance between ensuring that as many locations as possible get served in Phase II auction-funded areas and giving recipients some flexibility in the case of unforeseeable circumstances.<sup>88</sup>

34. We acknowledge that some bidders may bid for more support to compensate for the risk of having to return support if they cannot meet the 100 percent service milestone.<sup>89</sup> But we conclude that this potential increase in costs is outweighed by the benefits of ensuring that at least 95 percent—as opposed to 90 percent—of the required number of locations in Phase II-funded areas are served, particularly given that unserved locations in Phase II-funded areas would be difficult to target with another support mechanism. Additionally, we expect that the competitive pressure imposed by competing for a finite budget in the Phase II auction will help mitigate bid inflation. Finally, any support that is returned by a Phase II recipient that serves less than 100 percent of the required number of locations can be repurposed to support broadband through other universal service mechanisms.

35. For these reasons, we also are not persuaded that we should permit Phase II auction recipients to take advantage of the 95 percent flexibility without returning an associated amount of support.<sup>90</sup> Moreover, we are not convinced by claims that it is unnecessary for such recipients to return support because bids will “already reflect the cost of building out to the minimum number of locations.”<sup>91</sup> Instead, we expect that all Phase II auction bidders will bid with the intention of serving 100 percent of funded locations, will factor the cost of serving 100 percent of the locations into their bids, and will take advantage of the flexibility only if necessary. Indeed, if we lowered the flexibility to 90 percent, under Verizon’s logic, we would be conceding that even more locations within eligible blocks could be unserved following the auction. Because Phase II auction bidders are required to conduct due diligence prior to bidding, the Commission explained that it adopted the flexibility to address “unforeseeable challenges” that Phase II auction recipients may have in meeting their deployment obligations.<sup>92</sup> If a Phase II auction bidder initially plans to build to only 95 percent of the required number of locations and then later in the support term experiences unforeseeable events, it will be subject to non-compliance measures if it is unable to serve at least 95 percent of locations and is unable to obtain a waiver.<sup>93</sup> We expect it would be difficult for a recipient to meet its burden of demonstrating good cause to grant a waiver of the deployment obligations if it did not plan to build to 100 percent of funded locations at the outset of its support term.

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<sup>87</sup> *Phase II Auction Order*, 31 FCC Rcd at 5966-67, para. 48 (noting that the Commission has not yet identified an “administratively feasible method” for ensuring that unserved consumers in partially served census blocks are not left behind and encouraging all stakeholders to work together to propose such a method).

<sup>88</sup> The Commission has also stated that if an ETC is unable to meet the required deployment obligations due to circumstances beyond its control, it could seek waiver of the service milestones. *December 2014 Connect America Order*, 29 FCC Rcd at 15700, para. 154. However, the Commission has cautioned that it does not expect such waiver requests will be granted routinely, and a failure to plan for some contingencies would make it difficult to establish that there is good cause to warrant waiver. *Id.* at 15660, para. 40, n.93.

<sup>89</sup> USTelecom Opposition at 11.

<sup>90</sup> Verizon Petition at 7-8; USTelecom Opposition at 11; Vantage Point Reply at 5; RWA Reply at 9; ITTA et al. Jan. 19, 2018 *Ex Parte* Letter at 2.

<sup>91</sup> Verizon Petition at 8; USTelecom Opposition at 11.

<sup>92</sup> *Phase II Auction Order*, 31 FCC Rcd at 5965-66, paras. 44-45.

<sup>93</sup> See 47 CFR § 54.320.

### 3. Accelerated Payment for Early Deployment

36. *Background.* In the *Phase II Auction Order*, the Commission declined to adopt an accelerated payment option for recipients of Phase II auction support.<sup>94</sup> It had proposed in the *April 2014 Connect America Order* potentially disbursing support on an accelerated timetable if a recipient completed its deployment ahead of the service milestones.<sup>95</sup> The Commission explained that it was not persuaded that it could implement such a proposal within the available annual Phase II auction budget, that such an approach would complicate the non-compliance scheme, which includes withholding monthly support payments, and that recipients already have incentives to build out their networks quickly. Crocker Telecommunications requests that the Commission reconsider this decision to permit entities that have winning bids for the Above-Baseline and Gigabit tiers to seek accelerated support.<sup>96</sup> Crocker Telecommunications suggests that because Phase II support “does not provide the full funding that is required to deploy and operate a broadband-capable network,” the accelerated support will incentivize recipients to deploy their networks more quickly.<sup>97</sup>

37. *Discussion.* We decline to reconsider the Commission’s decision not to adopt an accelerated payment option for recipients of Phase II auction support. We are not convinced that the benefits of an accelerated payment option would outweigh any potential additional burden on rate payers. Moreover, as the Commission explained, service providers already have the incentive to build out their networks more quickly so that they can begin earning revenues to help with their costs.<sup>98</sup> They also have an incentive to meet the final service milestone as soon as possible because once it has been verified that they have met their deployment obligations, they can further reduce costs by no longer maintaining a letter of credit.<sup>99</sup> While Crocker Telecommunications suggests that the requirement that Phase II auction recipients offer the required services at rates that are reasonably comparable to those offered in urban areas means that revenues may not offset the higher costs of building in rural areas,<sup>100</sup> nothing precludes a recipient from securing other funding options that can help with the upfront costs of building out and maintaining its network before it receives its full ten years of support.<sup>101</sup>

38. Additionally, we are concerned about our ability to accurately predict the amount by which the Phase II auction budget could be exceeded and, in turn, the potential impact of an accelerated option. Crocker Telecommunications suggests that, given the size of the Phase II auction budget relative to the entire universal service budget, and taking into consideration the additional contributions from providers that will be offering VoIP over their Phase II-funded networks, an accelerated payment option would not result in “dramatic swings in the contribution factor” if the Commission exceeds its annual Phase II auction budget.<sup>102</sup> Whereas in the rural broadband experiments, the Commission had access to the entire \$100 million budget at the start of the program, and thus could make an accelerated payment option available because the Commission could cover any upfront payment requests without needing to

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<sup>94</sup> *Phase II Auction Order*, 31 FCC Rcd at 5967, para. 50.

<sup>95</sup> *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7107, para. 161.

<sup>96</sup> Crocker Telecommunications Petition at 5-6. Crocker Telecommunications refers to Tiers 3 and 4, which we are assuming are meant to correspond to the Above-Baseline and Gigabit performance tiers.

<sup>97</sup> Crocker Telecommunications Petition at 6.

<sup>98</sup> *Phase II Auction Order*, 31 FCC Rcd at 5967, para. 50.

<sup>99</sup> *Id.* at 5967, 5991, paras. 50, 123.

<sup>100</sup> Crocker Telecommunications Petition at 6; 47 CFR § 54.309(a).

<sup>101</sup> *See e.g., Phase II Auction Order*, 31 FCC Rcd at 5989, para. 116 (“We anticipate that many bidders will need to obtain a loan or rely upon other sources of funding to cover the cost of building the network, with the ongoing support used to repay those construction loans.”).

<sup>102</sup> Crocker Telecommunications Petition at 5-6.

increase the contribution factor or wait for the following year's budget,<sup>103</sup> here, however, we will have only the annual Phase II auction budget available each year. Too many unknowns remain about the Phase II auction—including the number of bidders that will participate, the number of bidders that would request and qualify for an accelerated support option, the size of those bidders' bids, and the timing for when the bidders would be eligible to receive accelerated support—to predict with any degree of certainty how much we could potentially exceed the annual budget if we were to adopt an accelerated option.<sup>104</sup>

39. Even if we could determine that giving Phase II auction recipients the option of receiving accelerated support would not dramatically increase the contribution factor, we are not convinced that it would serve the public interest to do so. The Phase II auction is one of many universal service programs, and the Commission is responsible for making decisions that balance the objectives of all of the programs with the burdens on the end-user rate payers that fund the programs.<sup>105</sup> We are not persuaded that increasing the contribution factor by even a small margin for the Phase II auction would be justified for the sole purpose of providing more support earlier in the term, given our efforts to also remain within a budget for other universal service programs.

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

40. *Background.* In the *December 2014 Connect America Order*, the Commission established a process for selecting next-in-line bidders for the rural broadband experiments in the event any provisionally-selected bidders defaulted before the Commission finalized the list of census blocks that would be eligible for the Phase II offer of model-based support to price cap carriers.<sup>106</sup> Specifically, all bidders for rural broadband experiment support that wanted to remain in consideration were required to submit the required technical and financial information to the Commission by a set deadline.<sup>107</sup> If they met these requirements and had placed category 1 bids, the census blocks that were included in category 1 bids (RBE census blocks) were removed from the offer of model-based support and would be made eligible for the Phase II auction.<sup>108</sup>

41. The Commission also decided in the *December 2014 Connect America Order* that “any area served by an unsubsidized facilities-based terrestrial competitor that offers broadband at 10/1 Mbps” would be ineligible for support in the Phase II auction, finding that it would be an “inefficient use of Connect America support to provide funding in these areas.”<sup>109</sup> In the *Phase II Auction Order*, the Commission also decided to exclude from the Phase II auction census blocks that a price cap carrier

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<sup>103</sup> *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8794, para. 75 (2014) (*Rural Broadband Experiments Order and/or FNPRM*).

<sup>104</sup> Crocker Telecommunications does not explain why \$50 million in annual support is a reasonable assumption for the amount of support by which the Commission may exceed its annual budget if recipients request and qualify for an accelerated payment option. Crocker Telecommunications Petition at 6.

<sup>105</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17682, para. 57 (explaining that one of the fundamental goals of the Commission's Connect America reforms “is to minimize the overall burden of universal service contributions on American consumers and businesses”).

<sup>106</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15674-75, para. 83.

<sup>107</sup> *Id.* at 15674-75, para. 83.

<sup>108</sup> *Id.* at 15675-76, paras. 84-85. Category 1 bids were those bids that proposed to deploy a network capable of delivering 100 Mbps downstream/25 Mbps upstream, while offering at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all locations within the selected census blocks; usage and pricing that is reasonably comparable to usage and pricing available for competitive wireline offerings in urban areas; and latency no greater than 100 milliseconds. *Rural Broadband Experiments Order*, 29 FCC Rcd at 8780, para. 26.

<sup>109</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15671, 15674, paras. 73, 80.



already serves with broadband speeds of at least 10/1 Mbps.<sup>110</sup> The Commission directed the Bureau to release a preliminary list of eligible census blocks for the Phase II auction incorporating these decisions, and to publish a final list of eligible census blocks no later than three months prior to the deadline for submission for short-form applications.<sup>111</sup>

42. The National Rural Electric Cooperative Association (NRECA) and the Utilities Technology Council (UTC) jointly request that the Commission reconsider its decision to exclude from Phase II auction eligibility RBE census blocks that are served by an unsubsidized competitor or a price cap carrier with broadband at speeds of 10/1 Mbps.<sup>112</sup>

43. *Discussion.* We dismiss as untimely NRECA and UTC's petition for reconsideration of the Commission's decision to exclude from the Phase II auction RBE census blocks that are served by an unsubsidized competitor with broadband at speeds of 10/1 Mbps. The Commission decided in the *December 2014 Connect America Order* that "any area" served by an unsubsidized competitor offering 10/1 would be excluded from the Phase II auction.<sup>113</sup> The Commission also stated that shortly before the Phase II auction it expected to "update the list of census blocks that will be excluded from eligibility" from the Phase II auction "based on the most current data" so as to "take into account any new deployment that is completed" prior to the auction.<sup>114</sup> The Commission did not indicate that there would be any exceptions to this decision.<sup>115</sup> The Commission's decision not to offer support in areas served by an unsubsidized competitor is one of the fundamental principles of the Connect America Fund,<sup>116</sup> so it is reasonable to expect that the Commission would make explicit any exceptions to this policy.<sup>117</sup>

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<sup>110</sup> *Phase II Auction Order*, 31 FCC Rcd at 5973, paras. 70-71.

<sup>111</sup> *Id.* at 5973-74, paras. 72-73.

<sup>112</sup> See generally Joint Petition for Reconsideration of the National Rural Electric Cooperative Association and the Utilities Technology Council, WC Docket No. 10-90 et al. (filed July 21, 2016) (NRECA/UTC Petition). Several electric cooperatives filed comments in support of NRECA and UTC's petition. See Orcas Power and Light Cooperative Statement in Support, WC Docket No. 10-90 et al. (filed Aug. 26, 2016) (OPLC Comments); Illinois Electric Cooperative Statement in Support, WC Docket No. 10-90 et al. (filed Aug. 26, 2016) (IEC Comments); Roanoke Electric Cooperative Statement in Support, WC Docket No. 10-90 et al. (filed Aug. 23, 2016) (REC Comments).

<sup>113</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15671, 15674, paras. 73, 80 (emphasis added).

<sup>114</sup> *Id.* at 15674, para. 80.

<sup>115</sup> The Commission's decision in the *Phase II Auction Order* to include all of the support associated with the RBE census blocks in the Phase II auction budget does not suggest that the Commission intended that all of these census blocks would be eligible for bidding. See NRECA/UTC Petition at 6 (citing *Phase II Auction Order*, 31 FCC Rcd 5974-75, paras. 77, 79). First, the Commission made its budget decisions in the same order where it decided to exclude census blocks served by price cap carriers at 10/1 Mbps broadband and directed the Bureau to update the eligible census block list with the most recent publicly available data to implement this decision and its decision in the *December 2014 Connect America Order* to exclude census blocks served by unsubsidized competitors. *Phase II Auction Order*, 31 FCC Rcd at 5975, para. 79. It did not yet have the updated list of eligible census blocks. Second, the Commission also included in the budget support associated with all of the census blocks where price cap carriers declined support even though the Commission had also made clear that some of these census blocks would not be eligible because of the Commission's eligible area decisions. *Id.* Finally, the Phase II auction budget is not tied to the CAM-calculated support amounts for each eligible census block because census blocks that were removed from the Phase II offer, like extremely high-cost census blocks, are also eligible for the Phase II auction and no additional support was added to the budget to account for those census blocks. See *April 2014 Connect America Order*, 29 FCC Rcd at 7060, para. 30.

<sup>116</sup> USTelecom Opposition at 4-5.

<sup>117</sup> See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17673, para. 24 ("Importantly, the [Connect America Fund] will only provide support in those areas where a federal subsidy is necessary to ensure the build-out and operation of broadband networks. The [Connect America Fund] will not provide support in areas where

(continued...)

44. Because the Commission made the decision to exclude all census blocks served by an unsubsidized competitor from the Phase II auction in the *December 2014 Connect America Order*, NRECA and UTC should have filed a petition for reconsideration of this decision within 30 days of publication of that order in the Federal Register.<sup>118</sup> NRECA and UTC failed to do so. Instead, NRECA and UTC filed a petition for reconsideration of this decision after the May 2016 *Phase II Auction Order*. In that order, the Commission took steps to implement the decisions it had already made about Phase II auction eligible areas in the *December 2014 Connect America Order*, including its decision to exclude areas served by unsubsidized competitors, by deciding that it would: 1) rely on the most recent publicly available FCC Form 477 data for identifying eligible Phase II auction census blocks, 2) conduct a limited challenge process, 3) average costs at the census block level, and 4) direct the Bureau to release a preliminary list of eligible census blocks.<sup>119</sup> NRECA and UTC do not take issue with these implementation decisions. Because NRECA and UTC instead seek reconsideration of the Commission's underlying decision in the *December 2014 Connect America Order* to exclude from the Phase II auction census blocks served by unsubsidized competitors, we dismiss this portion of the petition as untimely.

45. Notwithstanding the untimely nature of this portion of the petition, we deny it on the merits. We similarly deny the timely filed portion of the petition asking us to reconsider the Commission's decision to exclude from the auction RBE census blocks served by price cap carriers at broadband speeds of 10/1 Mbps.<sup>120</sup> In both instances, we conclude that the Commission's decision to exclude these census blocks reasonably balances the Commission's objectives in furtherance of the public interest. The Commission has repeatedly emphasized that while it has a preference for higher speeds, higher data usage, and lower latency, it must balance these preferences against its objective of maximizing its finite budget to serve as many unserved consumers as possible and not overbuilding locations served by private capital.<sup>121</sup> For this reason, the Commission adopted different performance tiers for the Phase II auction starting with 10/1 Mbps speeds,<sup>122</sup> and for this reason the Commission decided to make ineligible census blocks already served by unsubsidized competitors and price cap carriers at broadband speeds of 10/1 Mbps.<sup>123</sup> Although the decision to exclude these census blocks means that these areas may not have access to higher speeds through the Phase II auction,<sup>124</sup> the Commission found that using the Phase II auction budget to address the digital divide by targeting those

(Continued from previous page) \_\_\_\_\_

unsubsidized competitors are providing broadband that meets our definition.”). While the Commission noted that it would be removing “any” rural broadband census block from the offer of model-based support and indicated that it would instead make such census blocks available for the Phase II auction, it did not explicitly exempt the census blocks from its other decision to make ineligible any area served by an unsubsidized facilities-based terrestrial competitor that offers 10/1 Mbps and to update the list of census blocks that will be excluded from eligibility based on the most current data available shortly before the auction. See OPLC Comments at 2-3; IEC Comments at 2; REC Comments at 2 (citing *December 2014 Connect America Order*, 29 FCC Rcd at 15675, para. 84).

<sup>118</sup> 47 CFR § 1.429(d).

<sup>119</sup> *Phase II Auction Order*, 31 FCC Rcd at 5968-73, paras. 53-68, 72-73.

<sup>120</sup> Our decision is limited to the RBE census blocks that are the subject of NRECA/UTC's petition. See Opposition of NTCA-The Rural Broadband Association, WC Docket No. 10-90 et al., at 7-8 (filed Sept. 2, 2016) (requesting that the Commission make clear “that any decision rendered with respect to this matter does not and will not have any practical or precedential effect upon areas in which [rate-of-return carriers] operate as the incumbent . . .”).

<sup>121</sup> *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 84.

<sup>122</sup> *Id.* at 5957, para. 15.

<sup>123</sup> *Id.* at 5973, paras. 70-71; *December 2014 Connect America Order*, 29 FCC Rcd at 15671, 15674, paras. 73, 80.

<sup>124</sup> NRECA/UTC Petition at 11 (claiming the Commission's decision to exclude certain RBE census blocks “locks-in the status quo for the rural communities located in the affected census blocks”). See also OPLC Comments at 3; IEC Comments at 2; REC Comments at 2.

areas that lack a provider offering even 10/1 Mbps speeds to at least one residential location was a more effective use of the limited Phase II budget.<sup>125</sup>

46. UTC and NRECA are asking the Commission to use our finite budget to fund census blocks where either an unsubsidized competitor using private capital or a price cap carrier has already deployed broadband at speeds meeting or exceeding the Commission's minimum 10/1 Mbps speeds. We recognize that all locations in these census blocks may not be served with 10/1 Mbps or higher speeds, as they would have been if the blocks were included in the Phase II auction.<sup>126</sup> Nevertheless, we conclude that, on balance, it better serves the public interest to focus our finite budget on areas that lack *any* broadband provider offering speeds that meet our requirements than on areas that have such a provider somewhere in the block.<sup>127</sup> This approach will ensure that our budget will be used to serve consumers that completely lack access to broadband meeting our minimum speed requirements rather than diverting funds to potentially overbuild areas where consumers already have access to such service.

47. We are not convinced by UTC and NRECA's arguments that the "cost efficiencies that would be gained by removing [the rural broadband experiment] census blocks are greatly outweighed by the public interest benefits that would be lost if [the] census blocks go unfunded."<sup>128</sup> Although it is possible that the current provider offering 10/1 Mbps in these areas may cease offering service at these speeds,<sup>129</sup> it also is possible that the current provider could improve its offerings without Connect America support. Similarly, it is possible that some price cap carriers or unsubsidized competitors may target only one location in the RBE census blocks with 10/1 Mbps broadband service to make them ineligible for the Phase II auction.<sup>130</sup> But consumers overall may benefit if such service providers take this opportunity to expand their 10/1 Mbps broadband offerings without Phase II auction support because that support then could be directed to areas that are totally unserved. There is also a possibility that service providers that were interested in bidding in RBE census blocks that are now ineligible may still win support in surrounding eligible areas. Such recipients may be able to leverage their funded networks in eligible areas so that it becomes cost-effective to deploy higher speeds in the ineligible census blocks absent support. Finally, if an area that was excluded from the Phase II auction does subsequently become unserved, either because the provider ceases offering service in that area or the provider does not upgrade its broadband service speeds to meet the Commission's current definition of "served," the Commission could make that area eligible for the Remote Areas Fund or for other future competitive bidding to the

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<sup>125</sup> *Phase II Auction Order*, 31 FCC Rcd at 5973, paras. 70-71 (noting the Commission's "finite budget" and its "objective of targeting support to areas that are unserved" and finding "that it furthers the public interest to exclude census blocks that are already served" by price cap carriers at 10/1 Mbps broadband speeds); *December 2014 Connect America Order*, 29 FCC Rcd at 15674, para. 80 (finding that "it would be an inefficient use of Connect America support to provide funding" in areas served by unsubsidized competitors). *See also* USTelecom Opposition at 4 (stating that "the Commission's decision represents sound public policy and reflects prudent use of limited [Connect America Fund] resources").

<sup>126</sup> NRECA/UTC Petition at 9-10 (claiming the Commission's decision "is a perpetuation of the 'digital divide' between rural and urban areas"). *See also* OPLC Comments at 3; IEC Comments at 2; REC Comments at 2.

<sup>127</sup> *Phase II Auction Order*, 31 FCC Rcd at 5973, para. 70.

<sup>128</sup> Reply Comments of the Utilities Technology Council and the National Rural Electric Cooperative Association, WC Docket No. 10-90 et al., at 3-5 (filed Sept. 12, 2016) (NRECA/UTC Reply).

<sup>129</sup> NRECA/UTC Petition at 10.

<sup>130</sup> NRECA/UTC Reply at 2 (claiming that the Commission's decision "encourages price cap carriers to game the process and thwart competition, because it creates an open opportunity for them to target [rural broadband experiment] areas for deployment, thereby undercutting their competitors from being able to access funding in those areas").

extent it remains unserved.<sup>131</sup>

48. We also are not persuaded by NRECA and UTC's claims that potential applicants "acted in good faith" in assuming that all RBE census blocks would be made eligible for the Phase II auction or that the Commission's decisions "penalize[]" those potential applicants for moving forward and deploying broadband prior to the Phase II auction.<sup>132</sup> As we explain below, all potential bidders have known since at least April 2014 that the Commission contemplated excluding certain census blocks from the Phase II auction, and it had been the Commission's longstanding policy to exclude census blocks served by unsubsidized competitors for its programs since the Connect America Fund was created.<sup>133</sup> But even if we were to agree that it was reasonable for applicants to assume that all RBE census blocks would be included, we are not convinced that applicants that intended to bid on these blocks are worse off than applicants that intend to bid on other census blocks. Any census block that is on the preliminary eligible census block list could subsequently become ineligible if it is reported as served in the most recent publicly available Form 477 when the final list of eligible census blocks is released. This means that any applicant could invest resources to get ready to bid for an area, only to later discover that it is no longer eligible. The Commission took measures to reduce this possibility by directing the Bureau to release the final census block list three months prior to the short-form application filing deadline so that applicants have time to plan and prepare for bidding.<sup>134</sup> We also conclude that the potential costs applicants incur in planning to bid on census blocks that ultimately become ineligible are outweighed by the benefits to consumers of using the Phase II auction budget efficiently.

49. Moreover, the fact that some applicants already deployed networks in the RBE blocks, even though they acknowledge they had no guarantee of winning support through the auction, provides further support for the Commission's decision not to make these census blocks eligible for the auction. The Commission did not adopt the eligibility rules or the public interest obligations for the Phase II auction until the *Phase II Auction Order* in May 2016.<sup>135</sup> Thus, the entities that NRECA and UTC cite in their petition as already having deployed broadband to these areas in July 2016 did not know, when they deployed broadband to these areas, if they could meet the eligibility requirements or what public obligations would be required; whether their applications would ultimately be approved to participate in the auction; whether they would win in the Phase II auction; and, whether they would be authorized to receive support.<sup>136</sup> Given these uncertainties, it seems unlikely that a broadband provider would deploy to an area if it thought it could not sustain the service without support. Because these providers could make a business case to serve these areas, even at the risk that they would not qualify to participate in the auction or win support, we see no reason why we should use our finite funds to support these areas instead of areas where no provider has been able to make a business case to serve.

50. We also disagree with NRECA and UTC's claims that our decisions favor price cap carriers.<sup>137</sup> NRECA and UTC claim that price cap carriers were given the "right of first refusal to model based support without any removal of census blocks in those areas."<sup>138</sup> However, they neglect to

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<sup>131</sup> *Phase II Auction Order*, 31 FCC Rcd at 5973, para. 70 n.141.

<sup>132</sup> NRECA/UTC Petition at 4, 8-9, 11; NRECA/UTC Reply at 1-2.

<sup>133</sup> *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7110-11, paras. 174-75; *USF/ICC Transformation Order*, 26 FCC Rcd at 17673-74, para. 24. See also USTelecom Opposition at 4-5.

<sup>134</sup> *Phase II Auction Order*, 31 FCC Rcd at 5974, para. 73.

<sup>135</sup> See generally *Phase II Auction Order*, 31 FCC Rcd 5949.

<sup>136</sup> See also USTelecom Opposition at 5 (noting that such providers "made deliberate and informed business decisions to deploy broadband infrastructure in the absence of any federal [Connect America] support").

<sup>137</sup> NRECA/UTC Petition at 9.

<sup>138</sup> NRECA/UTC Reply at 2.

acknowledge that census blocks that were served by unsubsidized competitors at 4/1 Mbps and above (the Commission's minimum speed requirement when the decision was made) were removed from the offer of model-based support, as were the RBE census blocks that are the subject of the petition.<sup>139</sup> Moreover, price cap carriers and other competitive bidders are both precluded from receiving Phase II support in ineligible RBE census blocks because they were removed from the offer of model-based support and from the Phase II auction.

51. We also do not find it persuasive to compare the Commission's decisions with respect to the offer of model-based support to price cap carriers with its decisions to remove certain census blocks from the Phase II auction.<sup>140</sup> NRECA and UTC claim that the Commission's decisions are "arbitrary and capricious" because they "disparately den[y] competitive providers . . . from being able to receive funding under Phase II in areas where they have deployed broadband networks."<sup>141</sup> Price cap carriers were able to receive Phase II funding in areas where they had already deployed 10/1 broadband service. But for the offer of model-based support, the Commission offered price cap carriers a state-wide commitment in high-cost areas so that if they accepted support, they would be required to offer voice and broadband at speeds of 10/1 Mbps to the required number of locations in their service area in the state where they were already an ETC, and in most cases they were already receiving universal service funding in those areas. The Commission decided that it preferred this approach as opposed to one in which the Commission would immediately adopt competitive bidding everywhere because price cap carriers were "in a unique position to deploy broadband networks rapidly and efficiently" throughout their "large service areas." The Commission further concluded that, on balance, and in its predictive judgment, its approach "best serves consumers in these areas in the near term, many of whom are receiving voice services today supported in part by universal service funding and some of whom also receive broadband, and will speed the delivery of broadband to areas where consumers have no access today."<sup>142</sup>

52. Here, the Commission also used its predictive judgment when deciding how to allocate its finite Phase II auction budget to best serve consumers, but under different conditions. For the Phase II auction, a service provider need not be the incumbent to compete for support; bidders can be selective about which eligible areas they include in their bids; bidders may not have received universal service support in the past to serve the areas for which they intend to bid; and, there are likely more areas eligible for support than there is support available. For the offer of model-based support, the Commission was constrained by the service area of a specific price cap carrier and reliant on only one incumbent carrier to reach its objectives of maximizing coverage. Here, the Commission is constrained by the Phase II auction budget. Therefore, it decided to take a different approach in the Phase II auction by targeting support only to those areas that are unserved by price cap carriers and unsubsidized competitors at 10/1 Mbps minimum broadband speeds. Nothing in the record persuades us that the Commission would better serve the public interest by reconsidering this approach.

53. Nor are we convinced that the Commission's decision to exclude certain census blocks from the Phase II auction "frustrate[s] the fundamental purpose" of the rural broadband experiments. NRECA and UTC claim that the purpose of the experiments was to "challenge status quo broadband from

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<sup>139</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15675, para. 84; *USF/ICC Transformation Order*, 26 FCC Rcd at 17729, para. 170.

<sup>140</sup> NRECA/UTC Petition at 9-11; NRECA/UTC Reply at 6.

<sup>141</sup> NRECA/UTC Reply at 6.

<sup>142</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17730-32, paras. 175-78. *See also id.* at 17727, para. 165 (noting that the Commission sought "to avoid consumer disruption—including the loss of traditional voice service—while getting robust, scalable broadband to substantial numbers of unserved rural Americans as quickly as possible"). The United States Court of Appeals for the Tenth Circuit found that the Commission "reasonably exercised its discretion in adopting this . . . funding framework for price-cap areas . . ." *In re FCC 11-161*, 753 F.3d 1015, 1083 (10th Cir. 2014).

the price cap carriers.”<sup>143</sup> While the Commission may have indicated that it expected the rural broadband experiments to provide the Commission with information about “which and what types of parties are willing to build networks that will deliver services that exceed” the performance standards the Commission adopted for the offer of model-based support,<sup>144</sup> the Commission intended to use what it learned to inform the rules it adopted for the Phase II auction.<sup>145</sup> The Commission did not decide to exclude the RBE census blocks from the offer of model-based support to price cap carriers until after rural broadband experiment bidders had placed their bids,<sup>146</sup> suggesting that it was not the fundamental purpose of the program to give losing rural broadband experiment bidders another opportunity to bid for support in the RBE census blocks in the Phase II auction. Instead, the rural broadband experiments served their purpose by giving the Commission valuable experience and data it could use when determining the public interest obligations and eligibility requirements for the Phase II auction. The Commission is under no obligation to ensure that all participants in the rural broadband experiments have the opportunity to bid for their desired census blocks in the auction, particularly when it would conflict with the Commission’s overall objectives for the Phase II auction.

54. Finally, we disagree with NRECA and UTC’s claims that applicants had no notice that the Commission might exclude RBE census blocks from the Phase II auction.<sup>147</sup> Consistent with the requirements of Section 553 of the Administrative Procedure Act,<sup>148</sup> interested parties had an opportunity for meaningful comment on the Commission’s proposals to exclude certain census blocks from Phase II auction eligibility. The Commission noted in the *April 2014 Connect America FNPRM* that, if its proposal to establish 10 Mbps as the minimum broadband downstream speed was adopted, “Phase II funds would only be available in a competitive bidding process for any area lacking 10 Mbps/1 Mbps.”<sup>149</sup> In the *FNPRM*, the Commission sought comment on excluding from the Phase II auction “any area” that is served by a price cap carrier that offers fixed residential voice and broadband meeting the Commission’s requirements,<sup>150</sup> and on excluding from Phase II “those census blocks” that are served by a facilities-based terrestrial competitor offering voice and broadband services at 10/1 Mbps.<sup>151</sup>

55. Although the Commission did not seek comment on applying these exclusions specifically to the RBE census blocks, such action is a logical outgrowth of the Commission’s proposals. Under the “logical outgrowth” standard, a notice of proposed rulemaking does not violate notice requirements under the Administrative Procedures Act if it “provide[s] the public with adequate notice of

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<sup>143</sup> NRECA/UTC Petition at 11; NRECA/UTC Reply at 3.

<sup>144</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8771, para. 6.

<sup>145</sup> See generally *Phase II Auction Order*, 29 FCC Rcd 5949 (repeatedly referencing its experience with the rural broadband experiments in making Phase II auction decisions); *Rural Broadband Experiments Order*, 29 FCC Rcd at 8772, para. 6 (“[W]e expect these experiments also will inform key decisions that we will be making in the coming months regarding the Connect America Fund”).

<sup>146</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15674-77, paras. 83-89. Rural broadband experiment bids were due November 7, 2014. *Wireline Competition Bureau Announces Date for Opening of Rural Broadband Experiments Application Filing Window and Final Deadline for Applications*, Public Notice, 29 FCC Rcd 12621 (WCB 2014).

<sup>147</sup> NRECA/UTC Petition at 4-8; NRECA/UTC Reply at 5.

<sup>148</sup> 5 U.S.C. § 553.

<sup>149</sup> *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7110, para. 175.

<sup>150</sup> *Id.* at 7111, para. 175 (emphasis added).

<sup>151</sup> *Id.* at 7110, para. 174 (emphasis added).

the proposed rule followed by an opportunity to comment on the rule's content."<sup>152</sup> First, the Commission sought comment "on the broader question of whether universal service funds are ever efficiently used when spent to overbuild areas where another provider has already deployed service."<sup>153</sup> Given the broad nature of this question, the parties were on notice that the Commission was contemplating eliminating support for served areas in any universal service context. Second, while the *FNPRM* did not explicitly propose that the RBE census blocks would be made eligible for the Phase II auction if they were removed from the offer of model-based support,<sup>154</sup> both NRECA and UTC filed comments in response to the *FNPRM* requesting that the Commission make the RBE census blocks available for competitive bidding.<sup>155</sup> Because they had the opportunity to urge the Commission to include the census blocks in the Phase II auction, they also had the opportunity to comment on how the Commission's proposals for the Phase II auction—including whether to exclude areas served by unsubsidized competitors—should or should not apply to the RBE census blocks. In fact, those comments also separately discuss the Commission's proposals to remove from eligibility the Phase II auction census blocks served by price cap carriers and raise similar arguments to those raised in the petition.<sup>156</sup> In the section seeking comment on the interplay between the Phase II offer of model-based support and the rural broadband experiments, the Commission did not suggest that census blocks removed from the offer of model-based support would be exempt from its broader Phase II auction proposals if the removed blocks were considered eligible for the Phase II auction inventory.<sup>157</sup>

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

56. *Background.* The Commission's rules require each applicant seeking to participate in the Phase II auction to provide in its short-form application, among other things, basic ownership information, certifications regarding its qualifications to receive support, and information regarding its operational and financial capabilities.<sup>158</sup> The information provided in a short-form application helps confirm that an applicant meets certain basic qualifications for participation in the bidding and enables

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<sup>152</sup> *Agape Church, Inc. v. FCC*, 738 F.3d 397, 422 (D.C. Cir. 2013); see generally *Covad Commc'ns Co. v. FCC*, 450 F.3d 528, 548-49 (D.C. Cir. 2006).

<sup>153</sup> *April 2014 Connect America FNPRM* at 7110, para. 178.

<sup>154</sup> See *id.* at 7123-24, paras. 220-23 (seeking comment on the interplay between the rural broadband experiments and Phase II).

<sup>155</sup> Comments of National Rural Electric Cooperative Association, WC Docket No. 10-90 et al., at 14 (filed Aug. 8, 2014) (NRECA Aug. 2014 Comments); Comments of the Utilities Technology Council, WC Docket No. 10-90 et al., at 5-8 (filed Aug. 8, 2014) (UTC Aug. 2014 Comments).

<sup>156</sup> See, e.g., Comments of National Rural Electric Cooperative Association, WC Docket No. 10-90 et al., at 10-11 (filed Aug. 8, 2014) (suggesting that the Commission's proposal to exclude census blocks served by price cap carriers from the Phase II auction "has the practical effect of insulating subsidized price cap carriers from competition and would enable these carriers to continue to provide 4/1 Mbps service" and that "price cap carriers will be under no pressure to improve service to those areas and to expand coverage to unserved locations"); Comments of the Utilities Technology Council, WC Docket No. 10-90 et al., at 22 (filed Aug. 8, 2014) ("Taking these areas off the table by declaring them ineligible because even a small portion of the area is served by a subsidized competitor would leave the remainder of the unserved customers in those areas in regulatory limbo for eternity"). See also Reply Comments of Utilities Technology Council, WC Docket No. 10-90 et al., at 8-9 (filed Sept. 18, 2014).

<sup>157</sup> *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7123-24, paras. 220-23.

<sup>158</sup> See 47 CFR §§ 1.21001(b), 54.315(a) (describing the information that each Phase II auction applicant must submit in its application to become qualified to participate in the Phase II auction); *Phase II Auction Comment Public Notice*, 32 FCC Rcd at 6242-58, paras. 15-64 (proposing that Phase II auction applicants submit additional information).

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

57. For the rural broadband experiments, entities that were interested in bidding were required to submit an application with their bids that included, in addition to other information, background information on the applicant and its qualifications to provide voice and broadband service, as well as a description of its proposed project.<sup>159</sup> The Commission announced applicants that submitted the most cost-effective bids as provisionally-selected bidders.<sup>160</sup> During the post-selection review process, each provisionally-selected bidder was required to submit three years of audited financial statements, a description of its proposed technology and system design with a network map certified by a professional engineer, and a letter of credit commitment letter from a qualified bank.<sup>161</sup> Prior to authorizing each bidder to receive support, Commission staff reviewed that information to determine if each winning bidder was financially and technically qualified to meet the obligations of support in the areas included in their winning bids.<sup>162</sup> A number of provisionally-selected bidders were not ultimately authorized to receive support because they failed to submit the required financial or technical information during the post-selection review period.<sup>163</sup>

58. Broad Valley Micro Fiber Networks Inc. (Broad Valley) petitioned for reconsideration of the Phase II auction eligibility rules, requesting that the Commission adopt an “alternative eligibility path” by “automatically qualify[ing]” any entity that was selected as a provisional winning bidder for the rural broadband experiments.<sup>164</sup>

59. *Discussion.* We decline to reconsider the Commission’s Phase II auction eligibility rules and automatically qualify to participate in the Phase II auction those entities that were selected as provisional winning bidders for the rural broadband experiments. We are not persuaded that provisionally-selected bidders that failed to submit all of the required information during the rural broadband experiments are necessarily qualified for the Phase II auction.<sup>165</sup> Because provisionally-selected bidders that were not ultimately authorized to receive support did not submit all of the required

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<sup>159</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8784-85, para. 45.

<sup>160</sup> See *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, Public Notice, 30 FCC Rcd 2045 (WCB 2015); *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, Public Notice, 29 FCC Rcd 14684 (WCB 2014).

<sup>161</sup> *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-88, para. 54.

<sup>162</sup> *Id.*

<sup>163</sup> See, e.g., *Connect America Fund et al.*, Order, 30 FCC Rcd 772 (WCB 2015); *Connect America Fund et al.*, Order, 30 FCC Rcd 2022 (WCB 2015); *Connect America Fund et al.*, Order, 30 FCC Rcd 6257 (WCB 2015) (denying various petitions for waiver of the rural broadband experiment post-selection review process requirements).

<sup>164</sup> Broad Valley Micro Fiber Networks Inc. Petition for Reconsideration, WC Docket No. 10-90 et al., at 1 (filed July 20, 2016) (Broad Valley Petition). Broad Valley was provisionally selected as a winning bidder, but then withdrew from consideration after determining that it was “not comfortable with the technical performance and scalability of the solution” it had proposed to use to meet the rural broadband experiment public interest obligations. Letter from Joseph T. DuFresne, Chief Financial Officer, Broad Valley Micro Fiber Networks Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Dec. 17, 2014). See also USTelecom Opposition at 2 (noting that “after its selection Broad Valley declined to offer any financial and technical information”).

<sup>165</sup> Broad Valley Petition at 1 (suggesting that provisionally-selected winning bidders were already “thoroughly” vetted, and that such bidders “already spent the effort and money to prove eligibility”).



technical and financial information at the post-selection review stage, Commission staff did not fully assess their qualifications once they were named as winning bidders.<sup>166</sup>

60. Furthermore, we are not convinced that we should permit provisionally-selected bidders that were ultimately authorized to receive rural broadband experiment support to participate in the Phase II auction without meeting the eligibility requirements for the Phase II auction.<sup>167</sup> Although we acknowledge that such entities underwent more extensive vetting than defaulting provisionally-selected bidders, eligibility requirements for applicants seeking to bid in the rural broadband experiments were not as rigorous as those proposed and adopted for the Phase II auction. As the Commission previously indicated,<sup>168</sup> the eligibility considerations for participation in the rural broadband experiments bidding were different than they are for the Phase II auction. The rural broadband experiments were intended to award support to discrete experiments, and if the bidder defaulted, the area that was included in the bid would be eligible for the Phase II auction if it remained unserved. By contrast, the Commission seeks to balance maximizing coverage with its preference for supporting higher speeds, higher usage allowances, and lower latency through the Phase II auction, and if a bidder defaults, it would thwart these objectives by leaving the relevant area unserved when another qualified bidder may have been able to serve the area if it had won the support.

61. Moreover, because the obligations for the Phase II auction are not the same as those of the rural broadband experiment, we conclude that it serves the public interest to independently assess the qualifications of rural broadband experiment recipients seeking to participate in the Phase II auction. The Commission has adopted different speed, capacity, and latency requirements and a different build-out timeline for the Phase II auction.<sup>169</sup> When the Commission authorized provisionally-selected bidders to receive rural broadband experiment support, it was authorizing those entities based on the specific technologies and networks they intended to use to meet their rural broadband experiment obligations. For the Phase II auction, the Commission has proposed to determine an applicant's eligibility to bid for the performance tier and latency combinations it selects in part based on information regarding how it intends to meet the Phase II obligations,<sup>170</sup> which may differ from how it intended to meet its rural broadband experiment obligations. Finally, the Commission began authorizing rural broadband experiment recipients in 2015, and the last rural broadband experiment recipient was authorized in 2016.<sup>171</sup> Because the Phase II auction will not be held until 2018, an applicant's technical and financial qualifications may

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<sup>166</sup> See USTelecom Opposition at 2-3 (stating that such bidders “had only provided minimal information that does not justify an automatic presumption of qualification to participate in the” Phase II auction and that automatically granting eligibility to such bidders “would reward applicants that have affirmatively demonstrated an inability to comply with [Commission] requirements and would unnecessarily risk the [Commission’s] limited [Connect America] resources by potentially awarding them to unqualified candidates”).

<sup>167</sup> USTelecom Opposition at 2 (noting that they “agree that arguably those provisional [rural broadband experiment] winners that went on to receive [rural broadband experiment] funding after meeting the [Commission’s] financial and technical requirements have made enough of a showing that they should be qualified for the auction”).

<sup>168</sup> *Phase II Auction FNRPM Order*, 32 FCC Rcd at 1640-41, para. 39.

<sup>169</sup> *Compare Phase II Auction Order*, 31 FCC Rcd at 5956-64, paras. 14-37, 40, with *Rural Broadband Experiments Order*, 29 FCC Rcd at 8779-80, 8794, paras. 24-29, 74-75.

<sup>170</sup> *Phase II Auction Comment Public Notice*, 32 FCC Rcd at 6247-55, paras. 29-54.

<sup>171</sup> See, e.g., *Rural Broadband Experiment Support Authorized for Winning Bid Submitted by Lake County, Minnesota d/b/a Lake Connections*, Public Notice, 31 FCC Rcd 13133 (WCB 2016); *Rural Broadband Experiment Support Authorized for Ten Winning Bids for Skybeam, LLC, Consolidated Communications Networks, Inc, Delta Communications LLC, and Allamakee-Clayton Electric Cooperative, Inc.*, Public Notice, 30 FCC Rcd 8283 (WCB 2015).

have changed since the Commission last had the opportunity to review them.<sup>172</sup>

### G. Letters of Credit Requirements

62. *Background.* In the *Phase II Auction Order*, the Commission adopted a letter of credit requirement for all winning bidders.<sup>173</sup> Specifically, before a winning bidder can be authorized to receive Phase II auction support, it must obtain an irrevocable stand-by letter(s) of credit from an eligible bank that covers the first year of support for all of the winning bids in the state.<sup>174</sup> Before the Phase II auction recipient can receive its next year's support, it must modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year.<sup>175</sup> Once the Phase II auction recipient has met its 60 percent service milestone, its letter of credit may be valued at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.<sup>176</sup> Once the Phase II auction recipient has met its 80 percent service milestone, its letter of credit may be valued at 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.<sup>177</sup>

63. The letter of credit must remain open until the Phase II auction recipient has certified that it has deployed broadband and voice services meeting the Commission's requirements to 100 percent of the required number of locations, and USAC has validated that the entity has fully deployed its network.<sup>178</sup> If a Phase II auction recipient fails to meet the required service milestone after it begins receiving support, then fails to cure within the requisite time period, and is unable to repay the support that is associated with its default in a timely manner, the Bureau will issue a letter evidencing the failure and declaring a default.<sup>179</sup> Broad Valley and Crocker Telecommunications request that the Commission reconsider these letter of credit requirements by further reducing the amount of the support that the letter of credit is required to cover as Phase II auction recipients meet their buildout milestones.<sup>180</sup>

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

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<sup>172</sup> Because rural broadband experiment recipients were required to submit the most recent three consecutive years of audited financial statements within 10 days of being announced as provisionally-selected bidders, they submitted financial statements ranging from 2011 to 2014. *Rural Broadband Experiment Order*, 29 FCC Rcd at 8787, para. 54.

<sup>173</sup> 47 CFR § 54.315(c); *Phase II Auction Order*, 31 FCC Rcd at 5989-99, paras. 119-40. The Commission also adopted a letter of credit requirement for Mobility Fund Phase I, the rural broadband experiments, and Mobility Fund Phase II. See 47 CFR §§ 54.1007, 54.1016; *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-93, paras. 54-71.

<sup>174</sup> 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5997, para. 135.

<sup>175</sup> 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5997, para. 135.

<sup>176</sup> 47 CFR § 54.315(c)(1)(i); *Phase II Auction Order*, 31 FCC Rcd at 5997-98, para. 136.

<sup>177</sup> 47 CFR § 54.315(c)(1)(ii); *Phase II Auction Order*, 31 FCC Rcd at 5998, para. 136.

<sup>178</sup> 47 CFR § 54.315(c)(1); *Phase II Auction Order*, 31 FCC Rcd at 5991, para. 123.

<sup>179</sup> 47 CFR § 54.315(c)(4)(i); *Phase II Auction Order*, 31 FCC Rcd at 6016-18, paras. 189-94.

<sup>180</sup> Broad Valley Petition at 2-3; Crocker Telecommunications Petition at 4-5. Broad Valley proposes that the "letter of credit should match the buildout requirements." Broad Valley Petition at 3. Crocker Telecommunications proposes two approaches for decreasing the value of the letter of credit as a percentage of the annual disbursement. Crocker Telecommunications Petition at 4-5.

reconsideration in part by declining to make further reductions in the value of the letter of credit.<sup>181</sup>

65. We are persuaded by commenters that claim that the Commission's existing letter of credit rules may impose significant costs on Phase II auction recipients, particularly on small providers.<sup>182</sup> We find that it is reasonable to provide some additional relief from these costs by permitting Phase II recipients to reduce further the amount of support that a letter of credit must cover for Phase II recipients offering the required service to 80 percent of the required number of locations in a state. Because we require recipients to submit the geocoded locations that count towards their service obligations in an online portal with built-in validations, USAC will be able to quickly verify that a recipient's 80 percent service milestone has been met, thereby enabling the recipient to reduce the value of its letter of credit.<sup>183</sup> As the Commission acknowledged in the *Phase II Auction Order*,<sup>184</sup> we expect that the risk of default will lessen as a Phase II auction recipient makes progress towards meeting its Phase II auction service milestones because, as recipients offer service to more locations, they have the opportunity to offset more of their deployment costs with revenues.

66. The letter of credit requirement applies to all winning bidders, which simplifies the administration of the letter of credit rules. However, the exact costs of obtaining and maintaining a letter of credit will affect each potential bidder in the Phase II auction differently. The letter of credit costs will likely vary based on the amount of support that a Phase II auction winning bidder is authorized to receive, and the impact of those costs is likely to vary based on the size and creditworthiness of the Phase II recipient.<sup>185</sup> Therefore, we cannot reasonably predict the cost of the requirement for each potential bidder relative to the benefit to the public of protecting the funds from default. However, the costs for a letter of credit in the range of several percentage points, when applied to the sizable amounts that may be awarded to bidders here, could well be considerable, particularly for smaller bidders. We conclude on reconsideration that, on balance, the benefits of relieving all Phase II auction recipients of some additional costs of maintaining a letter of credit later in the term of support, after the recipient has met significant deployment milestones, outweigh the risk that we will not be able to recover an additional portion of the support already disbursed if the recipient is unable to repay the Commission in the event of a default. Moreover, as we discuss below, an applicant that is affected by high letter of credit costs may choose to build out its network more quickly so that it can close out its letter of credit sooner.

67. We are not persuaded by claims that we should take further steps to reduce the cost of a letter of credit for Phase II auction recipients. While Broad Valley and Crocker Telecommunications present new proposals that would further reduce costs for recipients, we are not convinced that these cost reductions would outweigh the associated risks to the public's funds. Under the Commission's rules, the Commission is able to recover the full amount of support that has been disbursed in prior years and support that will be disbursed in the coming year until the fourth year service milestone has been met, with only modest adjustments to the value of the letter of credit after a recipient has met the significant

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<sup>181</sup> Broad Valley Petition at 3-4; Crocker Telecommunications at 4-5.

<sup>182</sup> Broad Valley Petition at 2-3 (claiming that it would be "challenging for the newest entrants" to cover the letter of credit costs in high-cost areas); Crocker Telecommunications at 4-5 (claiming that the Commission's letter of credit "represent a challenge for non-incumbent, small rural focused enterprises seeking to expand existing networks in rural America"). See also WISPA Sept. 2016 Opposition at 9-10 (explaining the costs Skybeam incurs for the letter of credit it is required to maintain as a rural broadband experiment winning bidder and supporting "rules that would further ease the carrying cost of letters of credit").

<sup>183</sup> See *Location Guidance Public Notice*, 31 FCC Rcd at 12906.

<sup>184</sup> *Phase II Auction Order*, 31 FCC Rcd at 5997, para. 136.

<sup>185</sup> See, e.g., WISPA Sept. 2016 Opposition at 9 (explaining that the letter of credit costs for one rural broadband experiment recipient included a percent annual fee along with funded debt that "is offset by only a single year of the company's cash flow"). Broad Valley and Crocker Telecommunications have not quantified or substantiated their claims regarding the costs of the letter of credit requirement.

deployment milestones in the fourth and fifth years.<sup>186</sup> In contrast, under Broad Valley's and Crocker Telecommunications' proposals, for the first three years of support, and prior to a recipient significantly deploying its network, the letter of credit would only cover support that had been disbursed in the previous year(s).<sup>187</sup> Accordingly, the Commission would not be able to recover support that is disbursed in the year that a recipient defaults. Moreover, under Broad Valley's and Crocker Telecommunications' proposals, more drastic reductions would be made in the value of the letter of credit earlier in the support term. As a result, throughout the build-out period, the Commission would not be able to recover more than two years of disbursements if a recipient defaults.<sup>188</sup>

68. Under these proposed approaches, the Commission would recover far less support if the recipient stops offering service and could not repay the Commission for the support associated with the locations that remain unserved. The Commission noted that the letter of credit will be drawn only in situations where the Phase II auction recipient does not repay the Commission for the support associated with its compliance gap, and that the recipients unable to repay the support are also more likely to be at risk for going into bankruptcy and ceasing operation of their networks.<sup>189</sup> Without a letter of credit, the Commission has no security to protect itself against the risks of default. Accordingly, the Commission found that it was necessary to ensure it could recover a significant amount of support in such situations.<sup>190</sup> Broad Valley and Crocker Telecommunications do not address these concerns in their petitions.

69. We expect that our decision to make a further modest reduction in the required value of the letter of credit for Phase II auction recipients that have substantially met their obligations will help address some of the cost concerns of potential bidders, including small entities and new entrants. But we are not persuaded that we should address these concerns by further reducing the value of the letter of credit.<sup>191</sup> We acknowledge that each winning bidder will have to certify in its long-form application that it will have available funds for all projects costs that exceed Phase II support.<sup>192</sup> We also recognize that small entities and new entrants, which often lack the resources of larger and established companies so that letter of credit costs have more of an impact on their budgets, may have to factor more of these letter of credit costs in their bids, potentially leading to less competitive bids.<sup>193</sup> However, all participants in the Phase II auction will have to factor in the various costs of meeting the Phase II auction obligations when deciding whether to participate in the auction and how much to bid to ensure they can cover all of the

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<sup>186</sup> 47 CFR § 54.315(c)(1) (requiring a recipient to maintain a letter of credit in an amount equal to at a minimum the amount of Phase II auction support that has been disbursed and that will be disbursed in the coming year).

<sup>187</sup> Broad Valley Petition at 3; Crocker Telecommunications Petition at 4-5.

<sup>188</sup> Under Broad Valley's proposal, after the third year 40% service milestone the letter of credit would only cover 60% of the support that had been disbursed over three years, with a 20% drop each subsequent year of the total amount of support that will have been disbursed. Broad Valley Petition at 3. Crocker Valley Telecommunication's proposals would also result in a significant decrease in the percentage of the annual support amount that would be covered each year, based on either the service milestones or the recipient's actual deployment, and the number of years the recipient has been receiving support. Crocker Telecommunications Petition at 5. *See also* WISPA Sept. 2016 Opposition at 10 (requesting that the Commission "permit the value [of the letter of credit] to decline to the extent recipients meet their annual" service milestones").

<sup>189</sup> *Phase II Auction Order*, 31 FCC Rcd at 5992, para. 124.

<sup>190</sup> *Id.*

<sup>191</sup> *See* WISPA Sept. 2016 Opposition at 9-10 (claiming that the Commission did not fully consider the costs of requiring a letter of credit for all recipients).

<sup>192</sup> 47 CFR § 54.315(b)(2)(v); WISPA Sept. 2016 Opposition at 9-10.

<sup>193</sup> Broad Valley Petition at 2 (suggesting that the Commission's letter of credit requirements "is an unfair and tremendously onerous approach; particularly for small and medium sized rural carriers, which is the largest segment of potential participants in the auction" and that the requirements "place[] these new competitive entrants at a distinct disadvantage"); WISPA Sept. 2016 Opposition at 10.

costs. The Commission took a number of steps at the request of small entities to help lessen these costs, including expanding the number and types of banks eligible to issue letters of credit so that small entities can obtain letters of credit from banks with which they have existing partnerships.<sup>194</sup> Although some entities may still find that participating in the auction is cost-prohibitive or that they are unable to place competitive bids, we are not convinced that we should put our ability to recover a significant amount of support at risk if these same entities were to participate and later discover that they are unable to meet the Phase II auction obligations and unable to repay the Commission for their compliance gap.

70. We are not persuaded that making large reductions in the required value of the letter of credit when a recipient meets its service milestones would encourage recipients to build out their networks faster.<sup>195</sup> Instead, we expect that the letter of credit requirements we adopt today may encourage more rapid deployment. By making only modest adjustments for the fourth- and fifth-year service milestones, and requiring a recipient to maintain a letter of credit only until it has been verified that the recipient has met the final service milestone, we expect that recipients will move faster to meet the final service milestone so that they no longer have to maintain a letter of credit.<sup>196</sup> Indeed, smaller bidders, which might be most affected by letter of credit costs, are also more likely to have winning bids that can be completed in less than the full six-year deployment term. Moreover, if the recipient could instead significantly reduce the value of its letter of credit when it reaches earlier milestones, it may not have as much of an incentive to meet the final service milestone as quickly.

#### **H. Bidding Weight for Phase II Auction Bids in Pennsylvania**

71. *Background.* In the *Rural Broadband Experiments FNPRM*, the Commission explained that it wished to further explore how to best maximize the reach of its existing Connect America budget and leverage non-federal funding to extend broadband to as many households as possible.<sup>197</sup> Accordingly, it sought comment on creating inducements for state action to assist in the expansion of broadband by adopting bidding credits for bidders that are leveraging governmental support from non-federal sources or for states that are net donors to the fund.<sup>198</sup>

72. In the *Phase II Auction Order*, the Commission noted concerns that had been raised by states regarding the need for an efficient and equitable allocation of Phase II funds, particularly where Phase II support was declined.<sup>199</sup> The Commission also recognized and applauded state-based initiatives to advance broadband deployment.<sup>200</sup> In the *Phase II Auction FNPRM*, the Commission sought comment on measures to achieve the public interest objective of ensuring appropriate support for all of the states, including establishing weights that would provide a preference to declined states.<sup>201</sup>

73. In the *Phase II Auction FNPRM Order*, the Commission adopted bidding weights for the performance tiers and latency levels, adopted a formula for applying those weights, and declined to adopt other types of weights.<sup>202</sup> The Commission also declined to adopt state-based preferences for the Phase II auction, including weights, preferring to award Phase II auction support to cost-effective bids and to wait until the Remote Areas Fund auction to prioritize unserved areas in states where the Phase II offer of

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<sup>194</sup> 47 CFR § 54.315(c)(2); *Phase II Auction Order*, 31 FCC Rcd at 5992-97, paras. 127-33.

<sup>195</sup> WISPA Sept. 2016 Opposition at 10.

<sup>196</sup> *Phase II Auction Order*, 31 FCC Rcd at 5991, 5997-98, paras. 123, 136.

<sup>197</sup> *Rural Broadband Experiments FNPRM*, 29 FCC Rcd at 8801, para. 97.

<sup>198</sup> *Id.* at 8801-02, paras. 97-101.

<sup>199</sup> *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 86.

<sup>200</sup> *Id.*

<sup>201</sup> *Phase II Auction FNPRM*, 31 FCC Rcd at 6023-25, paras. 217-24.

<sup>202</sup> *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1627-28, 1639, paras. 15-16, 35-36.

support to price cap carriers was declined.<sup>203</sup> The Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and Economic Development (jointly Pennsylvania) request that the Commission reconsider its decisions or waive the Phase II auction rules “by adding a negative weight” to the Commission’s formula for bids in census blocks where Verizon declined Phase II support in Pennsylvania “to reflect additional resources brought to the auction” by Pennsylvania.<sup>204</sup>

74. *Discussion.* We decline to reconsider the formula the Commission adopted for applying the weights for performance tier and latency combinations to give bids placed in Pennsylvania, in areas where Verizon declined Phase II support, an advantage over other bids by adding an additional negative weight for such bids. We also decline to waive the Phase II auction rules to add such a weight to Pennsylvania bids.<sup>205</sup>

75. Based on the record before us, Pennsylvania has not persuaded us that its proposal would more effectively balance our Phase II objectives in furtherance of our section 254 obligations and the public interest.<sup>206</sup> The Commission balanced its interest in ensuring that consumers in declined states get access to broadband services with its objective of maximizing the finite Phase II budget by deciding to award support to cost-effective and higher service quality bids through the Phase II auction and then prioritize unserved areas in declined states in the Remote Areas Fund.<sup>207</sup> As part of this balancing, the Commission determined that its adopted framework may encourage bidders to bid in declined areas and incentivize states to offer complementary support, so that declined states may still have a strong possibility of being served through the Phase II auction absent a preference.<sup>208</sup> Bidders might be more

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<sup>203</sup> *Id.* at 1641-44, paras. 43-50.

<sup>204</sup> Pennsylvania Petition for Reconsideration, Modification, or Waiver, WC Docket Nos. 10-90, 14-58, at 1 (filed Apr. 19, 2017) (Pennsylvania Petition). Pennsylvania proposes modifying the Commission’s formula of  $S = 100 \times B/R + T + L$  to include “the value added by the bidder’s premium as a percentage of the reserve price (converted to a negative weight)” so that the formula would be  $S = 100 \times B/R + T + L - (P/R)$  where P equals the bidder’s premium (i.e., the amount of support that the bidder “identified and secured for use in Pennsylvania prior to the auction”) and R equals the reserve price. *Id.* at 12-13. A number of Pennsylvania entities filed ex partes supporting Pennsylvania’s petition. *See, e.g.*, Letter from Douglas E. Hill, Executive Director, County Commissioners Association of Pennsylvania, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed May 15, 2017) (CCAP May 15, 2017 *Ex Parte* Letter); Letter from Richard J. Schuettler, Executive Director, Pennsylvania Municipal League, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al. (filed July 19, 2017) (PML July 19, 2017 *Ex Parte* Letter); Letter from Richard J. Schuettler, Executive Director, Pennsylvania State Association of Township Commissioners, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al. (filed July 19, 2017) (PSATC July 19, 2017 *Ex Parte* Letter); Letter from David M. Sanko, Executive Director, Pennsylvania State Association of Township Supervisors, Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al. (filed July 19, 2017) (PSATS July 19, 2017 *Ex Parte* Letter); Letter from William S. Rossey, President, Pennsylvania State Association of Boroughs, WC Docket No. 10-90 et al. (filed July 19, 2017) (PSAB July 19, 2017 *Ex Parte* Letter); Letter from John J. Bell, Senior Government Affairs Counsel, Pennsylvania Farm Bureau, WC Docket No. 10-90 et al. (filed July 24, 2017) (PFB July 24, 2017 *Ex Parte* Letter); Letter from Fred Gaffney, President, Columbia Montour Chamber of Commerce, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed Nov. 15, 2017) (Columbia Montour Chamber of Commerce Nov. 15, 2017 *Ex Parte* Letter).

<sup>205</sup> Pennsylvania recently announced a new state broadband initiative and notified the Commission that it would “soon file a request that the Commission modify the [Phase II] auction rules and dedicate state funds to match [Connect America Fund] funding declined by Verizon in the state.” Because this request is not currently before the Commission, this Order is limited to addressing the merits of the petition of reconsideration, modification, or waiver Pennsylvania filed in 2017. Letter from John M. Beahn, Counsel to Pennsylvania, to Marlene H. Dortch, Secretary, FCC WC Docket No. 10-90 et al., at Attach. (filed Jan. 23, 2018).

<sup>206</sup> 47 U.S.C. § 254(b) (requiring that the Commission “base policies for the preservation and advancement of universal service” on certain principles).

<sup>207</sup> *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1641-42, paras. 43-44.

<sup>208</sup> *Id.* at 1642-43, paras. 45, 48.

interested in bidding in the declined areas in the state through the Phase II auction because those areas are lower cost. While the ranking of bids on a bid-to-reserve price basis, rather than on a dollar-per-location basis, may remove a potential bidding advantage for bidders in lower cost areas because those areas tend to have more locations,<sup>209</sup> bidders may nonetheless be more likely to make a business case to serve such areas because they are lower cost. Bidders might also be more attracted to declined areas, and may have a higher likelihood of winning such areas, if a state such as Pennsylvania made available support that bidders could leverage to reduce the amount of Connect America support they were requesting, therefore making their bids more cost-effective when compared to other bidders nationwide.<sup>210</sup>

76. We are not convinced by Pennsylvania and the National Association of Regulatory Utility Commissioners' (NARUC) claims that Pennsylvania's proposal would "provide significant cost effectiveness and financial synergies that may not be available absent modification."<sup>211</sup> In fact, we find that adopting a negative weight could actually thwart the Commission's objectives of maximizing the Phase II auction budget and incentivizing states to contribute support. First, the negative weight would effectively double count the support that Pennsylvania offers to bidders because bidders would be able to reduce their bids by the amount of Pennsylvania support in addition to a negative weight applied to their Connect America bids in proportion to the amount of Pennsylvania support they receive. This could result in bidders asking for more Connect America support than they might if they could only use Pennsylvania support to reduce their bids (i.e., without the additional negative weight). With the negative weight applied to a Connect America bid that already accounts for Pennsylvania support, they could potentially win even though their bid is not as cost-effective as other bidders. Second, the negative weight could result in Pennsylvania making less support available than it would without this factor because the weight would give Pennsylvania bidders at least some advantage over other bidders, regardless of the amount of support provided by Pennsylvania.

77. We also are not persuaded that the negative weight that Pennsylvania proposes would permit the Commission to effectively leverage the funds that Pennsylvania does make available to meet our Phase II auction objectives.<sup>212</sup> Pennsylvania's petition does not describe with specificity the amount of funding that will be made available,<sup>213</sup> and how the Commission will have assurance that the funding

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<sup>209</sup> Verizon Comments, WC Docket No. 10-90 et al., at 3 (filed May 18, 2017) (Verizon Comments); *Phase II Auction Order*, 31 FCC Rcd at 5977, para. 85.

<sup>210</sup> While there is "no certainty" that there will be bidders in Pennsylvania regardless of the methodology that the Commission uses to allocate support, for the reasons described we are not persuaded by Pennsylvania's claim that "[t]here is no certainty that the broadband providers will submit bids for the eligible census blocks in Verizon's service territories in Pennsylvania during the auction absent the modification requested . . . ." Pennsylvania Petition at 23.

<sup>211</sup> See Pennsylvania Petition at 2, 18-20 ("[I]n order to maximize cost-effectiveness and encourage state engagement in the deployment process, the approach adopted by the [Commission] in the [*Phase II Auction Order*] should provide an *explicit* incentive for Pennsylvania to provide and for carriers to take advantage of the availability of additional complementary broadband support within its borders"). See also Letter from James Bradford Ramsay, General Counsel, National Association of Regulatory Utility Commissioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Feb. 26, 2017) (NARUC Feb. 26, 2017 *Ex Parte* Letter).

<sup>212</sup> See also Letter from Stephen E. Coran, Counsel to Wireless Internet Service Providers Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2-3 (filed June 20, 2017) (WISPA June 20, 2017 *Ex Parte* Letter) (noting "the lack of certainty and details" in Pennsylvania's proposal). The Commission also declined to adopt state-specific weights in the *Phase II Auction FNPRM Order*, noting that among other reasons the "record is not well developed on . . . what should constitute a sufficient amount of state support that a state would need to offer for the [weight] to apply, and what kind of commitment we should require of states that intend to co-invest funds." *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1643, para. 48 & n.114.

<sup>213</sup> Pennsylvania Petition at 8-10 (noting that the "PADCED currently has several economic development initiatives through which complementary funding *may* be available for application") (emphasis added); Pennsylvania Reply to the Wireless Internet Service Providers Association Opposition to Pennsylvania's Petition for Reconsideration,

(continued....)

Pennsylvania makes available will actually be provided to the applicant.<sup>214</sup> And although Pennsylvania's proposal would allocate federal support through the Phase II auction rather than establishing a separate allocation mechanism for Pennsylvania,<sup>215</sup> the results of the auction may be skewed in a way that conflicts with Phase II objectives if a preference is given to bidders based on state support that is allocated in a manner that is inconsistent with decisions the Commission made for the Phase II auction.<sup>216</sup> For example, Pennsylvania does not describe what specific restrictions will be placed on its funding to ensure it is used in areas that are eligible for the Phase II auction,<sup>217</sup> how Pennsylvania will ensure that its funding is made available on a technology-neutral basis,<sup>218</sup> and whether Pennsylvania will be using market-based mechanisms to allocate support.<sup>219</sup> Without such information and safeguards, the Commission risks giving Pennsylvania bidders an advantage in the Phase II auction to the detriment of other cost-effective bidders even though state funding may ultimately not be made available, be spent to overbuild areas that already have broadband service, or be allocated in a manner that conflicts with the Commission's Phase II objectives. Unlike New York's NY Broadband Program, where the Commission found it could align its stated Phase II objectives with New York's existing broadband-funding program by adopting specific conditions to its waiver of the Phase II auction rules,<sup>220</sup> here we do not have enough specific information

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Modification, or Waiver, WC Docket Nos. 10-90, 14-58, at 5-6 (filed May 30, 2017) (Pennsylvania Reply) (explaining that it had identified "[m]any existing economic development programs support initiatives through which complementary funding for broadband buildout *may* be available) (emphasis added); Letter from Regina L. Matz, Legal Counsel to Pennsylvania Public Utility Commissioner David W. Sweet, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 et al, at 2 (filed July 20, 2017) (Pennsylvania July 20, 2017 *Ex Parte* Letter) ("In addition to direct funding made available, Pennsylvania will also offer financial assistance for economic development, including broadband, through grants and low-cost financing options that will be available at the local level"). *See also* Wireless Internet Service Providers Association Opposition to and Comments on Petitions for Reconsideration, WC Docket Nos. 10-90, 14-58, at 11-12 (filed May 18, 2017) (WISPA May 2017 Opposition) (noting that "the Commission is essentially urged to take comfort in the fact that 'Pennsylvania is positioned to act'").

<sup>214</sup> *See* WISPA June 20, 2017 *Ex Parte* Letter at 3 ("Who would bear the consequences if state appropriations are subsequently reduced or withdrawn entirely?").

<sup>215</sup> Pennsylvania Reply at 4 ("With the exception of the single modification to the formula to recognize additional state-harnessed resources identified by the bidder in the bid, Pennsylvania's proposal adheres to the [Commission's] auction process.").

<sup>216</sup> In the *New York Auction Waiver Order*, the Commission acknowledged that "even if coordinating our efforts with New York's program results in some differences in how the federal support may be allocated in one state [the] public interest benefits outweigh the potential harm." *Connect America Fund et al.*, Order, 32 FCC Rcd 968, 978-79, para. 28 (2017) (*New York Auction Waiver Order*). For the reasons explained, we find that the public interest benefits do not outweigh the potential harm in this instance.

<sup>217</sup> Pennsylvania Petition at 13 (stating that "[s]upport will have to be used in the same eligible census blocks in Verizon's territory to which the CAF Phase II funding was originally offered").

<sup>218</sup> Pennsylvania explains that "[t]he PA DCED programs enable any potential broadband provider . . . to reach out to and partner with applicants . . . to obtain state resources to complement a bid," but does not explain how it will be determined which applicants will receive state support or how it will ensure that other funding programs will be technology-neutral. Pennsylvania Reply at 5-6. *But see* WISPA June 20, 2017 *Ex Parte* Letter at 2 (noting that Pennsylvania's claims that its funding programs will be technology-neutral "cannot bind a state legislature that has not adopted any relevant law and is free to make different policy choices").

<sup>219</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17667, para. 1 (explaining that the Commission's Connect America reforms were intended "to distribute universal service funding in the most efficient and technologically neutral manner possible, through market-based mechanisms . . .").

<sup>220</sup> *See, e.g., New York Auction Waiver Order*, 32 FCC Rcd at 982-84, paras. 38-43 (imposing conditions on how New York will allocate support).



about the various programs Pennsylvania intends to use to allocate support in order to consider any appropriate conditions that might address our concerns.

78. In addition, we are not convinced by Pennsylvania's claims that the negative weight would not "detract[]" from the Commission's goals of deploying broadband nationwide and would not "negatively impact[]" support that is available to other declined states.<sup>221</sup> Due to the finite Phase II auction budget, there is a potential that not all interested bidders will ultimately be awarded support. Accordingly, any mechanism that would give Pennsylvania bidders an opportunity to make less cost-effective bids than other bidders in other states, but still win, has the potential to unreasonably skew support to the state at the expense of other areas that may be served more cost-effectively. Such a mechanism also could result in fewer consumers receiving broadband.<sup>222</sup> For New York, the Commission knew the *maximum* amount of support that could be allocated through New York's program and it adopted certain measures that could stretch that support beyond the census blocks in New York that were eligible for the Phase II offer of model-based support.<sup>223</sup> Because Pennsylvania has not provided specific information regarding how much support it intends to make available, and the value of the negative weight is based on how much state support a Pennsylvania bidder will receive, we are unable to assess the potential impact of the negative weight on our nationwide broadband deployment objectives.<sup>224</sup>

79. We also disagree with Pennsylvania's claims that such a negative weight will not add complexity to the Phase II auction.<sup>225</sup> First, a process must be created to determine and verify how much support each applicant has received or will receive from Pennsylvania state programs to determine how much negative weight to apply. Second, an auction system must be designed that uses a different formula for calculating bids in only the declined Pennsylvania areas. These steps add a significant layer of complexity to the auction and could potentially lead to a delay in commencing the Phase II auction.

80. We acknowledge that Pennsylvania's proposed approach could reduce the possibility that Pennsylvania will have to wait "until the finalization of the Remote Areas Fund to make progress on its "intra-county digital divides,"<sup>226</sup> may make it more likely that an amount equivalent to the support that Verizon declined is allocated to Pennsylvania through the Phase II auction rather than through the Remote Areas Fund,<sup>227</sup> and would give Pennsylvania recognition for its past and future contributions to broadband

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<sup>221</sup> Pennsylvania July 20, 2017 *Ex Parte* Letter at 2. See also PFB July 24, 2017 *Ex Parte* Letter at 2.

<sup>222</sup> See *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1642-43, para. 46 ("Instead, the possibility that state preferences in the Phase II auction could divert funding from more cost-effective and higher service quality bids in the Phase II auction, and the added complexity they would introduce to the Phase II auction, outweigh the potential benefits.").

<sup>223</sup> *New York Auction Waiver Order*, 32 FCC Rcd at 979-80, para. 30.

<sup>224</sup> See WISPA June 20, 2017 *Ex Parte* Letter at 2 ("Nor has any amount of funds been allocated so that the impact of [Pennsylvania's] proposal can be assessed.").

<sup>225</sup> Pennsylvania Petition at 14, 17-18. See also Comments of the Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and Economic Development, AU Docket No. 17-182, WC Docket No. 10-90 (filed Sept. 18, 2017) (suggesting how to implement Pennsylvania's proposal using the Commission's proposed short-form application); Institute for Local Self-Reliance et al. Reply at 12-13.

<sup>226</sup> Pennsylvania Petition at 4, 10-11, 17, 23 (claiming that "to minimize the amount of funding that may be required from the [Remote Areas Fund] and to help ensure that Pennsylvania, with *high cost areas*, receives a timely and equitable distribution of funds to deploy broadband in those areas, the Commission should reconsider its determination for Pennsylvania"); Verizon Comments at 2-3. See also CCAP May 15, 2017 *Ex Parte* Letter at 1; PML July 19, 2017 *Ex Parte* Letter at 2; PSATC July 19, 2017 *Ex Parte* Letter at 1; PSATS July 19, 2017 *Ex Parte* Letter at 1; PSAB July 19, 2017 *Ex Parte* Letter at 1; PFB July 24, 2017 *Ex Parte* Letter at 2.

<sup>227</sup> Pennsylvania Petition at 4, 13-14, 16 (claiming that if the Commission adopts Pennsylvania's proposal, "a score that may have lost and resulted in resources being diverted outside of Pennsylvania contrary to the [Commission's] original model becomes less likely"); Verizon Comments at 4. See also CCAP May 15, 2017 *Ex Parte* Letter at 1;

(continued....)

deployment.<sup>228</sup> However, the benefits of adopting the approach Pennsylvania recommends are outweighed by the drawbacks we have discussed, and we are not persuaded that altering the balance already achieved by the Commission through its existing Phase II auction and Remote Areas Fund framework would serve the public interest.<sup>229</sup> Pennsylvania is one of a number of states, including other states where Phase II model-based support was declined, that have supported and continue to support broadband deployment.<sup>230</sup> We conclude the most effective way to accomplish our Phase II objectives and leverage these state programs is to have bidders factor any state support that they have received or will receive into their bids so that they can place cost-effective bids within the existing Phase II auction and Remote Areas Fund auction framework.

81. We disagree with the assumption that states are entitled to receive the amount of support that the price cap carrier declined in the respective states.<sup>231</sup> The Commission has made several decisions that contradict this assumption, including comparing all bids nationwide,<sup>232</sup> making extremely high-cost

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

<sup>228</sup> Pennsylvania Petition at 2-4 (claiming that “absent modification of the auction formula as requested, Pennsylvania will receive no recognition of the complementary roles its additional contributions have played and will continue to play in ensuring broadband access to Verizon’s CAF Phase II eligible census blocks in Pennsylvania”). *See also* Letter from Regina L. Matz, Counsel to Commissioner David W. Sweet, Pennsylvania Public Utility Commission, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed June 1, 2017) (“[P]ennsylvania simply sought recognition in the [Commission’s] auction for additional support Pennsylvania may bring to the process”); PML July 19, 2017 *Ex Parte* Letter at 1-2; PSATC July 19, 2017 *Ex Parte* Letter at 1-2; PSATS July 19, 2017 *Ex Parte* Letter at 2; PSAB July 19, 2017 *Ex Parte* Letter at 1-2 (citing Pennsylvania’s past contributions to broadband deployment).

<sup>229</sup> *See Phase II Auction FNPRM Order*, 32 FCC Rcd at 1642, para. 45 (“We acknowledge that this approach may mean that some areas in declined states have to wait longer to get service than if support was awarded through the Phase II auction. Nevertheless, on balance we conclude this approach serves the public interest because it reasonably enables us to achieve our objectives by first using the Phase II auction to maximize our budget by prioritizing cost-effective bids and then targeting support to areas that remain unserved in the Remote Areas Fund.”).

<sup>230</sup> *See, e.g.*, Letter from the Honorable Gregg C. Sayre, State Chair of the State Members of Federal-State Joint Conference on Advanced Services, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 16-245 (filed Dec. 2, 2016) (attaching a survey of the “current status of State programs that promote broadband deployment”).

<sup>231</sup> Pennsylvania Reply at 8 (“Designed and offered on a state-by-state census block basis, [Pennsylvania] reasonably expected that declined funds would remain available within the state for auction to another provider.”); NARUC Feb. 26, 2017 *Ex Parte* Letter at 2 (notifying the Commission that NARUC had adopted a resolution that “specifically supports States’ retention of [Phase II] declined funds”); PML July 19, 2017 *Ex Parte* Letter at 1; PSATC July 19, 2017 *Ex Parte* Letter at 1; July 19, 2017; PSATS *Ex Parte* Letter at 1; PSAB July 19, 2017 *Ex Parte* Letter at 1 (claiming that the support declined in Pennsylvania “was objectively designed on the basis” of the Commission’s cost model “to be used in underserved areas of Pennsylvania” and that “[i]t is critical that these funds remain in Pennsylvania”); Columbia Montour Chamber of Commerce Nov. 15, 2017 *Ex Parte* Letter at 1 (asking the Commission “to keep the allocated funds in Pennsylvania to provide opportunities for growth”). *But see* WISPA May 2017 Opposition at 16 (“As is clear, the ‘original model’ was *not* to give price cap carriers support, but to *offer* support to price cap carriers on defined terms. In cases where the offer of support was declined, the resources would be available on a nationwide basis, a process put in motion in 2011 and confirmed in 2014.”).

<sup>232</sup> *Phase II Auction Order*, 29 FCC Rcd at 5976, para. 84.

census blocks nationwide eligible for the Phase II auction,<sup>233</sup> adopting a limited budget,<sup>234</sup> and deciding to score bids against each other nationwide on a ratio-to-reserve price basis.<sup>235</sup> Instead, the Commission has acknowledged the importance of connecting a similar number of unserved consumers in the states that would have been reached had the Phase II offer been accepted and has committed to provide sufficient support to do so through both the Phase II auction and the Remote Areas Fund, to the extent possible.<sup>236</sup>

82. We also find that Pennsylvania has not demonstrated good cause for waiving the Phase II auction scoring formula.<sup>237</sup> First, Pennsylvania has not established special circumstances that warrant deviation from the Phase II auction scoring formula. When the Commission waived the Phase II auction program rules for New York, the Commission found that the state was uniquely situated to quickly and efficiently further our goal of broadband deployment. The state had committed a significant portion of its own support as matching support, and demonstrated that there were unique timing considerations given that it had already implemented its own broadband program and had aggressive service deadlines.<sup>238</sup> Such conditions are not present here. As explained above, the Commission already intends to address Pennsylvania's status as a declined state through the existing framework it adopted for the Phase II auction and the Remote Areas Fund, and it is able to leverage any support that Pennsylvania makes available through that same framework. And while we acknowledge and appreciate Pennsylvania's past efforts to encourage broadband deployment in the state,<sup>239</sup> Pennsylvania has not demonstrated why its past state contributions warrant waiver of rules for the future allocation of federal support.

83. Second, even if we were to find that Pennsylvania had established special circumstances,

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<sup>233</sup> *April 2014 Connect America Order*, 29 FCC Rcd at 7060-61, paras. 30-31 (“We believe it would be the most efficient use of Phase II funding to provide support to areas above the specified funding threshold and then target the discrete budget for the Remote Areas Fund to those areas that remain unserved after the competitive bidding process.”)

<sup>234</sup> *Phase II Auction Order*, 31 FCC Rcd at 5975, para. 79.

<sup>235</sup> *Id.* at 5976-77, paras. 84-85 (concluding that the Commission's decision “is more likely to ensure winning bidders across a wide range of states than selecting bids based on the dollar per location, which could result in support disproportionately flowing to those states where the cost to serve per location is, relatively speaking, lower than other states”).

<sup>236</sup> The Commission also reserved the right to modify the approach on a state-by-state basis if it determines that the Phase II auction resulted at a minimum in supporting service to the percentage of the consumers in the state that would have been served if the Phase II offer had been accepted. *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1642, para. 44 & n.105.

<sup>237</sup> Generally, the Commission's rules may be waived for good cause shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

<sup>238</sup> See *New York Auction Waiver Order*, 32 FCC Rcd at 972-73, paras. 14-17; Pennsylvania Petition at 8 (acknowledging that “Pennsylvania does not have the structure or funding of a large, uncommitted broadband appropriation like New York”). New York's deadline for submission of its Phase 3 applications was August 31, 2017. See also New York State, New NY Broadband Program- Phase 3, <https://nysbroadband.ny.gov/new-ny-broadband-program/phase-3> (last visited Sept. 13, 2017).

<sup>239</sup> See Pennsylvania Petition at 5-8, 15 (claiming that “[t]he special circumstances arising from Pennsylvania's extensive historic and continuing prospective public/private model for facilitating broadband deployment, which will cover the same territories in advance of the [Connect America Fund] auction, also warrants grant of this request”).

for the reasons explained above, Pennsylvania has not demonstrated the public interest would be served by waiving the Phase II auction formula to add a negative weight for bids placed in declined areas in the state. New York was able to demonstrate that waiver of the Phase II auction program rules would serve the public interest for a number of reasons including that it would result in accelerated broadband deployment,<sup>240</sup> it would enable the Commission to use Phase II support efficiently and effectively by leveraging matching New York support in Connect America Phase II-eligible areas and avoiding overbuilding areas served by New York's program,<sup>241</sup> and support would be awarded in a technology-neutral manner using a market-based mechanism consistent with Phase II auction objectives.<sup>242</sup> Such conditions are not present here. For the reasons we already discussed, although Pennsylvania's proposed approach could result in more declined areas in Pennsylvania being served through the Phase II auction, Pennsylvania has not demonstrated that its requested modification would necessarily further our objectives of using the finite Phase II auction budget efficiently or fully explained how its request would result in a more effective federal-state partnership.<sup>243</sup> Instead, we conclude that the framework the Commission has adopted for the Phase II auction and the Remote Areas Fund will more effectively balance all of these objectives, while still leading to widespread broadband deployment across Pennsylvania's high-cost areas with complementary state support. Thus, we conclude it would not serve the public interest to grant Pennsylvania a waiver.

#### **IV. PROCEDURAL MATTERS**

##### **A. Paperwork Reduction Act Analysis**

84. This 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, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

##### **B. Congressional Review Act**

85. The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>244</sup>

##### **C. Supplemental Final Regulatory Flexibility Analysis**

86. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>245</sup> the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the *USF/ICC Transformation FNPRM*, the *April 2014 Connect America FNPRM*, and the *Phase II Auction FNPRM* (collectively, *Phase II FNPRMs*).<sup>246</sup> The Commission sought written public comment on the proposals in

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<sup>240</sup> *New York Auction Waiver Order*, 32 FCC Rcd at 974-75, para. 19.

<sup>241</sup> *Id.* at 975-76, paras. 20-21.

<sup>242</sup> *Id.* at 976, 979-80, paras. 22, 29-30.

<sup>243</sup> Pennsylvania Petition at 20-24.

<sup>244</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>245</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>246</sup> *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18364-95 (Appx. P, Initial Regulatory Flexibility Analysis); *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7216-44, (Appx. D, Initial Regulatory Flexibility Analysis); *Phase II Auction FNPRM*, 31 FCC Rcd at 6078-103 (Appx. D, Initial Regulatory Flexibility Analysis).

the *Phase II FNPRMs* including comments on the IRFAs. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the *December 2014 Connect America Order, Phase II Auction Order* and the *Phase II Auction FNPRM Order* (collectively, *Phase II Orders*).<sup>247</sup> This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the FRFAs in the *Phase II Orders* to reflect the actions taken in this Order on Reconsideration and conforms to the RFA.<sup>248</sup>

87. *Need for, and Objectives of, This Order on Reconsideration.* This Order on Reconsideration considers the remaining issues raised by parties challenging the Commission's orders implementing the Phase II auction, in which service providers will compete to receive support of up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas. Specifically, we resolve petitions challenging the Commission's decisions on the following issues: how to compare bids of different performance levels, standalone voice requirements, Phase II auction deployment and eligibility, and state-specific bidding weights, among other matters. We also adopt a process by which a support recipient that sufficiently demonstrates that it cannot identify enough actual locations on the ground to meet its Phase II obligations can have its total state location obligation adjusted and its support reduced on a pro rata basis. Additionally, we modify the Commission's letter of credit rules to provide some additional relief for Phase II auction recipients by reducing the costs of maintaining a letter of credit. By resolving these issues, we move the Commission a step closer to holding the Phase II auction and, in turn, to the goal of closing the digital divide for all Americans, including those in rural areas of our country.

88. *Summary of Significant Issues Raised by Public Comments in Response to the IRFAs.* There were no comments filed that specifically addressed the IRFAs that are relevant to the issues discussed here.

89. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010,<sup>249</sup> which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the rules as a result of those comments.

90. The Chief Counsel did not file any comments in response to the relevant IRFAs.

91. *Description and Estimate of the Number of Small Entities to which the Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.<sup>250</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>251</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>252</sup> A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3)

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<sup>247</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15712-39 (Appx. B, Final Regulatory Flexibility Analysis); *Phase II Auction Order*, 31 FCC Rcd at 6050-77 (Appx. C, Final Regulatory Flexibility Analysis); *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1654-64 (Appx., Final Regulatory Flexibility Analysis).

<sup>248</sup> See 5 U.S.C. § 604.

<sup>249</sup> 5 U.S.C. § 604(a)(3).

<sup>250</sup> *Id.* § 603(a)(4).

<sup>251</sup> *Id.* § 601(6).

<sup>252</sup> *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."

satisfies any additional criteria established by the SBA.<sup>253</sup>

92. As noted above, FRFAs were incorporated into the *Phase II Orders*. In those analyses, we described in detail the small entities that might be significantly affected. In this Order on Reconsideration, we hereby incorporate by reference the descriptions and estimates of the number of small entities from the previous FRFAs in the *Phase II Orders*.<sup>254</sup>

93. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The data, information and document collection required by the *Phase II Orders* as described in the previous FRFAs in this proceeding are hereby incorporated by reference.<sup>255</sup> In this Order on Reconsideration, we also adopt a process whereby a support recipient can demonstrate there are not enough actual locations on the ground to meet its state location requirement. The Order on Reconsideration directs the Bureau to implement the specific procedures for this filing.

94. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) and exemption from coverage of the rule, or any part thereof, for small entities.”<sup>256</sup>

95. The analysis of the Commission’s efforts to minimize the possible significant economic impact on small entities as described in the previous *Phase II Orders* FRFAs are hereby incorporated by reference.<sup>257</sup> In addition, by making a modest reduction in the required value of the letter of credit for recipients that have substantially met their service obligations, we are further reducing the costs of this requirement for such entities, including small entities. Moreover, we adopted a process by which a support recipient can demonstrate that there are not enough actual locations on the ground to meet its state location requirement. If the support recipient makes a sufficient demonstration, it can have its state location obligation adjusted along with a pro rata reduction in support. This will particularly benefit entities that bid to serve smaller areas, which we expect will include small entities. Such entities might not have otherwise been able to locate enough locations in the areas where the CAM did not overestimate the available locations in their bids to meet their obligation and would potentially have been subject to non-compliance measures. We also expect that the Bureau will factor in the unique challenges faced by small entities in implementing this process.

96. *Report to Congress.* The Commission will send a copy of this Order on Reconsideration, including this Supplemental FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this Order on Reconsideration, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.<sup>258</sup>

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<sup>253</sup> 15 U.S.C. § 632.

<sup>254</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15714-35, paras. 11-66; *Phase II Auction Order*, 31 FCC Rcd at 6052-73, paras. 7-62; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1655-62, paras. 7-24.

<sup>255</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15735-37, paras. 67-73; *Phase II Auction Order*, 31 FCC Rcd at 6073-75, paras. 63-74; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1662-63, paras. 25-26

<sup>256</sup> 5 U.S.C. § 603(c)(1)-(4).

<sup>257</sup> *December 2014 Connect America Order*, 29 FCC Rcd at 15737-39, paras. 74-80; *Phase II Auction Order*, 31 FCC Rcd at 6075-77, paras. 75-82; *Phase II Auction FNPRM Order*, 32 FCC Rcd at 1663, paras. 27-30.

<sup>258</sup> See 5 U.S.C. § 604(b).

**D. Additional Information**

97. *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).

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

**V. ORDERING CLAUSES**

99. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 214, 254, 303(r), 403, and 405, and sections 1.1, 1.3, 1.427, and 1.429 of the Commission's rules, 47 CFR §§ 1.1, 1.3, 1.427, and 1.429, that this Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.<sup>259</sup>

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

101. IT IS FURTHER ORDERED, that the Commission SHALL SEND a copy of this 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).

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

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

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

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

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

107. IT IS FURTHER ORDERED that, pursuant to section 1.429 of the Commission's rules, 47 CFR § 1.429 the Petition for Reconsideration filed by the National Rural Electric Cooperative

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<sup>259</sup> The amendment to the heading of section 54.315 of the Commission's rules shall be effective 30 days after publication in the Federal Register.

Association and the Utilities Technology Council on July 21, 2016 is DISMISSED IN PART AND DENIED IN PART to the extent described herein.

108. IT IS FURTHER ORDERED that, pursuant to sections 1.3 and 1.429 of the Commission's rules, 47 CFR §§ 1.3, 1.429 the Petition for Reconsideration, Modification, or Waiver filed by the Pennsylvania Public Utility Commission and the Pennsylvania Department of Community and Economic Development on April 19, 2017 is DENIED to the extent described herein.

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

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary



**APPENDIX**

**Final Rules**

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

**Part 54- Universal Service**

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

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

2. Amend § 54.315 to revise the heading to read as follows:

§ 54.315 Application Process for Connect America Fund Phase II Support Distributed Through Competitive Bidding.

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

(c) \* \* \*

(1) \* \* \*

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

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**STATEMENT OF  
CHAIRMAN AJIT PAI**

Re: *Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments, Connect America Fund Phase II Auction*, WC Docket Nos. 10-90, 14-58, 14-259, AU Docket No. 17-182, Order on Reconsideration.

The details are as dense as the impact will be profound: We're taking the final Commission-level steps necessary to kickstart the \$2 billion program to deliver fixed broadband to rural America—known as the Connect America Phase II (CAF II) auction.

And it's about time. Believe it or not, way back in 2011, the FCC said it expected CAF II competitive bidding disbursements to “ramp up in 2013.”<sup>260</sup> And all the while, rural America has waited. But pushing things off is no longer an option. In August, I said we'd hold an auction in mid-2018. And we're keeping that promise.

The acute need to close the digital divide is why we got to work on the CAF II auction immediately once I became Chairman. You'll recall in February 2017—only 30 days into my chairmanship—the FCC made several key decisions about the auction's framework. And last August, we adopted the *CAF II Comment Public Notice*. With our decisions today, we jump the last big hurdle before holding a first-of-its-kind universal service reverse auction.

I hope that the CAF II auction will attract a wide variety of providers. We need and want everyone to participate: rural telcos, electric co-operatives, cable operators, price-cap carriers, satellite companies, and fixed wireless providers. Of course, the most cost-effective technology for a particular area will vary. So regardless of how you deliver connectivity, please take a hard look at the CAF II auction.

To this end, we've done a lot to make sure the auction is accessible to everyone. We've simplified the bidding options and balanced the design to accommodate both those seeking to extend their networks and those planning larger projects. We've reviewed the financial-qualification and letter-of-credit requirements to enable bidding by smaller companies. We've created flexibility in our model so that bidders won't have to identify every location they plan to serve before the auction even starts. And our staff is working hard to make sure that the bidding interfaces are user-friendly. We'll also be holding several events to give bidders a chance to learn how things work and get questions answered.

Now, I understand that some didn't get exactly what they wanted in the auction rules and procedures. There are well-intentioned differences on how to best make sure communities get connected. That's understandable—these calls aren't easy. But at the end of the day, the perfect can't be the enemy of the good—especially when there's no agreement in this context on what “perfect” is. And I'll remind everyone that CAF II is only the beginning. In 2019, we will move on to the Remote Areas Fund for those areas still without high-speed broadband. Rural America has waited long enough.

The work from staff on these items has been top-notch. I want to highlight the work of the Rural Broadband Auctions Task Force, led by Chelsea Fallon along with Kirk Burgee, Michael Janson, and Thom Parisi, as well as its newest member, Nathan Eagan. And many thanks to Allison Baker, Mikelle Bonan, Cheryl Callahan, Talmage Cox, Katie King, Heidi Lankau, Ken Lynch, Alec MacDonnell, Sue McNeil, Suzanne Mendez, Alexander Minard, Kris Monteith, Ryan Palmer, Michael Qin, Steve Rosenberg, Gilbert Smith, Rodger Woock, and Cathy Zima from the Wireline Competition Bureau;

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<sup>260</sup> See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17674, para. 25 (2011).

Valerie Barrish, Craig Bomberger, Stephen Buenzow, Rita Cookmeyer, Bill Huber, Sasha Javid, Shabnam Javid, Angela Kung, Scott Mackoul, Eliot Maenner, Aalok Mehta, Charlie Meisch, Gary Michaels, Mark Montano, Erik Salovaara, Linda Sanderson, Paroma Sanyal, Blaise Scinto, Dana Shaffer, Ziad Sleem, Debbie Smith, Martha Stancill, Don Stockdale, Tom Tran, and Margie Wiener from the Wireless Telecommunications Bureau; Jose Albuquerque, Chip Fleming, Kerry Murray, and Kathryn O'Brien and the International Bureau; Paul Murray from the Office of Engineering and Technology; Evan Kwerel and Paul Lafontaine from the Office of Strategic Planning and Policy; Bill Dever, Doug Klein, Billy Layton, and Rick Mallen from the Office of General Counsel; and Laura Dean and Cathy Williams from the Office of the Managing Director.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments, Connect America Fund Phase II Auction, WC Docket Nos. 10-90, 14-58, 14-259, AU Docket No. 17-182, Order on Reconsideration.*

“When will high-speed broadband reach my community?”

Month after month, year after year, I have been asked that question by hundreds of consumers longing to be part of the digital economy. Consumers, who are spending hundreds of dollars on a cellular hotspot every month, those who have been quoted tens of thousands of dollars in construction costs just to bring a wire a few hundred feet to their home, and others in communities with no internet at all who have been told for years, that the business case just does not exist for bringing them service. Today, we take another step forward in our ability to answer that question for the millions of consumers who currently lack access to high-speed fixed broadband service.

Demographic data shows that most of these individuals live in areas marked by persistent poverty: communities that would benefit the most from connectivity; areas that are populated by those who are cut off from robust job opportunities; places that remain at a marked disadvantage, when it comes to education, healthcare, government services, and civic participation. Today, we act as a full Commission in laying the groundwork for an auction that kicks off later this year which will in the foreseeable future, bring hope to those currently stuck on the wrong side of the digital divide.

One thing that I have consistently sought in this quest, is to make it easier for smaller providers to participate in this competitive auction. Why? Because more bidders more often mean both a better bang for our universal service buck, and better, targeted service for local consumers. Two years ago, I asked that we allow smaller banks, including community banks, to provide letters of credit; and for enabling certain parties to provide audited financial statements after being selected as a winning bidder in the auction instead of before; and the creation of a flexible process to enable entities to use a range of technologies to provide service in unserved areas because greater participation is more often better for us all.

Fast forward to this item, and again the need called for more changes to enable smaller entities to more fully participate in the auction. I am pleased that we eased some of the burdens small providers face, including challenging financial qualifications and the use of consultants. I am also pleased that we put in place the means for robust educational efforts that could uniquely benefit smaller providers.

Yet I find myself still having to concur in part.

I am disappointed that we are unable to use smaller geographic units than census block groups. And, that despite our unified desire as a Commission to spur deployment on Tribal lands, we do not take any action here either. The FCC’s 2016 Broadband Progress Report found, that more than 68 percent of Americans living on Tribal lands in rural areas, lack access to fixed broadband of speeds of 25 Mbps down and 3 Mbps up. That we do nothing additional to incent Tribal broadband speaks volumes.

It is also cold comfort to me that many of these companies winning auction monies will be the only game in town, and that if by chance, they engage in blocking, throttling, or paid prioritization, there will be nowhere for those consumers to turn. The majority’s decision last month to dismantle net neutrality protections is to blame for this uncertainty, yet I am inspired by states like Montana and New York, that make clear of their intent to protect their consumers when the federal government has chosen not to do so.

Nonetheless, to the dedicated public servants on the Rural Broadband Auctions Task Force and in the Wireline Competition Bureau, I thank you for your unwavering commitment to universal service and for focusing on how to ensure that all Americans have access to the promise that broadband brings.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY  
APPROVING IN PART AND CONCURRING IN PART**

Re: *Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments, Connect America Fund Phase II Auction, WC Docket Nos. 10-90, 14-58, 14-259, AU Docket No. 17-182, Order on Reconsideration.*

With these two items, the full Commission completes its remaining tasks to finalize the Connect America Fund Phase II auction. The work on this auction has been a substantial undertaking spanning multiple chairmanships. It will be the first auction of ongoing universal service support using a multiple-round, reverse auction format – a structure I have strongly advocated for years. In fact, I recall drafting amendments on behalf of members of Congress to require reverse auctions for FCC high-cost programs back in 2005. Therefore, I am pleased that this long-awaited auction will soon come to pass.

I do remain concerned about the impact of certain decisions on participation in the auction. In particular, I still believe that the weights assigned to different service tiers will tip the scale towards funding gigabit service in a few communities at enormous costs while leaving many more unserved Americans with no broadband option whatsoever for many years to come. The weighting decision was made, in part, to encourage providers of fiber-based broadband to participate in the auction, and I truly hope they do. A successful auction will depend on the broadest possible participation. But, with some of those same providers expressing concern about the complexity of the auction, criticizing the FCC for excluding areas that our data show are now served, or inappropriately criticizing Chairman Pai's commitment to rural America, we cannot take their interest for granted. At the same time, the decision to unduly penalize other technologies, especially satellite service, could have a negative impact on participation, not only in this auction but in the Remote Areas Fund auction as well. This is not the balance I hoped to achieve and, therefore, I must concur on the failure to reconsider and recalibrate the auction weights.

In general, however, I am supportive of the policy decisions and procedures set forth in these items. I am particularly encouraged by the agency's efforts to ensure that our universal service decisions are based on accurate data. For example, when commenters raised concerns, which I shared, regarding potential shortfalls in the number of locations supposedly available in eligible areas, we were able to work together to reach an appropriate solution. Support recipients will be able to provide evidence, subject to potential audit, of the actual number of locations. If the number is less than what had been estimated, there will be a proportional reduction in support.

Now, it is up to would-be participants to thoroughly examine the rules and procedures, aided by education and outreach from our good staff. With short form applications due in March and the auction commencement scheduled for July 24, potential applicants should waste no time in undertaking the necessary due diligence to determine whether, where, and to what extent they will participate in the auction.

I look forward to the auction commencement and I hope it will be successful, bringing broadband access to additional unserved Americans who would not otherwise receive service. But make no mistake, completion of this auction, like the many steps before it, will not end the Commission's efforts to bring broadband to the farthest reaches of our nation.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments, Connect America Fund Phase II Auction, WC Docket Nos. 10-90, 14-58, 14-259, AU Docket No. 17-182, Order on Reconsideration.*

When I think about broadband, I think about the jobs and opportunities it creates for millions of Americans around the country. That is why I continue to emphasize the importance of updating and reforming our infrastructure deployment rules. When we remove regulatory barriers, we make it easier for providers to extend broadband to even more communities.

But for large parts of the country, streamlining alone is not going to be enough. Without additional support, too many Americans will remain on the wrong side of the digital divide. With that in mind, today we reaffirm our commitment to bring the benefits of broadband to all Americans. The rules we finalize today will allow us to make nearly \$2 billion available over the next decade to help deliver broadband and voice service to areas that would otherwise be uneconomical to serve. And the schedule we adopt today will allow us to kick off the auction this summer.

The procedures we've put in place will also help maximize the value that the American people get out of this program. For instance, we target support to those geographic areas the Commission has identified as unserved based on our Form 477 data, which ensures that finite universal service funds are used where the need for them is greatest. And we include safeguards to address instances where our model might overpredict the number of customer locations. We also incentivize prudent spending by using a first-of-its kind reverse auction, which will award support to providers with relatively lower costs. And, as both the Order and the Public Notice make clear, we allow a range of providers and technologies—from fiber to fixed wireless and satellite—to compete, recognizing that there is no one-size-fits-all solution to getting broadband to unserved communities.

I believe this Commission is on the right path to removing the regulatory barriers that will help incent greater broadband deployment. But in those areas of the country where challenges persist, this auction will build on the good work we've done so far to make sure that no community gets left behind. Thank you to the staffs of the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and the Rural Broadband Auctions Task Force for your hard work on these items. They have my support.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Connect America Fund, ETC Annual Reports and Certifications, Rural Broadband Experiments, Connect America Fund Phase II Auction, WC Docket Nos. 10-90, 14-58, 14-259, AU Docket No. 17-182, Order on Reconsideration.*

Mark your calendar. Today we put in place the final pieces of a \$2 billion reverse auction of universal service support that will kick off on July 24, 2018. This effort has been many years in the making. It's exciting—because with these decisions we are taking steps into the future of high-cost universal service. We are experimenting with new opportunities for providers to build broadband in some of our most rural communities that have been among our most challenging places to serve. This forward-thinking effort has my support.

I do have a concern, however, with the approach we take here. I would have preferred that we worked right now with our state partners—like Pennsylvania—who have stepped up and sought out new forms of federal-state collaboration when it comes to universal service. When our state partners express interest in working with us—and even offer up their own funds to do so—we should have that conversation. Instead of pursuing it with vigor, we put it off for another day. Going forward, we should do better than this.

Finally, I want to step back and acknowledge that while this auction will help expand broadband availability to more Americans, it is not the only auction we should be putting on the calendar. We currently do not have any major spectrum auction on the Commission calendar. Other nations are speeding ahead with plans for auctioning airwaves for the next generation of wireless services. South Korea, for instance, has already announced plans to auction the 28 GHz and 3.5 GHz bands between June and October of this year. But in the United States, all we have now is a blitz of bands being discussed in regulatory proceedings. If we want to lead in 5G we need to take action—and not the misguided effort to nationalize networks recently leaked to the press—but real action. It's time for the FCC to put our next major spectrum auction on the calendar. Because we can't rest on our laurels with the universal service auction we announce today.