

Polymer

CAS No.

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 Octadecanoic Acid, 12-Hydroxy-, Homopolymer Ester with 2-Methylloxirane Polymer with Oxirane monobutyl Ether, minimum  
 number average molecular weight (in amu), 4,500 ..... 1373125-59-7  
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 [FR Doc. 2013-28364 Filed 11-26-13; 8:45 am]  
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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[WC Docket Nos. 10-90; DA 13-2115]

**Connect America Fund**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission specifies service obligations of price cap carriers that accept Connect America Phase II model-based support through the state-level commitment process, and addressed how to determine what areas are considered as served by an unsubsidized competitor. Specifically, the Commission sets out how a price cap carrier satisfies the latency, usage allowance, and pricing requirements for Connect America Phase II. This document also addresses how these metrics will apply in determining what areas will be considered as served by an unsubsidized competitor.

**DATES:** Effective December 27, 2013, except for § 54.313(a)(11), which contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for that section.

**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 Wireline Competition Bureau's Report and Order in WC Docket No. 10-90, and DA 13-2115, released on October 31, 2013. 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. These documents 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>. Or at the following Internet address: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2013/db1031/DA-13-2115A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db1031/DA-13-2115A1.pdf).

**I. Introduction**

1. In the *USF/ICC Transformation Order*, 78 FR 38227, June 26, 2013, the Federal Communications Commission (Commission) comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans. As part of the reform, the Commission adopted a framework for providing support to areas served by price cap carriers, known as the Connect America Fund, through "a combination of competitive bidding and a new forward-looking model of the cost of constructing modern multi-purpose networks." In particular, the Commission will offer each price cap carrier monthly model-based support for a period of five years in exchange for a state-level commitment to serve specified areas within the state that are not served by an unsubsidized competitor, and if that offer is not accepted, will determine support through a competitive process.

2. In this Report and Order (Order), the Wireline Competition Bureau (Bureau) takes further action to implement the Commission's direction that price cap carriers may elect to receive model-based support in certain areas in exchange for making a state-level commitment to meet the Commission's service obligations. The Bureau specifies the service obligations of price cap carriers that accept Phase II model-based support through the state-level commitment process. Specifically, the Bureau provides two options for a price cap carrier accepting model-based

support to meet the Commission's requirements for reasonably comparable pricing of voice and broadband services. In addition, the Bureau specifies a 100 gigabyte (GB) minimum usage allowance that will initially apply to a price cap carrier accepting model-based support for Phase II-funded locations, to the extent the carrier chooses to set usage allowances in such areas. The Bureau also specifies latency requirements—specifically, that price cap carriers must have a provider round trip latency of 100 milliseconds (ms) or less, and provide two options for how they may test and report compliance with this requirement. Finally, the Bureau addresses how we will apply these metrics to determine what areas we will consider as served by an unsubsidized competitor.

**II. Discussion**

*A. Price Cap Carrier Obligations*

3. In this section, the Bureau discusses the specific metrics that will be used to determine compliance of recipients of model-based Phase II support with the Commission's service obligations. By setting these standards, the Bureau provides clarity to price cap carriers contemplating accepting Phase II support through the state-level commitment process. The Bureau details how compliance with the Commission's requirements will be evaluated, while creating a straightforward framework for oversight and accountability in Phase II. Price cap carriers should use the standards in this Order when making their annual certifications. The Commission will review these annual reports to ensure the standards set forth in this Order are being met and to evaluate price cap carriers' continuing eligibility for Phase II support.

4. *Price.* The *USF/ICC Transformation Order* calls for rates for both voice and broadband between urban and rural areas to be reasonably comparable. The Bureau has adopted a survey instrument to conduct a rate survey, and the Bureau is working to conduct this survey in the near future. The Bureau anticipates that the rate survey data will be available, and the benchmarks set, prior to the deadline for Phase II state-level

commitment elections. Once these benchmarks are adopted, a price cap carrier accepting model-based support can certify that its rates conform to the reasonable comparability benchmark.

5. Consistent with the Commission's approach when it adopted rules for the second round of Connect America Phase I incremental support, the Commission also adopted an alternative means for showing reasonable rate comparability: A carrier's rate for both voice and broadband will be presumed reasonably comparable if the carrier certifies that it is offering fixed services meeting our voice and broadband requirements for the same or lower prices in rural areas as urban areas. To qualify for this presumption, the qualifying service plan must have substantially similar terms and conditions in both urban and rural areas. This approach recognizes that if rates in rural areas are the same as urban areas, that by definition complies with the reasonable comparability principles set forth in section 254(b). In order to certify that rates are reasonably comparable under this presumption, the rates in Phase II-funded areas must be the same or lower than rates for fixed wireline services in urban areas. The Bureau does not require the carrier to offer a particular rate nationwide; rather, it is sufficient if the carrier offers the same rate in an urban area in the state where it accepts Phase II funding.

6. The Bureau recognizes that, in comparing urban and rural offerings, carriers may not offer service plans that exactly match the minimum service obligations for Connect America. Therefore, in certifying that rural rates are at or below urban rates, the basis for comparison should be the lowest cost non-promotional rate for an urban service offering that meets or exceeds each dimension of the service obligations set in this Order.

7. In adopting this presumption, the Bureau concludes that the relevant comparison for a price cap carrier accepting model-based support is to rates and usage allowances for fixed wireline services in urban areas. Some carriers eligible for Phase II funding offer a fixed wireless product in urban areas that may meet all of the service obligations described herein, but such offerings are typically offered at a higher price for a given amount of data usage than typical wireline offerings. Given the Commission's reference in its discussion of capacity to the typical data allowances of wireline broadband

offerings, the Bureau does not believe it would be consistent with the Commission's framework for a price cap carrier accepting model-based support to meet its reasonable comparability obligations by relying on uniform pricing for fixed wireless offerings. Rather, a price cap carrier making a reasonable comparability certification for model-based support must look to the prices and usage allowances of its fixed wireline offerings in urban areas.

8. This presumption may be overcome in extreme circumstances where other evidence strongly suggests that the price cap carrier is relying on the existence of a rate plan in urban areas to which few consumers subscribe. For example, it would not be reasonable for a price cap carrier to rely on the offering of the same service at the same rate in urban and rural areas when only a de minimus number of customers subscribe to the service offering in the urban area. Similarly, the presumption may be overcome if a carrier is only offering the service plan in a very small portion of the urban area.

9. As proposed in the *Phase II Service Obligations Public Notice*, 78 FR 16456, March 15, 2013, an urban area is defined as any "urban area" or "urban cluster" that sits within a Metropolitan Statistical Area, as defined by the Census Bureau. A carrier need only make the offering in part of the "urban area" or "urban cluster" to qualify. The presumption of reasonable comparability under this alternative provides carriers needed certainty in making their elections and is supported by parties in the record.

10. The rate survey benchmarks, once adopted, will serve as a safe harbor. To the extent the rates in question for funded locations are at or below the benchmarks established through the rate survey, that will be sufficient to meet the Commission's reasonable comparability requirements.

11. *Usage Allowance.* Under the *USF/ICC Transformation Order*, Phase II recipients must provide broadband with usage allowances reasonably comparable to those available through comparable offerings in urban areas. The Commission set some guide posts as to what would be deemed reasonably comparable, noting that a 250 GB per month usage allowance would likely be reasonably comparable, while a 10 GB per month usage allowance would not. The Commission delegated to the Bureau the task of setting a specific

minimum usage allowance and specified that minimum should be adjusted over time.

12. In the *Service Obligations Public Notice*, the Bureau sought comment on two methods of setting the minimum usage allowance: The first method was based on what activities could be undertaken with a particular data allowance, and the second method was based on current consumer data usage patterns. The Bureau also inquired as to whether the minimum usage allowance should be a fixed standard, or whether it should grow during the term of Phase II.

13. The Commission envisioned that price cap carriers accepting model-based support would build "robust, scalable networks." As such, the Bureau does not expect those carriers accepting model-based support would impose the kind of usage allowances that typically exist today for many wireless and satellite offerings. Indeed, such usage allowances would be incompatible with the fiber-based forward looking cost model approach that the Bureau has adopted. To provide clarity in the event a price cap carrier sets any usage allowance for the service offering that it relies upon to meet its universal service obligations for acceptance of model-based support, however, we specify an initial minimum allowed usage limit of 100 GB per month, with the opportunity to obtain additional data usage at a reasonable price to the extent the price cap carrier chooses to offer a plan providing the minimum specified amount. The Bureau concludes that 100 GB is a reasonable initial usage allowance for price cap carriers making a state-level commitment. According to the Commission's most recent data, 80 percent of cable/fiber users—most of which are likely to be in urban areas—currently use less than 100 GB per month. As discussed in the *Phase II Service Obligations Public Notice* and shown in the chart below, this would provide for a mid-level basket of video related activities, including viewing over 20 hours of video per week and the ability to load hundreds of Web sites each day. And, the Bureau emphasizes that the 100 GB per month is the *minimum* usage—price cap carriers are free to offer plans with additional usage and indeed the Bureau encourages price cap carriers to offer a variety of plans in rural areas as they do in urban areas.

BROADBAND APPLICATIONS POSSIBLE WITH 100 GB OF USAGE

Video Applications (Education (including digital learning), Healthcare, Business, Community Engagement and Other Activities Such As Video Conferencing with Family).	95 Hours.
plus E-mails Sent/Received for Personal and Professional Correspondence .....	5,000 E-mails.
plus Websites Loaded (Activities Such As Job Searching, Education, Banking, Health, and Government Services) .....	14,500 Websites.

14. Other parties have called for a lower minimum usage limit, with some advocating for limits at or below 20 GB per month and others suggesting 60 GB. However, a 20 GB limit would fall well short of existing fixed broadband usage levels—over two-thirds of cable and fiber subscribers currently consume in excess of 20 GB of data per month. Nor is the Bureau convinced we should establish a minimum usage allowance of 60 GB for price cap carriers accepting model-based support. Over 30 percent of current fiber and cable subscribers consumed in excess of 60 GB of data per month, and consumers are likely to consume more, not less, over time. The Bureau is guided by the Commission’s statement that “Americans should have access to broadband that is capable of enabling the kinds of key applications that drive our efforts to achieve universal broadband, including education (e.g., distance/online learning), health care (e.g., remote health monitoring), and person-to-person communications (e.g., VoIP or online video chat with loved ones serving overseas).” While the Commission recognized that service obligations may need to be relaxed in some fashion for extremely high cost areas, the Bureau concludes that a usage limit of 20 GB, or 60 GB, for price cap carriers accepting model-based support is not consistent with the robust, scalable networks that the Commission expects such providers to deploy.

15. The Bureau requires price cap carriers accepting model-based Phase II support to offer a minimum usage allowance over the course of Phase II’s five-year term that remains consistent with trends in usage for 80 percent of consumers using cable or fiber-based

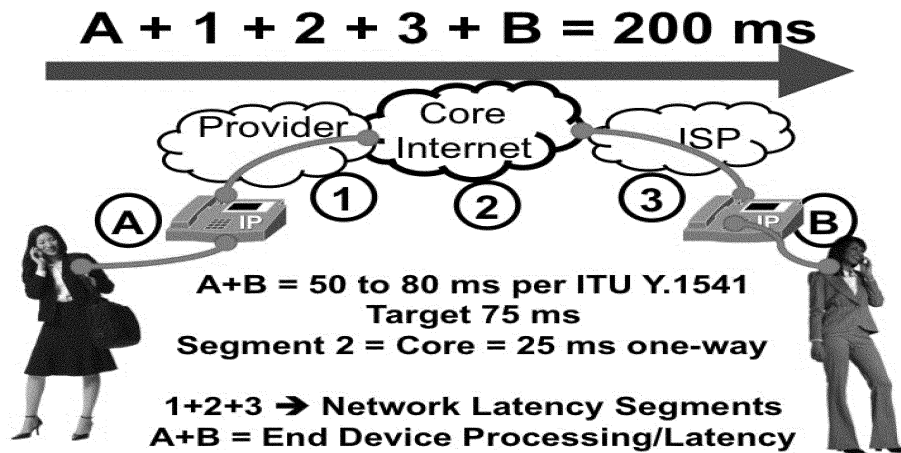
fixed broadband services. As an alternative to any national data set (such as Measuring Broadband America) that demonstrates trends in usage over time, the Bureau will deem a price cap carrier to be in compliance with this usage allowance requirement in future years if its minimum usage allowance for Connect America funded locations is at least 100 GB and is at or above the usage level for 80 percent of all of its broadband subscribers, including those subscribers that live outside of Phase II funded areas. Given the size and scale of most price cap carriers, it is reasonable to presume that their individual data would be consistent with national data, and this alternative will enable price cap carriers to anticipate how their usage allowances may change in the future.

16. *Latency.* In the *USF/ICC Transformation Order*, the Commission required Phase II recipients to provide latency sufficient for real-time applications, such as VoIP. In this section, the Bureau describes how they will implement this requirement for price cap carriers that accept Phase II model-based support.

17. The Bureau agrees with WISPA that because latency can be defined and measured in many ways, “a clear, workable, measureable definition of ‘latency’” is necessary. The Bureau also agrees with commenters that argue the Commission should base its performance metrics on “empirical data.” After consideration of the record, the Bureau therefore bases our standard on the International Telecommunication Union (ITU) G.114 design objectives. ITU Standard G.114 provides that consumers are “very satisfied” with the quality of VoIP calls up to a mouth-to-ear latency of approximately 200 ms.

The ITU has determined that consumers become less satisfied with the quality of VoIP calls when total mouth-to-ear latency is above 200 ms. Therefore, the Bureau concludes that a reasonable approach is a framework that should result in mouth-to-ear latency of 200 ms or less.

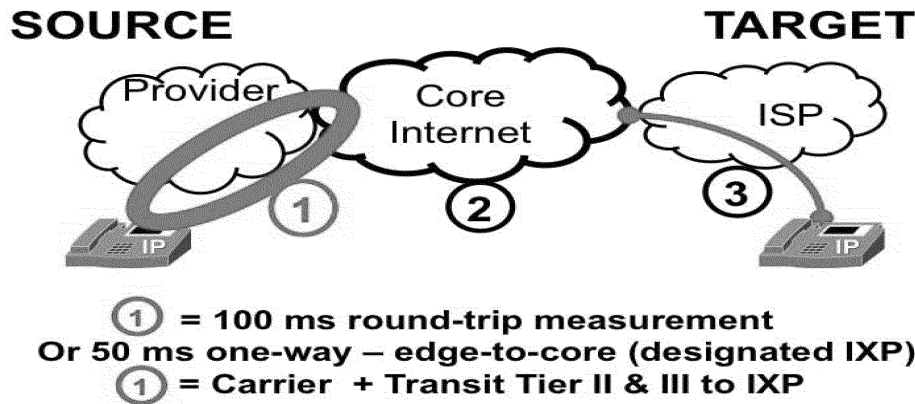
18. The Bureau recognizes that price cap carriers accepting model-based support may not presently have a way to measure end-to-end latency, and therefore adopt an approach that allows them to certify they are meeting the Commission’s requirements based on a provider round-trip latency measure. The ITU latency calculations are “mouth-to-ear” one-way path measurements which include: The signal conversion at the input (the conversion of the speaker’s voice to digital packets); the broadband provider’s network path from the input device to the Internet core; the path through the Internet core; the broadband provider’s network path from the Internet core over the provider’s network to the output device; and the signal conversion at the output device (the conversion of the digital packets back to voice for the listener). ITU Standard Y.1541 calculates input and output terminal conversion delays together to be between 50 and 80 ms. Based on these ITU calculations and other research, we use 75 ms for purposes of calculating conversion delays. An assumed conversion delay of 75 ms means that the total latency for the network path to the Internet core, the Internet core, and the network path from the Internet core to the output device would need to be no greater than 125 ms if 200 ms mouth-to-ear latency limit is to be maintained.



19. Based on ITU calculations and reported core latencies in the contiguous United States, the Bureau assumes 50 ms as the roundtrip (25 ms one way) core Internet latency in our calculations. The assumed 75 ms for conversion delay and assumed 50 ms (25 ms one way) for the Internet core

path means that the provider network path from the input device to the Internet core and from the Internet core to the output device must be no more than 100 ms (50 for each provider segment) in order to maintain an overall mouth-to-ear latency limit of 200 ms. Because existing network management

systems, ping tests, or other commonly available network measurement tools typically calculate latency as a round-trip measurement, we adopt a 100 ms provider latency round-trip limit, which is consistent with the 50 ms one-way latency assumption for the path from the input device to the Internet core.



20. To show that it is meeting this standard, a price cap carrier accepting model-based support will need to certify that 95 percent or more of all peak period measurements (also referred to as observations) of network round trip latency are at or below 100 ms. As suggested in the *Phase II Service Obligations Public Notice*, measurements should be taken during peak period (defined as weeknights between 7:00 p.m. to 11:00 p.m. local time) between the customer premises and the closest designated Internet core peering interconnection point (often referred to as an Internet Exchange Point—IXP). The measurements should be conducted over a minimum of two consecutive weeks during peak hours for at least 50 randomly-selected customer locations within the census blocks of each state for which the provider is receiving model-based

support using existing network management systems, ping tests, or other commonly available network measurement tools.

21. The Bureau acknowledges that measuring latency is a complex task that requires detailed testing protocols. To minimize the cost of testing and ensure that it can be done relatively quickly, the Bureau will allow providers to rely on existing network management systems, ping tests, or other commonly available network measurement tools. Although the Bureau recognizes that these types of tests have drawbacks, such as a possible low priority handling/response times at target servers, low quality of service (QoS) handling/packet drops in intermediate nodes, and generally small packet sizes, the Bureau concludes that this approach strikes the appropriate balance of implementing Phase II quickly, with

some assurance that Phase II funded locations will have the service that the Commission expects, without requiring carriers accepting model-based support to make a significant investment in testing infrastructure.

22. As an alternative to conducting ping-like tests, MBAs participating in the MBA program may use the results from that testing to support certification that they meet the latency requirement. To use MBA results, carriers will need to deploy at least 50 white boxes to customers within the Phase II-funded areas within each state, i.e. at least 50 white boxes per state distributed throughout the Phase II-funded areas within that state. The white box costs and any associated administrative costs imposed by the MBA program would be the carrier's responsibility. Because white boxes take measurements on a continuous basis, a carrier would prove

compliance with the latency limit by certifying that 95 percent or more of the measurements taken during peak periods for a period of two weeks were at or below 100 ms.

23. The Bureau is not persuaded by AT&T's argument that the Commission should not set a specific numerical latency standard and should instead "assume that wireline networks capable of delivering speeds of 4/1 and greater will meet the latency requirements for real-time applications such as VoIP." Although results from the most recent MBA testing show that providers using fiber, cable, or DSL technology are generally able to meet or exceed 100 ms provider-round trip latency 95 percent limit, MBA testing is currently limited to only large providers. Not all of the price cap carriers eligible for Phase II support are participating in this program and, in any event, we have no assurance that the measurements taken in MBA are taken at Phase II-funded locations. Moreover, MBA testing results show that there can be a great disparity in latency among different locations served by a single provider. The Bureau concludes it is necessary for carriers to test latency in the census blocks where they will be receiving Phase II funding, and not rely on MBA data that may be derived from other locations.

24. The Bureau also disagrees with ViaSat's argument that "network latency need not impact the end-user experience" and that adoption of a numerical latency standard could "violate the Commission's policy of technological neutrality." To the contrary, the ITU's extensive VoIP calculations show that consumer satisfaction is improved by lower latency. Further, adoption of a numerical standard designed to meet reasonable regulatory objectives does not violate technological neutrality simply because some technologies or service providers cannot meet that standard. Failing to specify how the Commission's requirements will be enforced in practical terms that can be incorporated into business planning would be a disservice both to price cap carriers accepting Phase II support and to consumers that stand to benefit from Phase II deployments. Quantifiable metrics provide certainty to these price cap carriers at the time they accept funding: they are aware of the specific performance standards they must meet in order to satisfy their obligations. These metrics also give federal and state regulators a bright line standard against which to hold these Phase II recipients accountable, ensuring that they perform in line with expectations. Failing to

provide such clarity would result in obligations that are difficult to anticipate, difficult to measure, and difficult to enforce.

25. The Bureau notes that they are adopting a more lenient approach than the 60 ms average latency standard they originally proposed in the Public Notice. The Bureau does so after consideration of the ITU conclusion that consumers are "very satisfied" with the quality of VoIP calls up to an ear-to-mouth latency of approximately 200 ms and the record received in this proceeding. The Bureau agrees that the ITU data for a VoIP call are an appropriate basis for determining latency sufficient for this aspect of Phase II, and we believe the 100 ms limit adopted herein is consistent with ITU data.

26. The Bureau disagrees with ACS that "[i]t is particularly important to develop testing solutions not dependent on customer usage, as there is an expected increase in latency over Internet Protocol networks as customer usage nears the peak capacity of the service." Although the Bureau agrees that latency is affected by customer usage, this does not lead to a conclusion that testing should be done at times of low customer usage. Latency sufficient for real-time applications such as VoIP must be available to consumers during the time they use the Internet. A network with low latency does not benefit most consumers if the low latency is only available when few customers are using the Internet. Therefore, the Bureau has adopted testing specifications that require testing to be conducted during the peak hours, weeknights between 7:00 p.m. to 11:00 p.m. local time. The Bureau believes that measurements conducted during the peak period will demonstrate the latency experienced by the majority of customers.

27. The Bureau does not believe that the testing methodology they have adopted will impose an undue burden on providers, as there are readily available hardware and software solutions for conducting such testing. The latency testing requires only 50 Phase II-funded locations in a state to be measured over a two-week period per quarter using existing or readily acquired network management or performance management systems. Many providers already perform network management tests to monitor network performance. Network devices commonly support ICMP and SNMP, as well as other vendor-specific tests such as Cisco's IP service level agreement (SLA) command line. In addition, for those carriers that either currently

participate in or join the MBA program, the Bureau will allow the use of MBA test results from Phase II-funded locations as an alternative basis for certifying compliance with our requirements. Therefore, even if a provider does not already have a testing mechanism in use for its network, the means to conduct such testing are readily available.

28. The Bureau is not persuaded by USTelecom's claims that testing should be "between the customer premises to the provider's transit or peering interconnection point, at least in cases where there is a transit or peering interconnection point located in the same state as the customer premises being measured." The Commission determined that latency should be sufficient to allow consumers to make use of real-time applications such as VoIP. Testing latency on only a portion of the network connecting a consumer to the Internet core will not show whether that customer is able to enjoy high-quality real-time applications because it is network performance from the customer's location to the destination that determines the quality of the service from the customer's perspective.

29. Further, while a price cap carrier accepting Phase II model-based support may not have direct control over any middle-mile or transit providers with which it connects, it does have influence over its transit providers. For example, a last-mile provider can compare the quality of service offered by transit providers and select one with a higher quality of service. In addition, the last-mile provider can improve its latency by purchasing additional capacity from the transit provider or by negotiating a SLA. Last-mile providers can also implement dual homing to more than one transit provider to ensure a higher quality of service. Measuring latency from the customer location to designated Internet exchange points will show if customers are being provided with service that allows use of real-time applications by giving price cap carriers accepting Phase II model-based support strong incentives to maintain a high-quality network and to use sufficient, high-quality transit providers.

30. The Bureau concludes that the metrics adopted today provide sufficient flexibility that price cap carriers serving markets with unique conditions, such as Alaska, will be able to make the necessary certifications. ACS argues that when measuring broadband latency in Alaska, the Commission must take into account the long transmission facilities in Alaska, which often include point-to-point microwave, satellite transport, and

undersea cable, as well as the remote location of Internet exchange points. The Bureau does not believe that the use of point-to-point microwave links will adversely affect the latency of broadband services in most cases. ITU planning values for delays of different technologies indicate that coaxial fiber has a higher delay time at 5 microseconds per kilometer whereas microwave transmissions (radio-relay) are at 4 microseconds per kilometer. Indeed, there has recently been renewed interest in microwave technology to support low-latency applications.

31. Conversely, the use of geostationary satellite technologies would substantially affect a price cap carrier's ability to meet the 200 ms end-to-end latency standard we adopt herein. Although satellite transmissions travel at rates faster than copper, cable, or fiber transmissions, the satellite's distance from Earth makes achievement of the 200 ms end-to-end transmission (100 ms limit for the round-trip carrier portion) impossible. Therefore, the Bureau presumes that ACS would not include customers served by satellite technologies in the 50 measurement locations required for latency testing. ACS has not alleged that a majority, or even a substantial number, of its customers are served by satellite technologies, so elimination of satellite customers from testing calculations should resolve this concern.

32. ACS also alleges that the use of undersea cable in its network and the distance between customers and Internet exchange points could affect ACS's ability to meet the latency standard. It is possible that the use of undersea cable, depending upon the type and length of cable, could affect latency determinations for providers serving Alaska. Therefore, providers in noncontiguous areas of the United States should conduct their latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point in the continental United States. For example, speedtest.net has five servers located in Anchorage, Alaska, and one in Fairbanks, Alaska, that could be used for network testing. Although the Bureau allows providers in noncontiguous areas of the United States to conduct their latency network testing from the customer location to a point at which traffic is consolidated for undersea cable transport to an IXP in the continental United States, the Bureau may not extend this exception to other circumstances without additional evidence that such an exception is warranted. The Bureau notes that MBA

2013 data results show that the 25 Time Warner Cable-based customer locations in Hawaii were able to meet the 100 ms limit 95 percent or more of the time. Hawaii, at approximately 2,500 miles from the continental United States, is over double the undersea cable distance from a continental United States-based IXP as Anchorage, Alaska.

33. ACS notes that with peering points "over a thousand miles away in Oregon and Washington," its ability to conduct testing and improve results is limited. The Bureau's decision that testing for noncontiguous parts of the United States should be conducted between the customer location and the point at which traffic is aggregated for transport to the continental United States via undersea cable should resolve this issue. Moreover, for remote points within Alaska, MBA testing data shows that although there is a correlation between distance and latency, the 200 ms end-to-end standard (100 ms roundtrip limit 95 percent or more of the time for the carrier portion) is reasonable for distances of 700 or more miles, as data from Measuring Broadband America testing in Hawaii shows. The MBA February 2013 Report shows that the mean latency for measurements 700 miles from the test server was 44.7 ms roundtrip. Thus, even for customer locations in Alaska located a substantial distance from a point used for aggregating traffic for transport to the continental United States, an Alaska provider should be able to meet the 200 ms end-to-end standard (100 ms roundtrip limit for the carrier portion).

34. *Buildout Measurement.* In order to satisfy their state-level commitment, Phase II recipients must deploy voice and broadband-capable networks and offer services meeting the above performance metrics to a specified number of locations. The Bureau expects to release a Public Notice specifying the number of locations that recipients of model-based support will be required to serve, based on the Connect America Cost Model, state by state, so that carriers are aware at the time of acceptance the required number of locations. Three years after making a state-level commitment, a carrier must have deployed voice and broadband-capable networks to 85 percent of the specified number of locations in the given state. Five years after making a state-level commitment, a carrier must have deployed voice and broadband-capable networks to the total number of locations as specified by the Bureau.

35. Generally, all deployment must occur in census blocks funded under the Connect America Cost Model. However,

the *USF/ICC Transformation Order* states that "[i]n meeting its obligation to serve a particular number of locations in a state, an incumbent that has accepted the state-level commitment may choose to serve some census blocks with costs above the highest cost threshold instead of eligible census blocks (i.e., census blocks with lower costs), provided that it meets the public interest obligations in those census blocks, and provided that the total number of unserved locations and the total number of locations covered is greater than or equal to the number of locations in the eligible census blocks." Thus, a carrier could build to one of these higher-cost locations in lieu of building to a location in one of its eligible census blocks as originally planned.

#### B. Unsubsidized Competitors

36. In adopting the *USF/ICC Transformation Order*, the Commission directed that Phase II support should not go to any "areas where an unsubsidized competitor offers broadband service that meets the broadband performance requirements" of Phase II. An unsubsidized competitor is defined as a facilities-based provider of residential terrestrial fixed voice and broadband service that does not receive high-cost support. The Commission delegated to the Bureau the task of implementing the specific requirements of the unsubsidized competitor rule and determining what areas should be considered as served by an unsubsidized competitor. In the *Phase II Challenge Process Order*, 78 FR 32991, June 3, 2013, the Bureau determined that an area would be presumed as served by an unsubsidized competitor if the area was shown on the National Broadband Map as served by a provider with speeds of 3 Mbps/768 kbps, and that provider was shown on Form 477 data as providing voice service in that state. Thus, a potential unsubsidized provider need only make a showing regarding the metrics discussed in this Order in two circumstances: first, if it challenges an area initially designated as unserved, claiming that the area should instead be treated as served; or second, if it is responding to a challenger's claim that one of the census blocks shown as served by the provider is in fact unserved.

37. Consistent with the Commission's direction in the *USF/ICC Transformation Order*, the Bureau concludes that unsubsidized competitors should meet the same standards we require of Phase II price cap carrier recipients. To exclude an area from Phase II support, an unsubsidized competitor must be

offering broadband and voice service that would meet the Commission's requirements for price cap carriers receiving model-based support. However, certain adjustments are necessary, not only to make an administrable system for determining what areas should be excluded from support, but also to account for the diversity of circumstances that potential unsubsidized competitors face.

38. *Unsubsidized competitor.* The Commission directed the Bureau to exclude areas with unsubsidized competitors from Phase II funding. The codified rule states that an unsubsidized competitor is one that "does not receive high-cost support." The Commission's intent in adopting this rule was to preclude support to areas where voice and broadband is available without burdening the federal support mechanisms. The Bureau will presume that any recipient of high-cost support at the time the challenge process is conducted does not meet the literal terms of the definition, but will entertain challenges to that presumption from any competitive eligible telecommunications carrier that otherwise meets or exceeds the performance obligations established herein and whose high-cost support is scheduled to be eliminated during the five-year term of Phase II. This will provide an opportunity for the Commission to consider whether to waive application of the "unsubsidized" element of the unsubsidized competitor definition in situations that would result in Phase II support being used to overbuild an existing broadband-capable network.

39. *Speed.* In the *Phase II Service Obligations Public Notice*, the Bureau sought comment on what proxy we should use for the requirement that an unsubsidized competitor provides 4 Mbps/1 Mbps service. Providers meeting this proxy would be presumed to meet the speed requirement of an unsubsidized competitor. The Bureau concludes that the proxy for 4 Mbps/1 Mbps broadband should be set at 3 Mbps/768 kbps, as data on 3 Mbps/768 kbps deployment are available on the National Broadband Map. This is consistent with the precedent established by the Commission in the *USF/ICC Transformation Order*, as well as its conclusions in the *Phase I Order*, 78 FR 38227, June 26, 2013.

Commenters note that areas served by an unsubsidized competitor with speeds of 3 Mbps/768 kbps are often already served by speeds of 4 Mbps/1 Mbps. If the Bureau were to use a 6 Mbps/1.5 Mbps proxy, areas served by speeds of only 4 Mbps/1 Mbps would be

presumed unserved. This would have the effect of burdening potential unsubsidized competitors, many of which are small businesses, requiring them to come forward in the challenge process discussed in the *Phase II Challenge Process Order* and show that they are actually providing 4 Mbps/1 Mbps service.

40. *Pricing.* Under the presumptions the Bureau adopted in the *Phase II Challenge Process Order*, a provider would be initially presumed to meet the reasonably comparable pricing requirement, so long as it was shown on the National Broadband Map as offering 3 Mbps/768 kbps service and shown on Form 477 data as offering voice service in the relevant state. The Bureau now adopts a conclusive presumption that a potential unsubsidized competitor is offering reasonably comparable prices if it offers the same or lower rates in rural markets as it does for fixed wireline offerings meeting the requisite standards in urban markets. In such circumstances, the Commission's policy objective of ensuring consumers have access to reasonably comparable services at reasonably comparable rates should be achieved.

41. The Bureau also adopts a conclusive presumption that if a potential unsubsidized competitor is competing in a particular census block with the incumbent price cap carrier, and both are offering services that offer at least 4 Mbps downstream, and at least 1 Mbps upstream, and at least 100 GB of data, the pricing of the competitor will be deemed reasonable, and not subject to challenge. Given the finite \$1.8 billion budget for Phase II, the Bureau did not find it efficient to target funding to such areas that already have two providers offering service meeting the Phase II standards for price cap carriers, when there are likely to be other census blocks where the average cost exceeds the funding threshold that have no providers at all.

42. The Bureau now turns to situations where the potential competitor does not offer fixed wireline service in urban areas, or does not serve an area where the incumbent itself offers broadband. Once the Bureau adopts the urban rate benchmark, the pricing of such a potential competitor will not be subject to challenge if it at or below the urban rate benchmark. Stated differently, there will be a conclusive presumption that the pricing of any operator with non-promotional rates below the urban rate benchmark is reasonable. In the event the challenge process is underway prior to the publication of the urban rate benchmark resulting from the urban rate survey,

however, the Bureau will need a simple, administratively workable method of determining whether the price cap carrier has made a prima facie case regarding pricing that shifts the burden to the other provider to respond. In the *Phase II Service Obligations Public Notice*, the Bureau sought comment on whether to adopt on an interim basis reasonable comparability benchmarks of \$37 for voice service and \$60 for broadband service. The Bureau now adopts such an approach on an interim basis, which will enable the Bureau to quickly and efficiently adjudicate challenges to the extent that process occurs before the adoption of the urban rate benchmark.

43. In order to make a prima facie case to proceed with a challenge in situations where the conclusive presumptions discussed above do not apply, a price cap carrier seeking to overturn the classification of a particular block as served based on a lack of reasonably comparable pricing would need to demonstrate that the provider's advertised non-promotional price for the lowest cost broadband service offering is above \$60 and/or the provider's advertised non-promotional price for the lowest cost voice service offering is above \$37. If the price cap carrier successfully makes such a showing, the burden then would shift to the other provider to submit evidence that its rates are in fact reasonably comparable. The provider can defeat the challenge by demonstrating either that: (1) It does in fact offer a qualifying broadband offering at a price at or below \$60 and a voice offering at or below \$37; (2) its rates nonetheless should be deemed reasonably comparable because it offers a more robust broadband service than the minimum requirements established for price cap carriers accepting Phase II support; or (3) its rates are the same as those of other providers in nearby urban markets where there are two or more providers offering fixed services meeting the Commission's standards.

44. The Bureau now addresses what showing is necessary when a provider is challenging the initial designation of a census block as unserved, arguing that instead the block should be treated as served by the provider. Prior to adoption of the urban rate benchmark, the provider may demonstrate that (1) it offers a qualifying broadband offering at a price at or below \$60 and a voice offering at or below \$37; (2) its rates nonetheless should be deemed reasonably comparable because it offers a more robust broadband service than the minimum requirements established for price cap carriers accepting Phase II

support; (3) it offers service meeting or exceeding the specified performance requirements for the same or lower rates in rural areas as it does for fixed wireline offerings in urban areas; or (4) both it and the price cap carrier are serving that census block and therefore its rates should be presumed reasonably comparable. After the adoption of the urban rate benchmark, the provider may present evidence that its rates are lower than the benchmark. If it successfully makes any of these showings, and the price cap carrier fails to offer sufficient contrary evidence, the provider will be deemed to be offering reasonably comparable rates. In responding to an unserved-to-served challenge, price cap carriers may contest the factual assertions made by the provider.

### III. Procedural Matters

#### A. Paperwork Reduction Act

45. This document contains new 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 are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Bureau notes that pursuant to the Small Business Paperwork Relief Act of 2002, they previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

46. In this present document, the Bureau has assessed the effects of requiring price cap carriers to report certain information related to their Phase II service obligations. As all price cap carriers employ more than 25 employees, these changes will have no impact on businesses with fewer than 25 employees. Some changes adopted in this Order affect how unsubsidized competitors report information related to the challenge process. Unsubsidized competitors may be businesses with fewer than 25 employees. However, the changes adopted herein fall under previous OMB approval for the Phase II challenge process.

#### B. Final Regulatory Flexibility Certification

47. The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that “the rule

will not have a significant economic impact on a substantial number of small entities.” The RFA generally defines “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 Small Business Administration (SBA).

48. The metrics and standards for determining compliance with the Commission’s service requirements contained in the “Price Cap Carrier Obligations” section of this Order do not have a significant economic impact on a substantial number of small entities. The requirements in that section only directly affect price cap carriers that ultimately elect to accept Phase II support through the state-level commitment. The vast majority of these affected carriers are not small businesses. As separate and independent grounds, we also conclude that articulating objective quantitative metrics for demonstrating compliance with the standards adopted by the Commission creates only a de minimis economic impact. The metrics and standards adopted in the “Unsubsidized Competitors” section of this Order could affect a substantial number of small entities, depending on how many such entities participate in the challenge process. However, in setting the proxy by which we will determine whether an unsubsidized competitor offers 4 Mbps/1 Mbps service and stating a how an unsubsidized competitor can make a showing that its rates are reasonably comparable, we create only a de minimis economic impact. Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the order including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. See 5 U.S.C. 605(b).

#### C. Congressional Review Act

49. The Commission will send a copy of this order to Congress and the

Government Accountability Office pursuant to the Congressional Review Act.

### IV. Ordering Clauses

50. Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 5(c), 201(b), 214, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 154(i), 155(c), 201(b), 214, 254, 1302, sections 0.91 and 0.291 of the Commission’s rules, 47 CFR 0.91, 0.291, and the delegations of authority in paragraphs 112, 170, and 171 of the *USF/ICC Transformation Order*, FCC 11–161, this Report and Order *is adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for the provisions subject to the PRA, which will become effective upon announcement in the **Federal Register** of OMB approval of the subject information collection requirements.

Federal Communications Commission.

**Kimberly A. Scardino,**

*Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 236

[Docket No. FRA–2001–10160, Notice No. 5]

#### Need for Agency Approval of a Railroad’s Use of Certain Technology That Has Been Previously Approved for Use by a Different Railroad

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Interim statement of agency interpretation, with request for public comment.

**SUMMARY:** FRA is providing interim guidance on a railroad’s use of processor-based signal or train control technology subject to the requirements of 49 CFR part 236, subpart H, in the situation where the railroad has not previously obtained FRA’s approval to use the technology, but a different railroad has already received FRA’s approval to do so. Under these regulations, any railroad seeking to use signal or train control technology subject to the regulations must first adopt both a Railroad Safety Program