

0910–0120, which is the control number for the 510(k) premarket notification process, to OMB control number 0910–0231, which is the control number for the PMA process. FDA estimates that it will receive seven new PMAs as a result of this order, if finalized. Based on FDA's most recent estimates, this will result in a 2,421 hour burden increase. FDA also estimates that there will be seven fewer 510(k) submissions as a result of this order, if finalized. Based on FDA's most recent estimates, this will result in a 318 hour burden decrease. Therefore, on net, FDA expects a burden hour increase of 2,103 due to this proposed regulatory change.

The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078.

#### X. Proposed Effective Date

FDA is proposing that any final order based on this proposed order become effective 90 days after date of publication of the final order in the **Federal Register**.

#### XI. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to <http://www.regulations.gov>. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <http://www.regulations.gov>.

#### XII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Medicines and Healthcare Products Regulatory Agency (MHRA), "Report of the Expert Advisory Group Looking at Soft Tissue Reactions Associated With Metal-on-Metal Hip Replacements," October, 2010.
2. Tower, S. S., "Arthroprosthetic Cobaltism: Neurological and Cardiac Manifestations in Two Patients with Metal-on-Metal Arthroplasty: A Case Report," *Journal of Bone and Joint Surgery*, 92, 2847–2851, 2010.
3. Australian Orthopaedic Association National Joint Replacement Registry, *Hip and Knee Arthroplasty Annual Report 2010*. Adelaide: Australian Orthopaedic Association, 2010.
4. American Academy of Orthopedic Surgeons (AAOS), "Modern Metal-on-

Metal Hip Implants: A Technology Overview," December 2011.

5. A.J. Smith, et al., "Failure Rates of Stemmed Metal-on-Metal Hip Replacements: Analysis of Data From the National Joint Registry of England and Wales," *Lancet*, 2012:S0140–6736(12)60353–5, March 13, 2012.

#### List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 888 be amended as follows:

#### PART 888—ORTHOPEDIC DEVICES

■ 1. The authority citation for 21 CFR part 888 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 888.3320 is amended by revising paragraph (c) to read as follows:

**§ 888.3320 Hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis.**

\* \* \* \* \*

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **Federal Register**], for any hip joint metal/metal semi-constrained prosthesis with a cemented acetabular component that was in commercial distribution before May 28, 1976, or that has, on or before [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **Federal Register**], been found to be substantially equivalent to any hip joint metal/metal semi-constrained prosthesis with a cemented acetabular component that was in commercial distribution before May 28, 1976. Any other hip joint metal/metal semi-constrained prosthesis with a cemented acetabular component shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

■ 3. Section 888.3330 is amended by revising paragraph (c) to read as follows:

**§ 888.3330 Hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis.**

\* \* \* \* \*

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [A DATE

WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **Federal Register**], for any hip joint metal/metal semi-constrained prosthesis with an uncemented acetabular component that was in commercial distribution before May 28, 1976, or that has, on or before [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **Federal Register**], been found to be substantially equivalent to any hip joint metal/metal semi-constrained prosthesis with an uncemented acetabular component that was in commercial distribution before May 28, 1976. Any other hip joint metal/metal semi-constrained prosthesis with an uncemented acetabular component shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: January 14, 2013.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2013–01006 Filed 1–17–13; 8:45 am]

**BILLING CODE 4160–01–P**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 54

[WC Docket No. 10–90; DA 12–2075]

#### Connect America Fund

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission seeks comment on procedures to determine what areas are eligible for Connect America Phase II funding and how carriers may elect to accept or decline a statewide commitment in Connect America Phase II.

**DATES:** Comments are due on or before February 19, 2013 and reply comments are due on or before March 4, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 10–90, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov>

[fjallfoss.fcc.gov/ecfs2/](http://fjallfoss.fcc.gov/ecfs2/). Follow the instructions for submitting comments.

- **People with Disabilities:** Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: (202) 418-0530 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Ryan Yates, Wireline Competition Bureau, (202) 418-0886 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Federal Communications Commission's (Commission) Public Notice in WC Docket No. 10-90, and DA 12-2075, released December 27, 2012. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's web site at <http://www.fcc.gov>.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full

name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554; Web site: [www.bcpweb.com](http://www.bcpweb.com); phone: 1-800-378-3160. Furthermore, two copies of each pleading must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5-A452, Washington, DC 20554; email: [Charles.Tyler@fcc.gov](mailto:Charles.Tyler@fcc.gov) and one copy to Ryan Yates, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5-B441A, Washington, DC 20554; email: [Ryan.Yates@fcc.gov](mailto:Ryan.Yates@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours

at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY-A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI through its Web site: [www.bcpweb.com](http://www.bcpweb.com), by email at [fcc@bcpweb.com](mailto:fcc@bcpweb.com), by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (tty), or by facsimile at (202) 488-5563.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov); phone: (202) 418-0530 or TTY: (202) 418-0432.

## I. Introduction

1. The Commission has delegated to the Wireline Competition Bureau (Bureau) the task of developing a forward-looking cost model to determine support levels to be offered to price cap carriers in Phase II of the Connect America Fund. The Bureau recently announced the availability of version one of the Connect America Cost Model, which provides the ability to calculate costs using a variety of different inputs and assumptions.

2. The Bureau expects to solicit additional public comment on the cost model through its ongoing Virtual Workshop, which focuses on technical model design and input issues, and public notices, which will focus on other issues relating to implementation of Phase II, before finalizing the Connect America Cost Model.

3. In this Public Notice, the Bureau proposes procedures to provide an opportunity for parties to challenge whether census blocks that are identified as eligible to receive Phase II support are in fact unserved by an unsubsidized competitor. We also seek comment on procedures relating to the election of price cap carriers to accept Phase II support in exchange for making a statewide commitment.

## II. Discussion

### A. Procedures for Challenging Whether an Area Is Served by an Unsubsidized Competitor

4. The Commission directed the Bureau, after the cost model is adopted,

to “publish a list of all eligible census blocks” (specifically, those census blocks in price cap territories below the extremely high-cost threshold but above the funding threshold) and provide an opportunity for parties to “challenge the determination of whether or not areas are unserved by an unsubsidized competitor.” We propose to utilize the following procedures to allow interested parties to make such challenges when we adopt a final model and seek comment on these proposed procedures.

5. The Commission concluded that “it would be appropriate to exclude any area served by an unsubsidized competitor,” and it delegated to the Bureau “the task of implementing the specific requirements of this rule.” Consistent with the directive in the *USF/ICC Transformation Order*, 76 FR 73830, November 29, 2011, we propose to publish a list of eligible census blocks classified by the cost model as unserved by an unsubsidized competitor offering service that meets the broadband performance obligations for Phase II. For purposes of this determination, the Commission has defined an unsubsidized competitor as one that is offering terrestrial fixed broadband with an advertised speed of 4 Mbps downstream and 1 Mbps upstream. Consistent with the approach adopted by the Commission for Connect America Phase I, we propose to use 3 Mbps downstream and 768 kbps upstream as a proxy for 4 Mbps downstream and 1 Mbps upstream in developing this initial list because that information is readily available from other data sources. Likewise, for administrative simplicity, we propose that to the extent a party is challenging the classification of a particular census block, it may present evidence demonstrating the block in question is served by service providing 3 Mbps downstream and 768 kbps upstream.

6. We expect the final Connect America Cost Model we adopt will use the National Broadband Map reflecting State Broadband Initiative (SBI) data as of June 2012, potentially supplemented with other data sources. Once we publish the relevant list of unserved census blocks with costs between the extremely high-cost threshold and the funding threshold shown in the model, we propose that interested parties would then have an opportunity to challenge that list. Specifically, challengers would submit revisions and other potential corrections to the list of eligible census blocks where coverage by unsubsidized competitors is either overstated (i.e., census blocks are listed as served where they are in fact unserved) or understated (i.e., census

blocks are listed as unserved when they are in fact served). We propose that parties contending the Bureau’s original classification as served or unserved is accurate would have an opportunity to submit evidence to rebut the challenge.

7. Commenters seeking to challenge the eligibility of a particular area for funding would be required to list specific census blocks that are inaccurately classified as served or unserved by an unsubsidized competitor, along with a brief statement and supporting evidence demonstrating that those census blocks are inaccurately reported. We propose not to process any challenge that lacks some evidentiary showing regarding the census block in question; a challenge that merely asserts the area is or is not served would not be sufficient. Challenges to a census block’s eligibility may be based on any or all of the Commission’s broadband performance metrics—speed, latency, and/or capacity (i.e., minimum usage allowance). Challenges may also be based on non-performance metrics that affect the availability of broadband in a census block. For example, if the provider of broadband in that census block only offers service to business customers and not residential customers, the status of that block as served may be challenged.

8. Consistent with our proposal above, we propose that to be deemed served, a census block must have access to broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream. Proposed examples of potential types of probative evidence regarding the availability of broadband service meeting the speed requirements established by the Commission include, but are not limited to, more recent SBI data than that used in version of the model adopted by the Bureau; maps or printouts of Web sites indicating coverage for a particular area accompanied by an officer certification that such materials reflect current conditions; printouts of billing information for customers within the particular census block, with identifying customer information appropriately masked; engineering analyses or drive tests; explanations of methodologies for determining coverage; and certifications by one or more individuals as to the veracity of the material provided. What other information regarding the speed of alleged service offerings would be readily available to potential challengers or parties seeking to maintain the classification of an area as shown on the National Broadband Map?

9. The Commission specified in the *USF/ICC Transformation Order* that latency should be sufficiently low as to

enable real-time applications, such as Voice over Internet Protocol (VoIP). Proposed examples of potential types of probative evidence regarding latency include, but are not limited to, documentation that a provider is actually offering voice service to customers in the relevant area, such as a printout of a Web site showing voice service availability at a particular address in the census block accompanied by an officer certification, or a sworn declaration from one or more customers within the census block that they subscribe to voice from that provider. What other information regarding the latency of alleged service offerings would be readily available to potential challengers or parties seeking to maintain the classification of an area as shown on the National Broadband Map?

10. The Commission delegated to the Wireline Competition Bureau and Wireless Telecommunications Bureau the task of adopting capacity or “minimum usage allowance” requirements for recipients of Phase II support. Proposed examples of potential types of probative evidence regarding minimum usage include, but are not limited to, a printout of a Web site showing market offerings meeting the minimum usage requirement accompanied by an officer certification, or a sworn declaration from one or more customers within the census block that they subscribe to a service offering meeting the minimum usage allowance requirement. What other information regarding the capacity of alleged service offerings would be readily available to potential challengers or parties seeking to maintain the classification of an area as shown on the National Broadband Map? Should we require one or more of these evidentiary showings for a challenge to be deemed complete as filed?

11. We propose that all certifications regarding evidence supporting or opposing a challenge be signed by an individual with relevant knowledge (such as officer of the company making or opposing the challenge, or a representative of the state mapping agency) certifying that the information presented is accurate to the best of his or her knowledge.

12. To assist in the development of a more complete record, we also seek comment on how to ensure that potentially interested parties are aware of the opportunity for public input. For instance, should a purported unsubsidized competitor challenging the classification of a block as unserved (and therefore eligible for funding) be required to serve a copy of its challenge

on the price cap carrier? If a price cap carrier believes a particular census block should be on the list of blocks eligible for funding (because it is not served), should it be required to serve a copy of its challenge by overnight delivery on any entity shown as serving the block on the National Broadband Map?

13. We intend to conduct this challenge process in an expeditious fashion. We propose that after the release of the list of census blocks, parties would have 45 days to file challenges to the list. Parties wishing to rebut such challenges would have an additional 20 days to submit evidence supporting their contentions. We seek comment on whether this proposed time frame adequately serves our goal of providing a meaningful opportunity for challenge, while concluding this challenge process in a reasonable timeframe. We propose that all evidence regarding the status of a particular census block must be filed within this timeframe; any evidence filed after these dates will be deemed untimely. Strict adherence to these deadlines is necessary to provide an adequate opportunity for the party that contends the classification as served or unserved is accurate to respond to all evidence submitted by the challenger within the reply comment timeframe, and in order for this administrative process to be completed expeditiously.

14. At the close of the challenge timeframe, we propose that where the Bureau finds that it is more likely than not that a census block is inaccurately classified as served or unserved, we would modify the classification of that census block for purposes of finalizing the census blocks that will be eligible for a price cap carrier statewide commitment under the Connect America Phase II program. In the event that both the challenger and the opponent provide credible evidence regarding the status of a particular block, we propose that the default determination will be however the block is classified on the National Broadband Map at the time the challenge is resolved. We recognize the practical difficulties that may ensue in situations where one party says service exists and the other party says service does not exist. Because it may be difficult and expensive for the party contending that service does not exist to prove a negative, we propose that the most expedient solution in such situations is to rely upon the most current available map data.

15. We propose that, in making its determinations, the Bureau would consider whether the challenger took

steps to bring the alleged errors in the National Broadband Map to the attention of the relevant state mapping authority and the outcome of any such efforts. It is possible that the December 2012 SBI data may become available shortly before or after the forward looking cost model is adopted, and therefore challengers may wish to present evidence of the more recent classification on the National Broadband Map in their challenges. If December 2012 SBI data is available at the time the Bureau resolves these challenges, we propose to rely upon the December 2012 classification.

16. While the Bureau will rely on updates to the available SBI data, we propose to focus on evidence regarding current broadband availability at the time we resolve the challenge, and not on announced market expansion plans that may occur at some future date. We note that announced deployment plans may change for business and other reasons, and if we were to exclude a census block area based on announced plans to extend service to that block, that could provide an opportunity for potential competitors to engage in strategic behavior to eliminate support for a particular census block, without an assurance that the competitor will actually serve the block at a future date.

17. We also propose that the Bureau only include on the preliminary list of blocks eligible for funding those census blocks that are completely unserved. We further propose to treat partially served census blocks as served and therefore not eligible for funding in Phase II. We anticipate that entertaining challenges with respect to potentially many thousands of individual census blocks could be a significant undertaking by itself, and we are concerned that the administrative burden of permitting challenges at the sub-census block level would outweigh the potential benefits. We therefore propose to conduct the challenge process at the census block level. To the extent commenters believe that we should entertain sub-census block challenges, they should describe with specificity how their proposed process would work, and in particular how we would ensure compliance with build out requirements in partially served census blocks.

18. We seek comment on all these proposals and on any alternatives. If commenters believe different procedures would better serve the Commission's goal of targeting support to areas without unsubsidized competitors, they should provide a detailed description of their preferred alternative. We welcome suggested alternatives that minimize the impact of

these proposals on small businesses, as well as comments regarding the cost and benefits of implementing these proposals.

#### *B. Procedures for Implementing the Price Cap Carrier Election To Make a Statewide Commitment*

19. We propose that after reviewing any public comment, the Bureau will publish a revised list of census blocks and a revised list of support amounts associated with each eligible area that will be offered to price cap carriers. We seek comment on whether the election period should be 90 days from the date of release of the finalized list, which would be the same as the time period provided to price cap carriers for electing to accept incremental support for Connect America Phase I. In the alternative, should the time period for price cap carriers to elect to make a statewide commitment in Phase II be longer, such as 120 days, due to the complexity of the decisions individual carriers will need to make? We also seek comment on requiring the submissions either electing or declining support to be submitted on a confidential basis prior to the deadline for election. Should carriers be allowed or required to make confidential submissions? In the event that such submissions were afforded confidentiality, we propose that the Bureau would announce all statewide elections on a single date shortly after the close of the election period.

20. We propose that a carrier electing to accept the statewide commitment would submit a letter, signed by an officer of the company, by the deadline specifying that it agrees to meet the Commission's requirements in exchange for receiving support in amounts set forth in the final Bureau public notice. To the extent a letter of credit or other form of security is required to ensure compliance with these obligations, we propose to require its submission within ten days of exercising the statewide commitment.

21. We seek comment on what information carriers should be required to submit along with their acceptance notices. Should such carriers be required to specify the technology or combination of technologies they intend to deploy in a particular state, at the wire center or census block level? Should carriers also be required to provide information such as geocoded latitude and longitude location information, along with census block and wire center information, for the specific locations where they intend to provide service meeting the 6 Mbps downstream/1.5 Mbps upstream

requirement, as determined by the Bureau? Should carriers be required at the time of acceptance to submit a preliminary plan showing the census blocks and/or wire centers, and associated number of locations, where they anticipate meeting the third year 85 percent build-out milestone? What other information should be required in the initial acceptance notices in order to ensure the Commission has the tools it needs to monitor compliance with performance obligations? Should the Commission afford confidential treatment to any of the information required to be submitted after the Bureau announces the acceptance by carriers of funding on a statewide level?

22. We propose that a carrier declining to accept a statewide commitment in a particular state would file a letter by the deadline specifying that it is declining funding. Alternatively, a carrier failing to file a letter by the deadline could be deemed as having declined funding.

23. We seek comment on all these proposals and on any alternatives. To the extent commenters believe that other procedures would better serve the Commission's goals, they should provide a detailed description of their proposal for the statewide commitment process. We welcome suggested alternatives that minimize the impact of these proposals on small businesses, as well as comments regarding the cost and benefits of implementing these proposals.

### III. Procedural Matters

#### A. Initial Regulatory Flexibility Act Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Public Notice. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

#### B. Need for, and Objectives of, the Proposed Rules

25. The Public Notice seeks comment on issues related to the implementation

of Phase II of Connect America. As discussed in the *USF/ICC Transformation Order*, the rapid and efficient deployment of broadband is crucial for our nation's growth. The proposals contained in this public notice will help to achieve the Commission's goal of making broadband accessible to all Americans.

26. The Bureau is currently in the process of developing a cost model for Phase II of Connect America. The Commission directed the Bureau to publish a list of census blocks that would be eligible for support under the cost model, and to provide an opportunity for parties to make challenges to that list. This Public Notice seeks comment on how to conduct such a challenge process and what data should be used in that process. The Bureau plans to publish a list of census blocks that are within the cost model's funding threshold but are unserved by broadband with speeds of 3 Mbps downstream and 768 kbps upstream. Parties could then submit comments challenging the accuracy of that list.

27. The Public Notice proposes that parties could make challenges based on the fact that a purported unsubsidized competitor is or is not meeting the broadband performance requirements for speed, latency, or capacity. The Public Notice also suggests various forms of evidence that could be submitted to support these contentions. Assertions that are offered without supporting evidence would not be considered. Where the Bureau finds it more likely than not that a census block is inaccurately classified as served or unserved, that census block's status would be altered accordingly for the purposes of Phase II eligibility.

28. Under the system proposed in the Public Notice, parties challenging the eligibility of a particular census block would be required to serve a copy of their challenge on the entity purportedly serving that block. That entity would then have an opportunity to respond and provide evidence rebutting that challenge. In the event that both the challenger and the respondent provide credible information supporting their claims, the census block's status would be determined based on its current status on the most recent version of National Broadband Map available at the time the list of eligible areas is finalized.

29. The Public Notice also sets limits on the types of challenges considered. First, only wholly unserved census blocks would be eligible for Phase II support. Therefore, under the proposed system, sub-census block challenges

would not be considered. Second, challenges and rebuttals must be based on current broadband availability, not announced deployment plans.

30. In addition to seeking comment on issues related to the Phase II challenge process, the Public Notice also seeks comment on procedures for implementing the process of price cap carriers' election to receive support in exchange for a commitment to serve all eligible areas within a state. Comment is sought on what time period should be used in this process. The Public Notice also seeks comment on what information a carrier should be required to submit when accepting a statewide commitment.

#### C. Legal Basis

31. The legal basis for any action that may be taken pursuant to the Public Notice is contained in sections 1, 4(i), 4(j), 214, and 218, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996.

#### D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

32. 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 proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

33. *Small Businesses*. Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

34. *Wired Telecommunications Carriers*. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

35. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Public Notice.

36. *Incumbent Local Exchange Carriers (incumbent LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Public Notice.

37. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

38. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the

Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Public Notice.

39. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

40. *Broadband Personal Communications Service*. The broadband personal communications

service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined “small entity” for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for “very small business” was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards defining “small entity” in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as “small” or “very small” businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

41. *Fixed Microwave Services*. Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the

SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licenses and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

42. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of \$15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of "Satellite Telecommunications" and "Other Telecommunications." Under the "Satellite Telecommunications" category, a business is considered small if it had \$15 million or less in average annual receipts. Under the "Other Telecommunications" category, a business is considered small if it had \$25 million or less in average annual receipts.

43. The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under \$10 million, and 18 firms had receipts of \$10 million to \$24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Public Notice.

44. The second category of Other Telecommunications "primarily engaged in providing specialized

telecommunications services, such as satellite tracking, communications telemetry, and radar station operation." This industry also includes establishments "primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems; or \* \* \* providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under \$25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

45. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Public Notice.

46. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have

under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Public Notice.

47. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

48. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had

employment of 1,000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Public Notice.

49. *All Other Information Services.* The Census Bureau defines this industry as including “establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).” Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under \$5.0 million, and an additional 11 firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

*E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

50. In this Public Notice, the Bureau seeks public comment on procedures for implementing Connect America Phase II. Certain proposals could result in additional reporting requirements.

51. If the Bureau implements the Phase II challenge process articulated above, commenters, including small entities, wishing to participate would be required to comply with the listed reporting and evidentiary standards. This includes filing a challenge along with supporting evidence and serving a copy of the challenge on any challenged party within a specified timeframe. Similarly, if the Bureau implements the proposed statewide commitment process, any small entity that is either accepting or declining a statewide commitment would be subject to additional reporting requirements.

*F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

52. The RFA requires an agency to describe any significant, specifically small business, 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 and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

53. The Public Notice seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the Public Notice, and the Commission will consider alternatives that reduce the burden on small entities.

54. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Public Notice, in reaching its final conclusions and taking action in this proceeding. The reporting requirements in the Public Notice could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of Section 254 of the Act are met without waste, fraud, or abuse.

55. In the Public Notice, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Small entities may be more likely to face challenges to their service areas, and thus be required to comply with the reporting requirements above in order to have their rebuttals considered. The Bureau will consider comments from small entities as to whether a different standard should apply.

*G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

56. None.

*H. Initial Paperwork Reduction Act of 1995 Analysis*

57. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

*I. Ex Parte Presentations*

58. *Permit-But-Disclose.* The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule section 1.1206(b). In proceedings governed by rule section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Federal Communications Commission.

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