

the language, “(g)(7)(iii) of this section.” is corrected to read “(g)(7)(iii) of this section;”.

Martin V. Franks,

*Chief, Publications and Regulations Branch,
Legal Processing Division, Associate Chief
Counsel (Procedure and Administration) .*

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 19-126, 10-90; FCC 19-77]

Rural Digital Opportunity Fund, Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to establish the Rural Digital Opportunity Fund and seeks comment on its overall approach in doing so.

DATES: Comments are due on or before September 20, 2019 and reply comments are due on or before October 21, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed in the following as soon as possible.

ADDRESSES: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, 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 the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy 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. All filings must be addressed to the

Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes 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 9050 Junction Drive, Annapolis Junction, MD 20701.

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

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. The Commission also strongly encourages parties to track the organization set forth in the Notice of Proposed Rulemaking in order to facilitate its internal review process.

People With Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418-7400 or TTY: (202) 418-0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket Nos. 19-126, 10-90; FCC 19-77, adopted on August 1, 2019 and released on August 2, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: <https://www.fcc.gov/document/fcc-proposes->

204-billion-rural-digital-opportunity-fund-0.

I. Introduction

1. Broadband access is critical to economic opportunity, job creation, education and civic engagement. That is why closing the digital divide is the Commission's top priority. For communities throughout our nation to thrive and prosper, their residents must have the option to obtain high-speed internet access.

2. Last year, the Commission took a major step forward in expanding broadband access to many parts of rural America. As a result of the Commission's successful Connect America Fund (CAF) Phase II auction, the Commission has begun providing \$1.488 billion in universal service support over ten years to build high-speed broadband service to over 700,000 households and small businesses in 45 states, with 99.75% of locations receiving at least 25/3 Mbps service and more than half receiving at least 100/20 Mbps service.

3. But more work remains to be done. For example, more than 10 million households and small businesses in price cap areas still lack access to critical broadband services that offer speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream in unserved census blocks, including more than 7 million in rural areas. In this document, the Commission proposes to build on the success of the CAF Phase II auction by establishing the Rural Digital Opportunity Fund, which will commit at least \$20.4 billion over the next decade to support high-speed broadband networks in rural America. Because the CAF Phase II auction secured higher quality services for consumers at a lower cost to the Universal Service Fund (Fund), the Commission proposes to conduct a multi-round, reverse, descending clock auction that favors faster services with lower latency and encourages intermodal competition. And in light of the need to bring service both to consumers in wholly unserved areas as well as those living in partially served areas, the Commission proposes to assign funding in two phases: Phase I will target those areas that current data confirm are wholly unserved, and Phase II will target those areas that are partially served as well as any areas not won in the first phase. By relying on a two-phase process, as the Commission did with the Connect America Fund, the Commission can move expeditiously to commence an auction in 2020 while

also ensuring that other areas are not left behind by holding a second auction.

4. The framework the Commission proposes in this document represents its single biggest step yet to close the rural digital divide and will connect millions more rural homes and small businesses to high-speed broadband networks.

II. Discussion

5. Closing the digital divide and bringing robust, affordable high-speed broadband to all Americans is the Commission's top priority. By improving access to modern communications services, the Commission can help provide individuals living in rural America with the same opportunities as their urban counterparts. The Rural Digital Opportunity Fund the Commission proposes is a critical next step in its high-cost program and ongoing effort to close the digital divide. By committing at least \$20.4 billion over the next ten years, the Commission will bring broadband service at minimum speeds of 25/3 Mbps to millions of Americans living in the areas that need it most—including those living on Tribal lands. And the Commission's two-phase approach will ensure that completely unserved areas are prioritized, so that support can begin to flow quickly while it works to improve the data needed to most efficiently target support over the longer term. At the same time, by awarding support through a competitive bidding mechanism and targeting investment to areas where there is currently no private sector business case to deploy broadband without assistance, the Commission will ensure that its limited universal service support is awarded in an efficient and cost-effective manner, without overbuilding to areas that already have service. Finally, the proposals the Commission adopts in this document includes measures to require accountability, so the Commission can ensure that its public investments are used wisely to deliver intended results.

6. The Commission seeks comment on its overall approach in establishing a Rural Digital Opportunity Fund. The Commission proposes that its adoption of a Rural Digital Opportunity Fund framework will be guided by the following goals: (1) Ensuring that high-speed broadband is made available to all Americans quickly, and at an affordable price; (2) reducing waste and inefficiency in the high-cost program and promoting the use of incentive-based mechanisms to award support; (3) requiring accountability to ensure that public investments are used wisely to deliver intended results; and (4)

minimizing the contribution burden. Does the framework the Commission proposes strike the right balance in helping to achieve those proposed objectives? Are there any other goals that should guide this process? How can the Commission measure progress against these proposed goals? In commenting on the detailed proposals that are in this document, parties are invited to discuss how the proposals (or any alternatives) can best be focused to achieve the Commission's proposed goals. Moreover, the Fund is a federal-state partnership. Are there ways the Rural Digital Opportunity Fund can facilitate that partnership?

7. The approach the Commission takes in this document leverage its experience with the CAF program, and the CAF Phase II auction in particular. But it also acknowledges that market realities have changed since the CAF framework was first established in 2011. Consumers' demand for faster speeds has grown dramatically—and the market has largely been able to deliver. Speeds of 25/3 Mbps are widely available, and 25/3 Mbps is the Commission's current benchmark for evaluating whether a fixed service is advanced-telecommunications capable. Thus, the item proposes a 25/3 Mbps service availability threshold as the basis for establishing eligible areas. Demand for greater speeds will continue to rise. The framework the Commission proposes in this document therefore takes a flexible approach that prioritizes faster, gigabit speeds. The Commission's proposals also acknowledge that, despite its expectation that broadband would be deployed to many areas without high-cost support, some of these areas remain unserved. The NPRM proposes including these areas in the Rural Digital Opportunity Fund auction. In light of these dynamic marketplace changes, the Commission believes that a new support mechanism is better able to meet its objectives than continuing with the existing CAF framework. The Commission seeks comment on this conclusion.

8. The Commission proposes adopting a term of support of 10 years for the Rural Digital Opportunity Fund. For the CAF Phase II auction, the Commission acknowledged that "some entities may be unwilling to make necessary long-term investments to build robust future-proof networks in areas that are uneconomic to serve absent continued support beyond a five-year term" and that "providing support for a period of ten years may stimulate greater interest" in the auction. The Commission believes that the 10-year term of support was partially responsible for the robust

participation that occurred in the CAF Phase II auction and expect that the same principles regarding encouraging long-term investments and auction participation will also apply to the Rural Digital Opportunity Fund. Thus, the Commission proposes to adopt the same support term here. The Commission seeks comment on this proposal.

9. The Commission proposes a budget of at least \$20.4 billion for the Rural Digital Opportunity Fund. The budget is premised on the CAM estimated cost of deploying a high-speed broadband network to all locations in wholly unserved price cap census blocks that exceed the existing high-cost threshold of \$52.50 per-location per-month, and with that cost capped at \$198.60. These census blocks are considered wholly unserved because no provider is offering both voice service as well as 25/3 Mbps terrestrial fixed broadband service. The Wireline Competition Bureau (Bureau) staff estimate that there are 3.9 million locations in these census blocks. The Commission seeks comment on this budget and this analysis.

10. Of this budget, the Commission proposes to make available at least \$16 billion for Phase I of the Rural Digital Opportunity Fund, and to make the remaining \$4.4 billion from the total budget, as well as any unawarded funds from Phase I, available for Phase II. Three considerations guide the Commission. First, \$16 billion reflects the sum of the total amount of CAF Phase II model-based support currently received by price cap carriers (\$1.5 billion per year) and the support amount the Commission once envisioned for the Remote Areas Fund (at least \$100 million per year). Second, the budget balances the Commission's goals of ensuring greater broadband deployment in rural America and efficient use of the Fund. The Commission proposes a budget that will lead to more robust inter-area competition in the auction, which will lead to service being provided at a lower cost in the areas awarded support. In the CAF Phase II auction, much of the bidding was driven by the fact that the total budget (\$2 billion) was significantly less than the aggregate reserve prices of all areas in the auction (\$6 billion). The inter-area competition, as well as the intra-area competition, ultimately drove down the support required to provide service from a model-estimated \$5 billion to only \$1.488 billion. The Commission seeks to have a similarly efficient outcome for Phase I of the Rural Digital Opportunity Fund and hence proposes to have an aggregate reserve price that well exceeds

the auction budget by expanding the eligible census blocks beyond those used in calculation of the budget, modifying the reserve prices from those used in the budget calculation, and adjusting the budget from \$20.4 billion to \$16 billion. Third, the fact that any areas unawarded in the Phase I auction will roll over into the Phase II auction militates in favor of ensuring there is adequate inter-area competition in Phase I—the Commission’s two-phase plan for the Rural Digital Opportunity Fund means it can ensure an efficient auction while furthering its commitment to universal service. The Commission seeks comment on this proposal, and on alternatives for how to appropriately size the Phase I budget.

11. Finally, the Commission recognizes that achieving its universal service objectives is an ongoing process. As technologies and service levels evolve, fulfilling the Commission’s objective of providing access in high-cost areas to services that are reasonably comparable to those available in urban areas means continually assessing the need to support services that compare to the ever-improving standard of advanced services in urban areas. Will the methodology the Commission proposes for the Rural Digital Opportunity Fund Phase I budget result in a budget that will cost-effectively achieve coverage to additional locations consistent with the public service obligations the Commission proposes for the Rural Digital Opportunity Fund? Should the Commission reassess the adequacy of the total budget after the Phase I auction?

12. Given the success of the CAF Phase II auction, the Commission proposes to use a substantially similar reverse auction mechanism to distribute support to providers that commit to offer voice and broadband services to fixed locations. Specifically, the Commission proposes to use a multi-round, descending clock auction to identify the providers that will be eligible to receive support and to establish the amount of support that each bidder will be eligible to receive using procedures substantially similar to those used in the CAF Phase II auction. The Commission reiterates its preference for a multi-round auction because multiple rounds enable bidders “to make adjustments in their bidding strategies to facilitate a viable aggregation of geographic areas in which to construct networks and enable competition to drive down support amounts.” The Commission proposes that the Rural Digital Opportunity Fund descending clock auction will consist of sequential bidding rounds according to

an announced schedule providing the start time and closing time of each bidding round. And the Commission proposes to rely on its existing general rules regarding competitive bidding for universal service support, with specific procedures to be developed through its standard Public Notice process.

13. The Commission proposes that bids for different areas at specified performance tier and latency levels will be compared to each other based on area reserve prices, and performance tier and latency weights. Likewise, the Commission proposes to use weights to account for the different characteristics of service offerings that bidders propose to offer when ranking bids. The Commission proposes that bids for different service tiers will be considered simultaneously, so bidders that propose to meet one set of performance standards will be directly competing against bidders that propose to meet other performance standards. As the Commission did in the CAF Phase II auction, it proposes calculating the implied annual support amount at a bid percentage by adjusting an area-specific reserve price for the bid percentage and the weights for the performance tier and latency combination of the bid, with implied support not exceeding the reserve price.

14. The Commission proposes to include all Phase I eligible areas nationwide in one auction, so that bidders compete for support across all areas at the same time. And the Commission seeks comment on whether census block groups containing one or more eligible census blocks is an appropriate minimum geographic unit for bidding for the Rural Digital Opportunity Fund. Given that the Rural Digital Opportunity Fund auctions will be much larger than the CAF Phase II auction, would a larger minimum geographic unit, like census tracts or counties, be more manageable? Are there other or more efficient ways to group census blocks for purposes of the auction?

15. The Commission seeks comment on all these proposals. The Commission also seeks comment on whether there are any rule changes that it should consider for the Rural Digital Opportunity Fund auction that would lead to greater efficiency or better outcomes for the Fund and rural consumers.

16. *Public Interest Obligations.* Given the success of the CAF Phase II auction in obtaining commitments from winning bidders for the deployment of robust service from a variety of service providers, the Commission proposes to adopt similar technology-neutral

standards for services supported by the Rural Digital Opportunity Fund. Specifically, the Commission proposes to permit bids in the Baseline, Above-Baseline, and Gigabit performance tiers with the same speed and usage allowance requirements as the CAF Phase II auction and to place low latency or high latency bids meeting the same latency requirements as the CAF Phase II auction high and low latency bidders. Specifically, Baseline performance means 25/3 Mbps speeds with a 150 gigabytes (GB) monthly usage allowance or a monthly usage allowance that reflects the average usage of a majority of fixed broadband customers, whichever is higher, Above-Baseline performance means 100/20 Mbps speeds with 2 terabytes (TB) of monthly usage, and Gigabit performance means 1 Gbps/500 Mbps speeds with a 2 TB monthly usage allowance. In turn, low latency means 95% or more of all peak period measurements of network round trip latency are at or below 100 milliseconds, and high-latency means 95% or more of all peak period measurements of network round trip latency are at or below 750 milliseconds and a demonstration of a score of four or higher using the Mean Opinion Score with respect to voice performance. Authorized support recipients would have the flexibility to use any fixed broadband technology to meet the required performance obligations and service milestones associated with their winning bids. Like all high-cost eligible telecommunications carriers (ETC), Rural Digital Opportunity Fund support recipients would be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas. The Commission seeks comment on these proposals. The Commission also seeks comment on whether it should tie the capacity requirements of all tiers to the average usage of a majority of fixed broadband customers, should it increase above the minimums the Commission establishes here.

17. The Commission proposes not to include a Minimum performance tier, which required 10/1 Mbps broadband in the CAF Phase II auction. The Commission has since recognized that “access to 25/3 Mbps broadband service is not a luxury for urban areas, but important to [all] Americans where they live.” The Commission seeks comment on this proposal.

18. As in the CAF Phase II auction, the Commission proposes using weights to reflect its preference for higher speeds, higher usage allowances, and low latency. There the Commission

adopted weights of 65 for the Minimum performance tier, 45 for the Baseline performance tier, 15 for the Above Baseline performance tier, and 0 for the Gigabit performance tier, as well as a weight of 25 for high latency bids and 0 for low latency bids. Accordingly, the spread between the best and least performing tiers was 90 points. With the Commission’s proposed elimination of

the Minimum performance tier, it can maintain that same 90-point spread between the best and least performing tiers in the Rural Digital Opportunity Fund auction by adjusting the weights for each tier as proposed in the following. To encourage the deployment of higher speed services, and in recognition that terrestrial fixed networks may serve as a backbone for

5G deployments, these proposed weights favor higher-than Baseline speeds and low-latency services. The Commission seeks comment on this proposal. Alternatively, should the Commission increase the 90-point spread between the best and least performing tiers to something higher—*e.g.*, 95% or more?
01-P

Proposed Performance Tiers, Latency, and Weights

Performance Tier	Speed	Monthly Usage Allowance	Weight
Baseline	≥ 25/3 Mbps	≥ 150 GB or U.S. median, whichever is higher	50
Above Baseline	≥ 100/20 Mbps	≥ 2 TB or U.S. median, whichever is higher	25
Gigabit	≥ 1 Gbps/500 Mbps	≥ 2 TB or U.S. median, whichever is higher	0

Latency	Requirement	Weight
Low Latency	≤ 100 ms	0
High Latency	≤ 750 ms & MOS ≥ 4	40

19. To ensure that Rural Digital Opportunity Fund support recipients meet the relevant speed, usage allowance, and latency requirements, the Commission proposes subjecting them to the same framework for measuring speed and latency performance and the accompanying compliance framework as are applicable to all other recipients of high-cost support required to serve fixed locations. The adopted framework generally provides high-cost support

recipients flexibility in choosing solutions to conduct the required testing.
20. The Commission seeks comment on these proposals and on whether any alternative deployment obligations, performance requirements, weights, or testing methodologies should be adopted for recipients of Rural Digital Opportunity Fund support. Commenters proposing alternatives should explain how their proposal will balance the objectives of maximizing the

Commission’s limited budget and guarding against widening the digital divide by ensuring that rural Americans do not fall further behind those living in urban areas.
21. *Service Milestones.* The Commission also proposes to adopt the same service milestones for the Rural Digital Opportunity Fund that it adopted for the CAF Phase II auction. Specifically, the Commission proposes that support recipients complete construction and commercially offer

voice and broadband service to 40% of the requisite number of locations in a state by the end of the third year of funding authorization, and an additional 20% in subsequent years, with 100% by the sixth year. As an alternative, should the Commission require support recipients to build out more quickly earlier in their support terms by offering voice and broadband to 50% of the requisite number of locations in a state by the end of the third year of funding authorization? A support recipient would be deemed to be commercially offering voice and/or broadband service to a location if it provides service to the location or could provide it within 10 business days upon request. All support recipients would also have to advertise the availability of their services through their service areas. Compliance would be determined on a state-level basis so that a support recipient would be in compliance with a service milestone if it offers service meeting the relevant performance requirements to the required number of locations across all of the awarded areas included in its winning bids in a state.

22. The Commission also gave CAF Phase II auction support recipients some flexibility in their service obligations to address unforeseeable challenges to meeting those obligations. The Commission proposes to adopt the same flexibility with an accompanying reduction in support that it adopted for the CAF Phase II auction in recognition that facts on the ground may necessitate some flexibility regarding the final service milestone. Specifically, support recipients that have offered service to at least 95%, but less than 100%, of the number of funded locations at the end of the support term will be required to refund support based on the number of funded locations left unserved in that state. The Commission seeks comment on these proposals.

23. The Commission recognizes that there may be some disparity between the number of locations specified by the Connect America Cost Model (CAM) and the "facts on the ground." For the offer of model-based support, the Commission directed the Bureau to address situations where a price cap carrier brings to the Bureau's attention any known disparity. The Commission notes that no price cap carrier receiving CAF Phase II model-based support has asked the Bureau to modify its number of required locations in a state. For the CAF Phase II auction, the Commission will permit support recipients to bring to its attention disparities between the number of locations estimated by the CAM and the number of locations actually on the ground in the eligible

census blocks within their winning bid areas in a state. If a support recipient could sufficiently demonstrate that it is unable to identify enough actual locations on the ground across all of the census blocks for which it won support in a state, its deployment obligation and support will be reduced on a pro rata basis. The Commission proposes to follow this same course here and directs the Bureau to establish a process for such adjustments. As an alternative, should the Commission use a different source to address location disparities? Likewise, if the Digital Opportunity Data Collection is adopted, should different rules apply for Phase I and Phase II of the proposed auction?

24. The Commission also seeks comment on whether there are additional measures it could adopt that would help ensure that Rural Digital Opportunity Fund support recipients will meet their third-year service milestones, and further seeks comment on what steps the Commission should take if it appears support recipients will not be able to meet their service milestones.

25. *Reporting Requirements.* To ensure that support recipients are meeting their deployment obligations, the Commission proposes to adopt the same reporting requirements for the Rural Opportunity Digital Fund that the Commission adopted for the CAF Phase II auction. Specifically, the Commission proposes requiring Rural Digital Opportunity Fund support recipients to annually file the same location and technology data in the High Cost Universal Broadband (HUBB) portal and to make the same certifications when they have met their service milestones, and the Commission would encourage them to file such data on a rolling basis. The Commission also proposes requiring Rural Digital Opportunity Fund support recipients to file the same information in their annual FCC Form 481s that it requires of the CAF Phase II auction support recipients. Specifically, in addition to the certifications and information required of all high-cost ETCs in the FCC Form 481, Rural Digital Opportunity Fund support recipients would be required to certify each year after they have met their final service milestone that the network they operated in the prior year meets the Commission's performance requirements, and support recipients would be required to identify the number, names, and addresses of community anchor institutions to which they newly began providing access to broadband service in the preceding calendar year as well as identify the total amount of support that they used

for capital expenditures in the previous calendar year. Moreover, support recipients would need to certify that they have available funds for all project costs that will exceed the amount of support they will receive in the next calendar year.

26. Additionally, Rural Digital Opportunity Fund support recipients would be subject to the annual section 54.314 certifications, the same record retention and audit requirements, and the same support reductions for untimely filings as all other high-cost ETCs. In addition, support recipients that are designated by the Commission would need to self-certify.

27. The Commission seeks comment on these proposals and whether it needs to make any adjustments to this reporting framework for Rural Digital Opportunity Fund support recipients. To the extent commenters propose that the Commission adopts different public interest obligations or service milestones or make other changes to relevant proposals, they should also address whether the Commission needs to make any adjustments to its reporting framework to account for the proposed changes.

28. To minimize the administrative burden on the Commission, the Universal Service Administrative Company (USAC), and Rural Digital Opportunity Fund support recipients, the Commission also seeks comment on how it can align service milestones, service milestone certifications, and location reporting deadlines for all Rural Digital Opportunity Fund support recipients, even though the long-form applicants may be authorized to receive support on different dates. For example, to minimize administrative burdens on the Commission and USAC and to simplify reporting for support recipients, should the Commission align the service milestones and reporting deadlines for the Rural Digital Opportunity Fund with those for other high-cost programs? Specifically, regardless of when a Rural Digital Opportunity Fund recipient is authorized to receive support, should each service milestone occur on a date certain, such as June 30 or December 31? Should support recipients be required to certify that they have met the applicable service milestone and to submit a list of locations where they offer service within two months of such a deadline? Are there any adjustments the Commission should make to better align the support reductions applicable to late filers with the filing deadlines?

29. *Non-Compliance Measures.* The Commission also proposes to apply the same non-compliance measures that are

applicable to all high-cost ETCs, the framework for support reductions that is applicable to high-cost ETCs that are required to meet defined service

milestones, and the process the Commission adopted for drawing on letters of credit for the CAF Phase II auction. Specifically, the Commission

proposes to rely on the following non-compliance tiers:

NON-COMPLIANCE FRAMEWORK

Compliance gap	Non-compliance measure
Tier 1: 5% to less than 15% required number of locations.	Quarterly reporting.
Tier 2: 15% to less than 25% required number of locations.	Quarterly reporting + withhold 15% of monthly support.
Tier 3: 25% to less than 50% required number of locations.	Quarterly reporting + withhold 25% of monthly support.
Tier 4: 50% or more required number of locations.	Quarterly reporting + withhold 50% of monthly support for six months; after six months withhold 100% of monthly support and recover percentage of support equal to compliance gap plus 10% of support disbursed to date.

30. A support recipient would have the opportunity to move tiers as it comes into compliance and will receive any support that has been withheld if it moves from one of the higher tiers to Tier 1 status during the build-out period. If a support recipient misses the final service milestone, it would have 12 months from the date of the final service milestone deadline to come into full compliance. If it does not report that it has come into full compliance, USAC would recover an amount of support that is equal to 1.89 times the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations, plus 10% of the support recipient's total relevant high-cost support over the support term for that state. The same support reduction would apply if USAC later determines in the course of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it is offering service to all of the locations required by the final milestone.

31. As in the CAF Phase II auction, USAC would be authorized to draw on the letter of credit to recover all of the support that has been disbursed in the event that a support recipient does not meet the relevant service milestones, does not come into compliance during the cure period, and does not repay the Commission the support associated with the non-compliance gap within a certain amount of time. If a support recipient is in Tier 4 status during the build-out period or has missed the final service milestone, and USAC has initiated support recovery as described in this document, the support recipient would have six months to pay back the support that USAC seeks to recover. If the support recipient does not repay USAC by the deadline, the Bureau would issue a letter to that effect and USAC would

draw on the letter of credit to recover all of the support that has been disbursed. If a support recipient has closed its letter of credit and it is later determined that the a support recipient does not have sufficient evidence to demonstrate that it is offering service to the total number of required locations, that support recipient would be subject to additional non-compliance measures if it does not repay the Commission after six months. And like other high-cost ETCs, support recipients would be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment.

32. The Commission seeks comment on these proposals. To the extent that commenters recommend any changes to the proposed service milestones or other rules, they should also comment on whether their proposals would require any changes to these non-compliance measures. Commenters should also explain how their proposals encourage support recipients to comply with the Commission's rules and accomplish the Commission's oversight responsibilities, including protecting the integrity of the Fund.

33. *Additional Performance Targets.* The Commission also seeks comment on whether it should adopt additional performance targets to provide better incentives for Rural Digital Opportunity Fund support recipients to sign up customers in the eligible areas. Specifically, the Commission seeks comment on how to ensure that support recipients have sufficient incentives for support recipients to pursue customers in the eligible areas. For example, spectrum-based bidders may have

capacity constraints on their systems deterring them from continuing to pursue new subscribers should an increase in capacity (but not coverage, which is already mandated by the deployment milestones) require additional capital expenditures. Since Rural Digital Opportunity Fund support may require certain providers to offer much higher data caps than they do to non-Rural Digital Opportunity Fund subscribers and price the services similarly, such providers may have an incentive to limit Rural Digital Opportunity Fund subscribers to sell their capacity to more profitable non-Rural Digital Opportunity Fund subscribers. Spectrum-based providers that do not have a network sufficient to serve most locations in a geographic area would also have an incentive to limit subscription if expanding capacity would be less profitable than limiting subscription and collecting Rural Digital Opportunity Fund subsidies based purely on deployment. Even wireline bidders may lack the proper incentives to serve additional customers in some areas, given that it may not be profitable without a per-subscriber payment to run wires from the street to the customer location and install customer premises equipment. The Commission seeks comment on whether these theoretical concerns are likely to bear out in reality and what to do to address them.

34. The Commission seeks comment on a proposal to also adopt subscribership milestones for Rural Digital Opportunity Fund support recipients. For example, such a proposal could set milestones at 70% (the subscribership level assumed by the CAM) of the yearly deployment benchmarks. Hence the first subscribership benchmark could be 28% in year three, and increase 14% each year through year six, where it could remain at 70% through the end of

the term of support. Would a subscribership rate that is lower than 70% be more appropriate to account for the unique challenges of serving rural areas? If so, what subscribership rate would better reflect such challenges? Rural Digital Opportunity Fund support recipients would have the flexibility to offer a variety of broadband service offerings as long as they offer at least one standalone voice plan and one service plan that provides broadband at the relevant performance tier and latency requirements at rates that are reasonably comparable to rates offered in urban areas. Would it be appropriate to credit subscribers to any of the broadband services that are eligible for Rural Digital Opportunity Fund support in calculating adoption rates? To account for subscriber churn that may occur during the support term, should the adoption rate be represented as a percentage of the total potential subscriber months of the locations deployed? How should the Commission and USAC account for the fact that some support recipients may meet their service milestones more quickly than the six-year build-out schedule, and the fact that some support recipients may take advantage of the flexibility to serve only 95% of the required number of locations? The Commission seeks comment on addressing this by using the minimum required deployed locations rather than actual locations deployed in the calculation of adoption rates.

35. Under this proposal, the Commission would condition a portion of the recipient's support on meeting the subscribership milestones. Specifically, the Commission would withhold an amount of support equal to however many percentage points the recipient missed its subscribership milestone by. For example, if a recipient only had 27% subscribership in year three, only 1% (28%–27%) of support would be withheld. In contrast, if a recipient only had 17% subscribership in year six, then 53% (70%–27%) would be withheld. Notably, a recipient would receive its full annual support amount in monthly payments for the first two years of initial buildout. Such an approach could be structured by providing a monthly minimum guaranteed level of funding and an additional quarterly per-subscriber payment. The Commission seeks comment on this proposal.

36. Commenters proposing that the Commission adopt such performance targets or similar measures should describe specifically how their proposals could be implemented within the Rural Digital Opportunity Fund

framework to minimize the potential administrative burdens on the Commission, USAC, and service providers. For example, what type of reporting obligations should the Commission impose and what types of information should it collect to verify that a consumer is subscribing to a service as claimed? How could the Commission minimize the amount of personally identifiable information that is collected by support recipients to demonstrate that a consumer is subscribing to a service? Moreover, what measures could the Commission and USAC take to verify quickly but sufficiently a recipient's claimed subscribership rate so as not to delay the disbursement of the support that is dependent on subscription rates? When should the support that is dependent on a subscription target be disbursed during the ten-year support term if an applicant's subscribership rate and its build-out compliance will not be reported and verified until after the relevant support year has ended? What non-compliance measures should be taken if it is determined that an applicant has overreported its subscribership rate? How should the requirement for a letter of credit be structured to provide adequate protection for the support that is guaranteed to be disbursed and the support that is dependent on meeting the subscribership rate? What other safeguards should the Commission put in place?

37. Alternatively, do other aspects of the Rural Digital Opportunity Fund framework that the Commission has proposed address these concerns? For example, would the requirement that a recipient be prepared to provide service meeting the relevant public interest obligations within 10 business days of request in order to count a location as served, as well as the requirement that an ETC advertise the availability of its services throughout its service area provide adequate incentives for Rural Digital Opportunity Fund support recipients to pursue customers? Would additional performance targets deter service provider participation in the auction? Would bidders that participate in the auction increase their bids to compensate for such uncertainty? Would the further complexity added to the auction by such an approach make it difficult for bidders, particularly small bidders with limited resources, to determine how much support to bid for? Are there particular challenges associated with marketing and encouraging broadband adoption in rural areas that the Commission should

consider in evaluating a subscribership benchmark? The Commission seeks comment on these issues and any other issues related to adopting additional performance targets or similar measures for Rural Digital Opportunity Fund support recipients and providing incentives for support recipients to meet their obligations and sign-up customers.

38. The Commission proposes to target Rural Digital Opportunity Fund support to areas that lack access to both fixed voice and 25/3 Mbps broadband services in two stages. For Phase I, the Commission proposes to target census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps. For Phase II, the Commission proposes to target census blocks that it later determines are only partially served through the Digital Opportunity Data Collection, as well as census blocks unawarded in the Phase I auction. Because the Commission will have an additional opportunity to seek comment on how best to target Phase II support as it gathers more granular data on where broadband has been actually deployed, the Commission focuses here on the areas eligible for Phase I of the auction. The Commission seeks comment on this proposal.

39. The Commission proposes to make several areas initially eligible for Phase I of the Rural Digital Opportunity Fund auction. *First*, the Commission proposes to include the census blocks for which price cap carriers currently receive CAF Phase II model-based support. *Second*, the Commission proposes to include any census blocks that were eligible for, but did not receive, winning bids in the CAF Phase II auction. *Third*, the Commission proposes to include any census blocks where a CAF Phase II auction winning bidder has defaulted. *Fourth*, the Commission proposes to include the census blocks excluded from the offers of model-based support and the CAF Phase II auction because they were served with voice and broadband of at least 10/1 Mbps. *Fifth*, the Commission proposes to include census blocks served by both price cap carriers and rate-of-return carriers to the extent that census block is in the price cap carrier's territory. The Commission proposes to use the most recent study area boundary data filed by the rate-of-return carriers to identify their service areas and determine the portion of each census block that is outside this service area. *Sixth*, the Commission proposes to include any census blocks that are currently unserved outside of price cap carriers where there is no certified high-cost ETC providing service, such as the Hawaiian Homelands, and any other

populated areas unserved by either a rate-of-return or price cap carrier. *Seventh*, the Commission proposes to include any census blocks identified by rate-of-return carriers as ones where they do not expect to extend broadband (as the Commission did with the CAF Phase II auction). The Commission seeks comment on these proposals.

40. Are there any other areas that the Commission should include in the initial list of eligible areas? For example, the Commission decided to assign support by auction to areas in legacy rate-of-return areas that are almost entirely overlapped by an unsubsidized competitor in the *December 2018 Rate-of-Return Reform Order*, 84 FR 4711, February 19, 2019. The Commission seeks comment on whether it should include these areas in the Rural Digital Opportunity Fund Phase I auction.

41. For all census blocks on the initial list of eligible areas, the Commission proposes to exclude those census blocks where a terrestrial provider offers voice and 25/3 Mbps broadband service. The Commission proposes to use the most recent publicly available FCC Form 477 data to identify these areas. The Commission also proposes to exclude census blocks where a winning bidder in the CAF Phase II auction is obligated to deploy broadband service. The Commission proposes to conduct a challenge process for the Rural Digital Opportunity Fund Phase I auction consistent with the process Commission conducted for the CAF Phase II auction, in which the Bureau released a preliminary list and map of initially eligible census blocks based on the most recent publicly available FCC Form 477 data. Because there is an inevitable lag between the reported deployment as of a certain date and when the data are publicly released, parties would be given an opportunity to identify areas that have subsequently become served. For example, the most recent publicly available FCC Form 477 was released on June 2, 2019, and reports deployment as of December 31, 2017. Similar to the CAF Phase II auction, it is likely that more recent FCC Form 477 data will be available prior to the Rural Digital Opportunity Fund auction. The final list of eligible areas would be based on the most recent publicly available FCC Form 477 data, but this would give the Bureau an opportunity to compare the preliminary list of eligible areas with the final list to identify any obvious reporting errors. The Commission seeks comment on this proposal.

42. The Commission notes one caveat in its approach: The Commission proposes to treat price cap carriers differently from other providers in the

areas where they have received model-based support because it already has more granular service availability data available from such carriers. Specifically, such carriers are required to report geocoded served locations to USAC through the HUBB portal. Although price cap carriers receiving model-based support were only required to offer broadband of at least 10/1 Mbps, some may have deployed higher speeds in their supported areas. The Commission proposes to include in the Rural Digital Opportunity Fund Phase I auction census blocks in which the price cap carrier receiving model-based support is the only terrestrial provider reporting the deployment of 25/3 Mbps broadband service in that block, but has not deployed such service to all locations in the block. Locations reported as served by 25/3 Mbps service in the HUBB portal would be considered served for purposes of the Rural Digital Opportunity Fund, and the reserve price and deployment obligations associated with the census block would be adjusted accordingly. The Commission proposes to establish a filing deadline for reporting 25/3 Mbps service in price cap areas that would be equivalent to what other providers report in their FCC Form 477 filings. The Commission seeks comment on this proposal. Specifically, the Commission seeks comment on whether the use of HUBB portal data here, coupled with its broader FCC Form 477 reporting, would better determine the areas and locations that are actually unserved.

43. As in the CAF Phase II auction, the Commission proposes to include both high-cost (*i.e.*, those where the CAM estimates the cost per location to exceed \$52.50 per month) and extremely-high cost locations (*i.e.*, those where the CAM estimates the cost per location to equal or exceed \$198.60 per month) in the Rural Digital Opportunity Fund auction. CAF Phase II support was targeted to “census blocks where the cost of service is likely to be higher than can be supported through reasonable end-user rates alone” through the use of a cost benchmark that reflected the expected amount of revenue that could reasonably be recovered from end users. Given that these areas are interspersed with lower-cost locations and with areas served by unsubsidized competitors, the Commission expects that potential bidders are best able to identify the areas where they could deploy broadband-capable networks to the unserved areas in price cap territories. Moreover, the Commission notes that most of the areas that did not receive winning bids in the CAF Phase II

auction are in areas the CAM identified as high-cost, and not extremely high-cost. Therefore, the Commission finds that it would be inefficient to conduct a separate Remote Areas Fund auction for so few locations.

44. In turn, the Commission proposes to include at least some census blocks where the CAM suggests the costs of deployment are below the high-cost threshold but deployment has nonetheless not yet occurred. Broadband deployment data indicate that there are 6.3 million locations with costs below the \$52.50 per month benchmark that still lack high-speed broadband (including 3.4 million locations that lack even 10/1 Mbps broadband), suggesting that potential end-user revenue alone has not incentivized deployment despite the model’s predictions. The Commission proposes to include at least two subsets of such census blocks in rural areas in the Rural Digital Opportunity Fund.

45. *First*, consistent with the approach the Commission established for Tribal areas for carriers that elected model-based rate-of-return support, it proposes to implement a Tribal Broadband Factor for the Rural Digital Opportunity Fund that accounts for the unique challenges of deploying broadband to rural Tribal communities. The Commission therefore proposes to include in the auction census blocks on Tribal lands meeting a \$39.38 per month benchmark, which reflects a 25% decrease compared to the \$52.50 funding benchmark for locations in non-Tribal census blocks.

46. *Second*, the Commission seeks comment on including other wholly unserved census blocks with estimated costs below the \$52.50 benchmark. One way to do so would be to include all such census blocks that are not part of an urbanized area (with a population equal to or greater than 50,000) or an urban cluster. Another way would be to include all wholly-unserved census blocks with a particular cost benchmark below \$52.50, such as \$45 or \$40. What approach would better serve the Commission’s goal of bringing high-speed broadband service to those without such service in rural America? The Commission seeks comment on how best to ensure that rural census blocks that are wholly unserved by high-speed broadband are appropriately included in the Rural Digital Opportunity Fund.

47. For Phase I of the Rural Digital Opportunity Fund auction, the Commission proposes to use the CAM to determine the reserve prices and number of locations for each area eligible for support in the auction. The

CAM uses a combination of commercial data and census data to determine the number of residential and small business locations within each census block. Specifically, the model incorporated an address-based data set of households and business building locations and census housing unit estimates to adjust the residential locations upward or downward to match the census data. The Commission used these data to determine the deployment obligations in a state for CAF Phase II model-based support as well as the number of locations and reserve prices for the CAF Phase II auction. Consistent with this approach, the Commission proposes to rely on the CAM for the Rural Digital Opportunity Fund Phase I auction.

48. Pursuant to the Commission's general competitive bidding rules and consistent with the CAF Phase II auction procedures, it has the discretion to establish reserve prices, *i.e.*, maximum acceptable per-unit bid amounts. For the Rural Digital Opportunity Fund, an area-specific reserve price should reflect the maximum price the Commission is willing to provide in support to the area. The Commission seeks to set area-specific reserve prices that are high enough to promote participation and competition in the auction, but not so high as to violate its commitment to fiscal responsibility. As in the CAF Phase II auction, because the sum of the reserve prices for all eligible areas in the auction exceeds the budget, bidders will have to compete across areas for the limited budget. This competition serves the Commission's universal service goals and the public interest because the support amounts that result are more cost-effective than the model-based reserve prices.

49. Consistent with the CAF Phase II auction, the Commission proposes using the CAM to establish the area-specific reserve prices based on the annual cost per location, less a benchmark to account for end-user revenue, for high-cost and extremely high-cost areas. Additionally, as the Commission proposes to include census blocks that are split between a price cap carrier and rate-of-return carrier in Phase I of the auction, it proposes to use the CAM to set the reserve price for the eligible price cap portion of the respective block. Similar to the CAF Phase II auction, the Commission proposes to set a per-location per-month cap for the reserve prices of census blocks with average costs that exceed the extremely high-cost threshold. Specifically, the Commission proposes to set a reserve price equal to the difference between

the high-cost threshold of \$52.50 (\$39.98 in Tribal areas) and the CAM-estimated cost of deployment, up to a \$200 cap (\$212.52 in Tribal areas). This proposal differs from the Commission's setting of reserve prices in the CAF Phase II auction in two respects. First, it accounts for the lower likely end-user revenues in Tribal areas (in the CAF Phase II auction, all areas had the same high-cost funding threshold). Second, it raises the cap from \$146.10 to \$200 (in the CAF Phase II auction, all areas were capped at the difference between the high-cost funding threshold and the extremely high-cost threshold of \$198.60). Both of these changes are consistent with the Commission's recent decision to adjust model-based support for its second A-CAM offering to rate-of-return carriers. The Commission seeks comment on these proposals.

50. To the extent the Commission includes rural census blocks with estimated costs below the \$52.50 high-cost funding threshold, it seeks comment on a methodology for using the CAM to establish reserve prices. If the Commission decides to lower the high-cost threshold outside of Tribal lands, it would propose to set reserve prices based on the new, lower threshold, such as \$40 or \$45. This approach would allocate an amount of support to incentivize providers to include these unserved blocks in their bids, and ultimately deploy to these areas. Likewise, this approach would have the practical effect of making only census blocks that are above the new funding threshold eligible for the auction.

51. In the alternative, if the Commission includes such census blocks based on whether they qualify as rural under a population metric, it would propose to use a uniform reserve price—*e.g.*, \$5 or \$10 per-location per-month—for all such wholly unserved census blocks. If the Commission were to adopt such an approach, it seeks comment on adding the same flat per-location amount to the reserve price of all areas so that areas with reserve prices above, but close to, the support threshold of \$52.50 would have a minimum reserve price of at least the flat amount. What would be an appropriate uniform per-location reserve price for such areas? Should the Commission consider other means of establishing reserve prices and, if so, what values are appropriate?

52. The Commission seeks comment on its proposals for setting reserve prices and on alternatives. Commenters that propose an alternative methodology for determining the reserve price for each eligible area should explain how

their methodology recognizes the variation in cost to serve different locations and how their methodology provides the Commission with the ability to establish reserve prices that reflect a maximum allowable amount of support for specific eligible areas nationwide while preserving its commitment to fiscal responsibility.

53. The Commission seeks comment on prioritizing support to certain eligible areas where broadband is significantly lacking. Specifically, the Commission seeks comment on prioritizing areas that entirely lack 10/1 Mbps or better fixed service, either at the census block or census block group level. As a way to prioritize support, the Commission seeks comment on setting a reserve price for such areas that is higher than that based strictly on the model. If the Commission were to do adopt such approach, it seeks comment on how much the reserve price should be increased. Would a 10% increase give bidders a sufficiently greater incentive to bid for support for those areas? How should the Commission consider the tradeoff between awarding more support to prioritized areas and awarding support to fewer areas overall? Should the Commission consider using targeted bidding credits instead? Should the Commission also prioritize areas entirely lacking 4G LTE mobile wireless broadband? The Commission seeks comment on other approaches that it could consider and request that parties discuss how each mechanism could best address its goal of spurring broadband deployment to areas that entirely lack broadband service, as well as the complexity of each option for bidders and how simple each would be to implement and administer as leverage the bidding system the Commission initially developed for the CAF Phase II auction.

54. The Commission expects to publish in conjunction with the final eligible areas list the reserve price for each eligible area. The Commission seeks comment on this proposal.

55. The Commission seeks comment on including a Tribal bidding credit to incentivize parties in the Rural Digital Opportunity Fund auction to bid on and serve Tribal census blocks. The Commission has previously used Tribal bidding credits in the context of spectrum auctions, as well as in the Rural Broadband Experiments. Is a Tribal bidding credit an appropriate approach for incentivizing parties to serve Tribal lands? The Commission's goal for the Rural Digital Opportunity Fund is to increase deployment to rural, low-density Tribal areas that disproportionately lack access to

adequate broadband services. The Commission seeks comment on implementing a Tribal bidding credit specifically for these rural, less dense Tribal areas.

56. In the event the Commission adopts a Tribal bidding credit for rural Tribal areas, it seeks comment on the appropriate credit to incentivize carriers to bid on and serve these areas. The Commission adopted a 25% bidding credit for the Rural Broadband Experiments and has implemented bidding credits ranging from 15% to 35% in the context of spectrum auctions. What would be an appropriate Tribal bidding credit for carriers committing to serve Tribal census blocks? How much of an increase would incentivize carriers to commit to serve rural Tribal areas? Would a 25% bidding credit for rural Tribal areas be appropriate or would a different amount be appropriate?

57. The Commission seeks comment on other proposals to ensure Tribal areas receive bids for support in the Rural Digital Opportunity Fund, especially those rural Tribal areas that are in the most need of increased deployment. The Commission encourages parties to be mindful of the Commission's competing goals of promoting deployment to Tribal lands and ensuring that scarce universal service funds are used efficiently and appropriately. The Commission asks commenters to fully consider and discuss the mechanics and implementation of any proposed approach, including how it would operate within the Commission's overall universal service budget and how, or if, it should leverage any of the Commission's existing programs or infrastructure. With this information, the Commission will be able to properly consider how to allocate most efficiently the universal service budget to bring high-speed broadband service to Indian country.

58. In this section, the Commission describes and seeks comment on the information it proposes to collect from each Rural Digital Opportunity Fund auction applicant in its short-form and long-form applications, considering lessons it learned from the CAF Phase II auction. The Commission proposes to adopt generally the same two-step application process that it adopted for the CAF Phase II auction, which the Commission found an appropriate but not burdensome screen to ensure participation by qualified applicants while protecting the Fund, the integrity of the auction, and rural consumers.

59. For the CAF Phase II auction, the Commission used a two-stage

application process, consisting of a short-form and long-form process. The Commission required a pre-auction short-form application to establish eligibility to participate in the auction, relying primarily on disclosures as to identity and ownership, as well as on applicant certifications. The short-form application was reviewed as part of the Commission's initial screening process to determine the applicant's eligibility to bid for support. The short-form application helped promote an effective, efficient, and fair auction, facilitating Commission staff's evaluation of whether a potential bidder was qualified to participate in the CAF Phase II auction. Applicants whose short-form applications were deemed incomplete were given a limited opportunity to cure defects and to resubmit correct applications. Only minor modifications to an applicant's short-form application were permitted after the deadline.

60. The Commission then performed a more extensive, post-auction review of the winning bidders' qualifications based on the required long-form application, which was an in-depth presentation of the applicants' eligibility and qualifications to receive high-cost universal service support. For the CAF Phase II auction, all winning bidders were required to provide detailed information showing that they are legally, technically and financially qualified to receive support.

61. The Commission proposes that all applicants for the Rural Digital Opportunity Fund auction provide basic information in their short-form applications that will enable it to review and assess whether the applicant is eligible to participate in the auction, before an applicant commits time and resources to participating in the auction. The Commission also seeks more detailed comment in the following on whether to require less information at the short-form stage from existing providers that have been offering a voice and/or broadband service for a certain period of time as demonstrated by the applicants' FCC Form 477. The Commission also proposes to apply the same post-auction long-form application process adopted for the CAF Phase II auction. Accordingly, winning bidders applying for Rural Digital Opportunity Fund support would be required to provide the same showing in their long-form applications that they are legally, technically and financially qualified to receive support as required of applicants for CAF Phase II auction support.

62. The Commission proposes that its existing universal service competitive bidding rules should apply so that

applicants will be required to provide information that will establish their identity, including disclosing parties with ownership interests and any agreements the applicants may have relating to the support to be sought through the Rural Digital Opportunity Fund auction competitive bidding process.

63. *Ownership.* The Commission proposes that its existing universal service competitive bidding rules should apply to the Rural Digital Opportunity Fund auction so that applicants will be required to provide information about ownership and agreements to establish their identity. The Commission's rules require each applicant to disclose in its short-form application information concerning its real parties in interest and its ownership, and to identify all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding. The Commission proposes requiring an applicant to also provide in its short-form application a brief description of any such agreements, including any joint bidding arrangements. Commission staff used such information to identify and resolve impermissible state overlaps prior to the CAF Phase II auction. The Commission further proposes to require every applicant to certify in its short-form application that it has not entered into any explicit or implicit agreements, arrangements, or understandings of any kind related to the support to be sought through the Rural Digital Opportunity Fund auction, other than those disclosed in the short-form application. The Commission seeks comment on this process and whether its proposals efficiently and effectively promote straightforward bidding and safeguard the integrity of the auction.

64. *Technical and Financial Qualifications Certification.* The Commission's CAF Phase II auction rules required an applicant for CAF Phase II auction support to certify that it is technically and financially capable of meeting the CAF Phase II auction public interest obligations in each area for which it seeks support. Likewise, the Commission proposes also requiring Rural Digital Opportunity Fund applicants to certify that they are technically and financially capable of meeting the applicable public interest obligations using the standards and certification criteria proposed in the following.

65. *Type of Technologies.* Next, consistent with the CAF Phase II auction, the Commission proposes that all applicants indicate the performance tier and latency for the bids that they

plan to make and describe the technology or technologies that will be used to provide service for each bid. Moreover, the Commission proposes that applicants submit with their short-form applications any information or documentation to establish their eligibility for any bidding weights or preferences that it ultimately adopts. Consistent with the CAF Phase II auction, the Commission also proposes allowing an applicant to use different technologies within a state and use hybrid networks to meet its public interest obligations.

66. *Access to Spectrum.* If a Rural Digital Opportunity Fund applicant intends to use spectrum to offer voice and broadband services, the Commission proposes, consistent with the CAF Phase II auction, that the applicant indicate the spectrum band(s) and total amount of uplink and downlink bandwidth (in megahertz) that it has access to for the last mile for each performance tier and latency combination it selected in each state. The Commission also proposes that an applicant must disclose whether it currently holds licenses for or leases spectrum. The Commission proposes the applicant must demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and meet the minimum performance requirements to serve all of the fixed locations in eligible areas, and the applicant must certify that it will retain its access to the spectrum for at least 10 years from the date of the funding authorization.

67. *Operational History and Submission of Financial Documents.* Consistent with the CAF Phase II auction, the Commission proposes establishing two pathways for an applicant to demonstrate its operational experience and financial qualifications to participate in the Rural Digital Opportunity Fund auction. With the first pathway, an applicant would certify, if applicable, in its short-form application that it (or its parent company if it is a wholly-owned subsidiary) has provided voice, broadband, and/or electric distribution or transmission services for at least two years prior to the short-form application filing deadline. If the applicant certifies that it (or its parent company) has been providing voice and/or broadband service for at least two years, the Commission proposes requiring it to demonstrate that it has filed FCC Form 477s as required during the relevant time period. If an applicant certifies that it (or its parent company) has been

providing only electric distribution or transmission services for at least two years, the Commission proposes requiring it to submit qualified operating or financial reports that it or its parent company (if it is a wholly-owned subsidiary) filed with the relevant financial institution to demonstrate its two years of operational history along with a certification that the submission is a true and accurate copy of the forms that were submitted to the relevant financial institution. The Commission expects that this information would provide it with sufficient assurance before the auction that an entity has demonstrated that it has the ability to build and maintain a network.

68. As with the CAF Phase II auction, the Commission proposes that applicants that meet the foregoing requirements and that are audited in the ordinary course of business must also submit their (or their parent company's) financial statements from the prior fiscal year. These would include the balance sheets, income statements, and cash flow statements, that were audited by an independent certified public accountant, along with the audit opinion. If an applicant (or its parent company) is not audited in the ordinary course of business and the applicant does not submit its audited financial statements with the short-form application, the Commission proposes requiring the applicant to certify that it will submit audited financial statements during the long-form application process and requiring such applicants to submit unaudited financial statements from the prior fiscal year with their short-form application. The Commission also proposes that applicants that make such a certification and fail to submit the audited financial statements as required would be subject to the same base forfeiture of \$50,000 that it adopted for the CAF Phase II auction. As with the CAF Phase II auction, the Commission expects that the additional cost of obtaining audited financial statements is outweighed by the importance of being able to assess the financial health of Rural Digital Opportunity Fund auction support recipients. The Commission notes the vast majority of CAF Phase II auction support recipients were able to obtain audited financial statements by the required deadlines.

69. If an applicant does not have at least two years of operational experience, consistent with the CAF Phase II auction, the Commission proposes requiring such applicants to submit with their short-form application their (or their parent company's)

financial statements that were audited by an independent certified public accountant from the three prior fiscal years, including the balance sheets, income statement, and cash flow statements, along with a qualified opinion letter. Such applicants would also be required to submit a letter of interest from a bank meeting the Commission's eligibility requirements stating that the bank would provide a letter of credit to the applicant if the applicant becomes a winning bidder and is awarded support of a certain dollar magnitude.

70. As with the CAF Phase II auction, the Commission recognizes that if it were to adopt these two pathways, the Commission would potentially be precluding from participating in the auction interested bidders that have not been in operation long enough to meet these requirements or that are unable to meet these requirements for other reasons. However, these concerns are outweighed by the Commission's duties as the steward of universal service support. Commenters proposing alternative eligibility requirements should explain how their proposals would similarly further the Commission's responsibility to implement safeguards to ensure the public's funds are being provided to ETCs that have the requisite operational and financial qualifications and to protect consumers in rural and high-cost areas against being stranded without a service provider in the event a winning bidder or long-form applicant defaults.

71. *Due diligence certification.* Consistent with the procedures adopted for the CAF Phase II auction, the Commission proposes requiring an applicant to certify that it has performed due diligence concerning its potential participation in the Rural Digital Opportunity Fund auction so the applicant understands its obligations in this regard. Specifically, the Commission proposes that each applicant make the following certification in its short-form application under penalty of perjury:

The applicant acknowledges that it has sole responsibility for investigating and evaluating all technical and marketplace factors that may have a bearing on the level of Rural Digital Opportunity Fund support it submits as a bid, and that if the applicant wins support, it will be able to build and operate facilities in accordance with the Rural Digital Opportunity Fund obligations and the Commission's rules generally.

72. This proposed certification will help ensure that each applicant acknowledges and accepts responsibility for its bids and any forfeitures imposed in the event of

default, and that the applicant will not attempt to place responsibility for the consequences of its bidding activity on either the Commission or third parties. The Commission seeks comment on this proposal.

73. *Changes to Short-Form Application.* Building on lessons learned from the CAF Phase II auction, the Commission seeks comment on whether to require less technical and financial information at the short-form stage from applicants that are existing providers. The Commission proposes to define an existing provider as an entity that has been offering a voice and/or broadband service for a certain period of time as demonstrated by its FCC Form 477 data. If the Commission were to adopt this approach, how long should an applicant be required to demonstrate that it has been filing FCC Form 477 data and would thus be considered an existing provider? Should a provider be required to demonstrate that it has submitted FCC Form 477 data that demonstrates it has offered both voice and broadband services for a certain period of time, or is it sufficient if the provider has offered only broadband services? Likewise, the Commission seeks comment on requiring less information at the short-form stage from applicants that qualified to participate in the CAF Phase II auction. Similarly, are there any eligibility restrictions that should be placed on CAF Phase II auction winning bidders that defaulted on their winning bids? Should the Commission require such defaulters to submit additional information? Should the Commission prohibit them from participating at all?

74. The Commission seeks to balance the burdens on applicants of completing a short-form application with the Commission's statutory obligation to protect the Fund, the integrity of the auction, and rural consumers. Commenters should consider what information the Commission can credibly rely on to evaluate an applicant's likeliness to perform without defaulting or to meet service milestones or service quality metrics. What presumptions can the Commission make from information that it already collects? To the extent commenters propose that the Commission adopt fewer obligations for certain applicants than it has proposed here, they should also address whether the Commission needs to make any adjustments to its application process in general to account for the proposed changes, and why the requirement is unnecessary for the Commission to determine whether an applicant is qualified to bid.

75. After the Rural Digital Opportunity Fund auction concludes, the Commission proposes that each winning bidder submit a long-form application, which Commission staff will review to determine whether the winning bidder meets the eligibility requirements for receiving Rural Digital Opportunity Fund support and has the financial and technical qualifications to meet the obligations associated with such support. Consistent with the CAF Phase II auction, in its long-form application, each Rural Digital Opportunity Fund winning bidder would be required to submit information about its qualifications, funding, and the network it intends to use to meet its obligations. In addition, prior to being authorized to receive Rural Digital Opportunity Fund support, each winning bidder would demonstrate that it has been designated as an ETC in the area(s) for which it is a winning bidder and obtain a letter of credit from a bank meeting the Commission's eligibility requirements. Similar to the CAF Phase II auction, the Commission proposes to adopt the rules in Appendix A that apply to the long-form application. The Commission seeks comment on these proposals and on whether any changes should be made to the long-form application process for the Rural Digital Opportunity Fund.

76. If a winning bidder is not authorized to receive Rural Digital Opportunity Fund support (e.g., the bidder fails to file or prosecute its long-form application or its long-form application is dismissed or denied), the Commission proposes the winning bidder would be in default and subject to the same forfeitures as CAF Phase II auction long-form applicants.

77. The Commission proposes to adopt here the same letter of credit rules it adopted for the CAF Phase II auction. For the CAF Phase II auction, the Commission adopted a requirement that all long-form applicants obtain a letter of credit, explaining that letters of credit "are an effective means for accomplishing [the Commission's] role as stewards of the public's funds" because they "permit the Commission to immediately reclaim support" from support recipients that are not meeting their CAF Phase II auction obligations. Before a CAF Phase II auction support recipient could receive its next year's support and each year's support thereafter, it had to modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of support that has already been disbursed plus the amount of support that is going to be provided in the next year, subject to certain

reductions when the support recipient has substantially met its service milestones. If a CAF Phase II auction support recipient does not meet its service milestones or take advantage of the opportunities to cure or pay back the relevant support, the Commission will draw on the letter of credit. A CAF Phase II auction support recipient must only maintain an open letter of credit until the recipient has certified it has met the final service milestone and the certification has been verified.

78. The Commission proposes that a Rural Digital Opportunity Fund long-form applicant obtain an irrevocable stand-by letter of credit that must be issued in substantially the same form as set forth in the Commission's *Phase II Auction Order*, 81 FR 44414, July 7, 2016, model letter of credit and that a long-form applicant submit a bankruptcy opinion letter from outside legal counsel. The Commission would also require that the letter of credit be issued by a bank that meets the same CAF Phase II auction bank eligibility requirements. Before they can receive their next year's support, Rural Digital Opportunity Fund support recipients would also be required to modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum of the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year.

79. The Commission proposes adopting the same phase-down schedule that was used in the CAF Phase II auction, allowing the value of the letter of credit to decrease over time as a support recipient satisfies its minimum coverage and service requirements. For the CAF Phase II auction, once the auction recipient has met its 60% service milestone, its letter of credit may be valued at 90% of the total support amount already disbursed plus the amount that will be disbursed in the coming year. Once the auction recipient has met its 80% service milestone, its letter of credit may be valued at 60% of the total support amount already disbursed plus the amount that will be disbursed in the coming year. The Commission also proposes that the letter of credit remain in place until USAC and the Commission verify that a Rural Digital Opportunity Fund recipient has met its minimum coverage and service requirements at the end of the six-year milestone. The Commission seeks comment on these proposals and on whether any adjustments should be made to the CAF Phase II auction letter of credit rules for the Rural Digital Opportunity Fund.

80. The Commission also seeks comment on whether it should make any changes to streamline the Commission and USAC's review and administration of letters of credit. For example, the CAF Phase II auction rules currently permit a long-form applicant to submit multiple letters of credit that cover all the bids in a state. Should Rural Digital Opportunity Fund support recipients be required to submit one letter of credit that covers all the bids in a state to reduce the number of letters of credit that USAC and the Commission must review and track throughout the build-out period? The Commission seeks comment on these issues and on whether any other adjustments are appropriate, including adjustments to timing or the process for submitting letters of credit to USAC for review.

81. The Commission seeks comment on adopting the same letter of credit waiver opportunity for Tribal Nations or Tribally-owned and -controlled winning bidders. Specifically, should the Commission permit any Tribal Nation or Tribally-owned and -controlled long-form applicant that is unable to obtain a letter of credit to file a petition for waiver of the letter of credit requirement using the same standard the Commission adopted for the CAF Phase II auction? What alternative could the Commission use to secure the federal funding going to these support recipients in the event of non-performance or default? The Commission notes that a number of Tribally-owned and -controlled winning bidders were able to obtain letters of credit for the CAF Phase II auction.

82. Finally, the CAF Phase II auction provides a basis for lessons learned that can inform the letter of credit requirements in the Rural Digital Opportunity Fund. The Commission observed in the CAF Phase II auction process that companies with existing lending relationships often use letters of credit in the normal course of operating their businesses and, generally, are able to maintain multiple forms of financing for varying purposes. On the other hand, the Commission also found that winning bidders complained of the high cost of obtaining and maintaining a letter of credit, such that it would "consume too much of the limited capital available to . . . [and] leave [in]sufficient funds for . . . [CAF Phase II auction] construction." The Commission therefore seeks comment on whether it should decline to require a letter of credit for the Rural Digital Opportunity Fund. Are there viable, less costly alternatives that still minimize risk to public funds?

83. The Commission proposes to adopt the same ETC designation procedures for the Rural Digital Opportunity Fund that the Commission adopted for the CAF Phase II auction. Only ETCs designated pursuant to section 214(e) of the Communications Act of 1934, as amended (the Act) are eligible to receive support from the high-cost program. For the CAF Phase II auction, the Commission did not require that service providers become ETCs to apply to participate and then bid in the auction. However, all long-form applicants were required to obtain an ETC designation that covers all of the areas where they won support prior to being authorized to receive support. Similarly, the Commission proposes that service providers that want to apply to bid in the Rural Digital Opportunity Fund auction would not be required to be ETCs, but that long-form applicants would be required, within 180 days of the release of the public notice announcing winning bidders, to obtain an ETC designation from the relevant state commission, or this Commission if the state commission lacks jurisdiction, that covers the areas where they won support.

84. As in the CAF Phase II auction, the Commission expects that allowing service providers that are not ETCs (such as electric utilities) to apply to bid in the auction will encourage participation from service providers that may be hesitant to invest resources in applying for an ETC designation without knowing if they would be likely to win Rural Digital Opportunity Fund support. The Commission also proposes that the Bureau waive the deadline where long-form applicants demonstrate good faith efforts to obtain their ETC designations, but the proceeding is not complete by the deadline. Good faith would be presumed if the long-form applicant filed its ETC application with the relevant authority within 30 days of the release of the public notice announcing winning bidders.

85. The Commission also proposes to forbear from the statutory requirement that the ETC service area of a Rural Digital Opportunity Fund participant conform to the service area of the rural telephone company serving the same area. As in the CAF Phase II auction, the Commission will be maximizing the use of Rural Digital Opportunity Fund support by making it available for only one provider per geographic area. Moreover, the Commission expects that the incumbent rural telephone company's service area will no longer be relevant because the incumbent service provider may be replaced by another

Rural Digital Opportunity Fund recipient in portions of its service area.

86. The Commission seeks comment on these proposals and on whether any changes should be made to the ETC designation procedures for the Rural Digital Opportunity Fund.

87. In this section, the Commission seeks comment on two transitions that may occur as a result of the Rural Digital Opportunity Fund. First, the Commission examines how to transition incumbent price cap carriers from legacy high-cost support in areas where Rural Digital Opportunity Fund support is awarded. Second, the Commission examines how to transition price cap carriers from CAF Phase II model-based support in areas where Rural Digital Opportunity Fund support is awarded.

88. To begin the process of transitioning legacy high-cost support to the CAF, the Commission implemented CAF Phase I by freezing support for price cap carriers under then-existing high-cost support mechanisms (legacy support) and decided that this frozen support would transition to CAF Phase II support upon completion of the CAF Phase II auction. To implement this transition, the Commission adopted a methodology for disaggregating the frozen support in states where price cap carriers declined model-based support and allocated a portion of each incumbent price cap carrier's existing frozen support to each CAF Phase II auction-eligible census block in the declined state based on the relative costs of providing service across all auction-eligible census blocks within the same state. Incumbent price cap carriers were given the option of declining this support on state-by-state basis.

89. In areas where an incumbent price cap carrier receiving disaggregated legacy support is the long-form applicant that is authorized to receive CAF Phase II auction support, the incumbent price cap carrier will cease receiving disaggregated legacy support the first day of the month after the price cap carrier is authorized to receive CAF Phase II auction support in that area. Similarly, in areas won in the CAF Phase II auction by a carrier other than the incumbent price cap carrier, the incumbent price cap carrier will cease receiving disaggregated legacy support the first day of the month after the long-form applicant is authorized to receive CAF Phase II auction support in that area. In areas where the incumbent price cap carrier receives disaggregated legacy support and there was no authorized long-form applicant, the incumbent price cap carrier will continue to receive such support until the Commission

takes further action. Finally, in all census blocks determined to be ineligible for the CAF Phase II auction, price cap carriers that declined CAF Phase II model-based support ceased receiving legacy support starting the first day of the month following the first authorization of CAF Phase II auction support nationwide.

90. The Commission proposes to adopt a similar transition period for the Rural Digital Opportunity Fund for incumbent price cap carriers that are receiving disaggregated legacy support. The Commission proposes that an incumbent price cap carrier currently receiving disaggregated legacy support will no longer receive such support in any census block that is deemed ineligible for the Rural Digital Opportunity Fund. This approach is consistent with the Commission's decision to stop providing legacy support in areas deemed ineligible for the CAF Phase II auction because by excluding those areas from the auction, the Commission had already determined not to offer ongoing high-cost support for those areas. For the Rural Digital Opportunity Fund, the Commission proposes ceasing such support in the first day of the month after the final Rural Digital Opportunity Fund eligible areas list is released. Although the Commission waited until the first CAF Phase II auction recipient was authorized to stop providing legacy support in areas deemed ineligible for the CAF Phase II auction, the Commission had not yet adopted a methodology for transitioning from legacy support to CAF Phase II auction support when the Bureau released the final CAF Phase II auction eligible areas list and there is no reason to continue paying a carrier through the Rural Digital Opportunity Fund auction if the Commission has already determined an area is ineligible for support.

91. In areas where an incumbent price cap carrier is receiving disaggregated legacy support and it becomes the authorized Rural Digital Opportunity Fund recipient, the Commission proposes that the incumbent price cap carrier will cease receiving disaggregated legacy support the first day of the month after the price cap carrier is authorized to receive Rural Digital Opportunity Fund support. Similarly, in areas where an incumbent price cap carrier is receiving disaggregated legacy support and another long-form applicant is authorized to receive Rural Digital Opportunity Fund support, the Commission proposes that the incumbent price cap carrier will cease receiving disaggregated legacy support

the first day of the month after that long-form applicant is authorized to receive Rural Digital Opportunity Fund support. Finally, if no long-form applicant is authorized to receive Rural Digital Opportunity Fund support in an area, the Commission proposes that the incumbent price cap carrier receiving disaggregated support in that area would continue to receive such support until further Commission action.

92. The Commission seeks comment on these proposals and on whether any adjustments should be made for the transition from disaggregated legacy support to Rural Digital Opportunity Fund support.

93. In the *December 2014 Connect America Order*, 80 FR 4446, January 17, 2015, the Commission adopted a transition period for price cap carriers that accepted CAF Phase II model-based support. If a price cap carrier was a winning bidder in the subsequent auction, it would commence receiving the auction support in 2021, after the model-based support term ended at the end of 2020. If the price cap carrier did not win in the auction or chose not to bid, it would have the option of electing one additional year of support, with CAF Phase II model-based support continuing in calendar 2021.

94. Given that a Rural Digital Opportunity Fund auction is unlikely to conclude before model-based support for price cap carriers is expected to end, the Commission seeks comment on whether to revisit the transition period from CAF Phase II model-based support to Rural Digital Opportunity Fund support. As a threshold matter, the Commission seeks comment on which price cap carriers should be eligible for the optional seventh year of support. The optional support year was only to be made available to price cap carriers that did not bid or did not win support in the subsequent auction. But by the end of 2020, the Commission may not know which price cap carriers fall in these categories. Should all price cap carriers have the option to elect an additional year of support or should the option only be available to a subset of price cap carriers? If the option should only be available to a subset of price cap carriers, what criteria should the Commission use to determine which price cap carriers should have the option of electing one more year of support?

95. The Commission emphasized the "limited scope and duration" of the CAF Phase II offer of model-based support. Price cap carriers had no expectation of receiving ongoing support beyond the additional optional year in these areas once the CAF Phase

II support term had ended because the Commission expected that it would have conducted the subsequent auction before the support term had ended. Price cap carriers were provided the option of receiving six years of support, with an optional seventh year, in exchange for fulfilling specific service obligations which each price cap carrier had the opportunity to evaluate and accept or decline. Price cap carriers were also on notice that other service providers could win support to serve these areas in the subsequent auction so that ongoing support would not be made available once the optional year had ended. Because price cap carriers accepted CAF Phase II model-based support without an expectation of sustained ongoing support, the Commission does not believe it is necessary to provide any transitional support to price cap carriers beyond the optional seventh year of support. The Commission seeks comment on this view.

96. Given the potential time period between the end of the CAF Phase II model-based support term and the authorization of Rural Digital Opportunity Fund support recipients, how should the Commission adjust the offer of an optional seventh year of support? Should it be available to all price cap carriers until the completion of the Rural Digital Opportunity Fund Phase I auction? Should it be available only until a specific time (e.g., June 30, 2021) with the remaining six months available only to price cap carriers that are not support recipients in the Phase I auction? Is a full year of support in 2021 appropriate or should the Commission reduce the support to some lesser amount? Are there any additional obligations that are in the public interest that price cap carriers should also be subject to as a condition of receiving the extra year of 2021 support?

97. The Commission also seeks comment on whether there are any other issues that it should address in the context of this proceeding that will facilitate the transition from CAF Phase II model-based support to Rural Digital Opportunity Fund support and will ensure that consumers retain access to voice and broadband services that are reasonably comparable to those offered in urban areas.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

98. This document contains proposed new information collection requirements. The Commission as part of its continuing effort to reduce paperwork burdens, invites the general

public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

99. *Initial Regulatory Flexibility Analysis.* 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 from the policies and rules proposed in the NPRM. The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments for the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

100. Broadband access is critical to economic opportunity, job creation, education and civic engagement. That is why closing the digital divide is the Commission's top priority. For communities throughout our nation to thrive and prosper, their residents must have the option to obtain high-speed internet access.

101. Last year, the Commission took a major step forward in expanding broadband access to many parts of rural America. As a result of the Commission's successful CAF Phase II auction, the Commission has begun providing \$1.488 billion in universal service support over ten years to build high-speed broadband service to over 700,000 households and small businesses in 45 states, with 99.75% of locations receiving at least 25/3 Mbps service and more than half receiving at least 100/20 Mbps service.

102. But more work remains to be done. For example, more than 10 million households and small businesses in price cap areas still lack access to critical broadband services that offer speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream in unserved census blocks, including more than 7 million in rural areas. In this document, the Commission proposes to build on the success of the CAF Phase II auction by

establishing the Rural Digital Opportunity Fund, which will commit at least \$20.4 billion over the next decade to support high-speed broadband networks in rural America. Because the CAF Phase II auction secured higher quality services for consumers at a lower cost to the Fund, the Commission proposes to conduct a multi-round, reverse, descending clock auction that favors faster services with lower latency and encourages intermodal competition. And in light of the need to bring service both to consumers in wholly unserved areas as well as those living in partially served areas, the Commission proposes to assign funding in two phases: Phase I will target those areas that current data confirms are wholly unserved, and Phase II will target those areas that are partially served as well as any areas not won in the first phase. By relying on a two-phase process, as the Commission did with the Connect America Fund, it can move expeditiously to commence an auction in 2020 while also ensuring that other areas are not left behind by holding a second auction.

103. The framework the Commission proposes in this document represents its single biggest step yet to close the rural digital divide and will connect millions more rural homes and small businesses to high-speed broadband networks.

104. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.412 of the Commission's rules, 47 CFR 1.1 and 1.412.

105. 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 rule revisions, 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.

106. The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive small entity size standards that could be

directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

107. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

108. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

109. The small entities that may be affected are Wireline and Wireless Providers, Broadband internet Access Service Providers, Satellite Telecommunications, Electric Power Generators, Transmitters, and Distributors, and All Other Telecommunications.

110. In the NPRM the Commission begins the process of seeking comment on rules that will apply in the Rural Digital Opportunity Fund auction. The Commission proposes establishing three technology-neutral tiers of bids available for bidding with varying broadband speed and usage allowances, and for each tier propose differentiating

between bids that would offer either lower or higher latency. Like all high-cost ETCs, the Commission proposes that Rural Digital Opportunity Fund support recipients would be required to offer standalone voice service and offer voice and broadband services meeting the relevant performance requirements at rates that are reasonably comparable to rates offered in urban areas. The Commission also proposes that Rural Digital Opportunity Fund support recipients will be subject to the same uniform framework for measuring speed and latency performance along with the accompanying compliance framework as all other recipients of high-cost support required to serve fixed locations.

111. The Commission also proposes adopting a 10-year support term for Rural Digital Opportunity Fund support recipients along with interim service milestones by which support recipients must offer the required voice and broadband service to a required number of locations. The Commission seeks comment on whether it should adopt additional performance requirements to provide incentive for Rural Digital Opportunity Fund support recipients to pursue customers in eligible areas.

112. For entities that are interested in participating in the Rural Digital Opportunity Fund, the Commission proposes adopting a two-step application process and seek comment on whether any adjustments should be made or if the application process should be streamlined for certain entities. The Commission proposes requiring applicants to submit a pre-auction short-form application that includes information regarding their ownership, technical and financial qualifications, the technologies they intend to use and the types of bids they intend to place, their operational history, and an acknowledgement of their responsibility to conduct due diligence. Commission staff will review the applications to determine if applicants are qualified to bid in the auction.

113. The Commission also proposes requiring winning bidders to submit a long-form application in which they will submit information about their qualifications, funding, and the networks they intend to use to meet their obligations. During the long-form application period, the Commission also proposes requiring long-form applicants to obtain an ETC designation from the state or the Commission as relevant that covers the eligible areas in their winning bids. Prior to being authorized to receive support, the Commission proposes requiring long-form applicants

to obtain an irrevocable stand-by letter of credit that meets its requirements from an eligible bank along with a bankruptcy opinion letter. The letter of credit would cover the support that has been disbursed and that will be disbursed in the coming year, subject to modest adjustments as support recipients substantially build out their networks, until the Commission and USAC verify that the applicant has met its service milestones. The Commission seeks comment on whether the Commission should use alternative measures to protect disbursed funds. Commission staff will review the applications and submitted documentation to determine whether long-form applicants are qualified to be authorized to receive support. The Commission proposes subjecting winning bidders or long-form applicants that default during the long-form application process to forfeiture.

114. To monitor the use of Rural Digital Opportunity Fund support to ensure that it is being used for its intended purposes, the Commission proposes to require support recipients to file location and technology data on an annual basis in the online HUBB portal and to make certifications when they have met their service milestones. The Commission also proposes requiring applicants to file certain information in their annual FCC Form 481 reports including information regarding the community anchor institutions they serve, the support they used for capital expenditures, and certifications regarding meeting the Commission's performance obligations and available funds. Support recipients would also be subject to the annual section 54.314 certifications, the same record retention and audit requirements, and the same support reductions for untimely filings as other high-cost ETCs. The Commission seeks comment on whether any adjustments should be made to this reporting framework.

115. For support recipients that do not meet their Rural Digital Opportunity Fund obligations, the Commission proposes subjecting such support recipients to the framework for support reductions that is applicable to all high-cost ETCs that are required to meet defined service milestones and to the process the Commission adopted for drawing on letters of credit for the Connect America Fund (CAF) Phase II auction. The Commission seeks comment on alternatives to this proposal.

116. The Commission also seeks comment on substantive proposals to address the impediments to broadband

deployment that have resulted in a Tribal digital divide.

117. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The Commission expects to consider all of these factors when it has received substantive comment from the public and potentially affected entities.

118. The Commission seeks comment on a number of issues to ensure that small entities have the opportunity to participate in the Rural Digital Opportunity Fund auction. For example, the Commission proposes to adopt different performance standards for bidders to maximize the types of entities that can participate in the Rural Digital Opportunity Fund auction.

119. Based on lessons learned from the CAF Phase II auction, the Commission also seeks comment on a two-step application process that will allow entities interested in bidding to submit a short-form application to be qualified in the auction that it found to be an appropriate but not burdensome screen to ensure participation by qualified providers, including small entities. Only if an applicant becomes a winning bidder would it be required to submit a long-form application which requires a more fulsome review of an applicant's qualifications to be authorized to receive support. Like the CAF Phase II auction, the Commission proposes providing two pathways for eligibility for the auction—both (1) for entities that have at least two years' experience providing a voice, broadband, and/or electric transmission or distribution service, and (2) for entities that have at least three years of audited financials and can obtain an acceptable letter of interest from an eligible bank. The Commission expects that by proposing to adopt two pathways for eligibility and to permit experienced entities that do not audit their financial statements in the ordinary course of business to wait to submit audited financials until after they are announced as winning bidders, more small entities will be able to participate in the auction. The

Commission also seeks comment on whether it should take measures to collect less information during the application process from certain experienced entities or entities that qualified for the CAF Phase II auction, which may also include small entities.

120. The Commission also proposes permitting all long-form applicants, including small entities, to obtain their ETC designations after becoming winning bidders so that they do not have to go through the ETC designation process prior to finding out if they won support through the auction.

Recognizing that some CAF Phase II auction participants, including small entities, have expressed concerns about the costs of obtaining and maintaining a letter of credit, the Commission also seeks comment on whether there are viable, less costly alternatives that still minimize risk to public funds.

121. The Commission invites comment from all parties, including small entities and participants in the CAF Phase II auction, on adopting for the Rural Digital Opportunity Fund generally the same service milestones, reporting obligations, and non-compliance measures that it adopted for CAF Phase II. The Commission seeks to learn from the experience of small entities so that it can balance its responsibility to monitor the use of universal service funds with minimizing administrative burdens on Rural Digital Opportunity Fund participants.

122. Additionally, the Commission seeks comment on potential measures for incentivizing carriers, including small entities, to bid on and serve Tribal lands. These measures include implementing a Tribal Broadband Factor that accounts for the unique challenges of deploying broadband to rural Tribal communities and a Tribal bidding credit.

123. More generally, the Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM and this IRFA, in reaching its final conclusions and taking action in this proceeding. The proposals and questions laid out in the NPRM were designed to ensure the Commission has a complete understanding of the benefits and potential burdens associated with the different actions and methods.

124. *Ex Parte Presentations—Permit-But-Disclose.* The proceeding this NPRM 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).

125. In light of the Commission’s trust relationship with Tribal Nations and its commitment to engage in government-to-government consultation with them, it finds the public interest requires a limited modification of the *ex parte* rules in this proceeding. Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act. However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from disclosure in permit-but-disclose proceedings and exempt from the prohibitions during the Sunshine Agenda period. To be clear, while the Commission recognizes consultation is critically important, it emphasizes that it will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

126. 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 1.1206(b). In proceedings governed by rule 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.

I. Ordering Clauses

127. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.412 of the Commission’s rules, 47 CFR 1.1 and 1.412, this Notice of Proposed Rulemaking *is adopted*, effective thirty (30) days after publication of the text or summary thereof in the **Federal Register**.

128. *It is further ordered* that, pursuant to the authority contained in sections 4(i), 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 254, 303(r), and 403, and sections 1.1 and 1.412 of the Commission’s rules, 47 CFR 1.1 and 1.412, *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rulemaking.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

PART 54—UNIVERSAL SERVICE

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

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

- 2. Amend § 54.313 by revising paragraph (e) introductory text, paragraph (e)(2) introductory text, and paragraph (e)(2)(iii) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(e) In addition to the information and certifications in paragraph (a) of this section, the following requirements

apply to Connect America Phase II and Rural Digital Opportunity Fund recipients:

* * * * *

(2) Any recipient of Connect America Phase II or Rural Digital Opportunity Fund support awarded through a competitive bidding process shall provide:

* * * * *

(iii) Starting the first July 1st after meeting the final service milestone in § 54.310(c) or § 54.802(c) of this chapter until the July 1st after the Connect America Phase II recipient's or Rural Digital Opportunity Fund recipient's support term has ended, a certification that the Connect America Phase II-funded network that the Connect America Phase II auction recipient operated in the prior year meets the relevant performance requirements in § 54.309 of this chapter, or that the network that the Rural Digital Opportunity Fund recipient operated in the prior year meets the relevant performance requirements for the Rural Digital Opportunity Fund.

* * * * *

■ 3. Amend § 54.316 by revising paragraphs (a)(4) and (b)(5) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

(a) * * *

(4) Recipients subject to the requirements of § 54.310(c) or § 54.802(c) shall report the number of locations for each state and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients of Connect America Phase II auction support and Rural Digital Opportunity Fund support shall also report the technology they use to serve those locations.

* * * * *

(b) * * *

(5) Recipients of Rural Digital Opportunity Fund support shall provide: By the last business day of the second calendar month following each service milestone specified by the Commission, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations to the required percentage of its supported locations in each state.

* * * * *

■ 4. Revise subpart J, consisting of §§ 54.801 through 54.806, to read as follows:

Subpart J—Rural Digital Opportunity Fund

§ 54.801 Use of competitive bidding for Rural Digital Opportunity Fund.

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of Rural Digital Opportunity Fund support and the amount of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.802 Rural Digital Opportunity Fund geographic areas, deployment obligations, and support disbursements.

(a) *Geographic areas eligible for support.* Rural Digital Opportunity Fund support may be made available for census blocks or other areas identified as eligible by public notice.

(b) *Term of support.* Rural Digital Opportunity Fund support shall be provided for ten years.

(c) *Deployment obligation.* (1) Recipients of Rural Digital Opportunity Fund support must complete deployment to 40 percent of supported locations by the end of the third year, to 60 percent of supported locations by the end of the fourth year, to 80 percent of supported locations by the end of the fifth year, and to 100 percent of supported locations by the end of the sixth year. Compliance shall be determined based on the total number of supported locations in a state.

(2) Recipients of Rural Digital Opportunity Fund support may elect to deploy to 95 percent of the number of supported locations in a given state with a corresponding reduction in support computed based on the average support per location in the state times 1.89.

(d) Disbursement of Rural Digital Opportunity Fund funding. An eligible telecommunications carrier will be advised by public notice when it is authorized to receive support. The public notice will detail how disbursements will be made.

§ 54.803 Rural Digital Opportunity Fund provider eligibility.

(a) Any eligible telecommunications carrier is eligible to receive Rural Digital Opportunity Fund support in eligible areas.

(b) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in the Rural Digital Opportunity Fund auction.

(c) To the extent any entity seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Rural Digital Opportunity Fund support, its designation as an eligible

telecommunications carrier may be conditioned subject to receipt of Rural Digital Opportunity Fund support.

§ 54.804 Rural Digital Opportunity Fund application process.

(a) In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, any applicant to participate in competitive bidding for Rural Digital Opportunity Fund support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically qualified to meet the public interest obligations established for Rural Digital Opportunity Fund support;

(3) Disclose its status as an eligible telecommunications carrier to the extent applicable and certify that it acknowledges that it must be designated as an eligible telecommunications carrier for the area in which it will receive support prior to being authorized to receive support;

(4) Describe the technology or technologies that will be used to provide service for each bid;

(5) Submit any information required to establish eligibility for any bidding weights adopted by the Commission in an order or public notice;

(6) To the extent that an applicant plans to use spectrum to offer its voice and broadband services, demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for the term of support;

(7) Submit operational and financial information.

(i) If applicable, the applicant should submit a certification that it has provided a voice, broadband, and/or electric transmission or distribution service for at least two years or that it is a wholly-owned subsidiary of such an entity, and specifying the number of years the applicant or its parent company has been operating, and submit the financial statements from the prior fiscal year that are audited by a certified public accountant. If the applicant is not audited in the ordinary course of business, in lieu of submitting audited financial statements it must submit unaudited financial statements from the prior fiscal year and certify that it will provide financial statements from the prior fiscal year that are audited by

a certified independent public accountant by a specified deadline during the long-form application review process.

(A) If the applicant has provided a voice and/or broadband service it must certify that it has filed FCC Form 477s as required during this time period.

(B) If the applicant has operated only an electric transmission or distribution service, it must submit qualified operating or financial reports that it has filed with the relevant financial institution for the relevant time period along with a certification that the submission is a true and accurate copy of the reports that were provided to the relevant financial institution.

(ii) If an applicant cannot meet the requirements in paragraph (a)(7)(i) of this section, in the alternative it must submit the audited financial statements from the three most recent fiscal years and a letter of interest from a bank meeting the qualifications set forth in paragraph (c)(2) of this section, that the bank would provide a letter of credit as described in paragraph (c) of this section to the bidder if the bidder were selected for bids of a certain dollar magnitude.

(8) Certify that the applicant has performed due diligence concerning its potential participation in the Rural Digital Opportunity Fund.

(b) Application by winning bidders for Rural Digital Opportunity Fund support—

(1) *Deadline.* As provided by public notice, winning bidders for Rural Digital Opportunity Fund support or their assignees shall file an application for Rural Digital Opportunity Fund support no later than the number of business days specified after the public notice identifying them as winning bidders.

(2) *Application contents.* An application for Rural Digital Opportunity Fund support must contain:

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter;

(ii) Certification that the applicant is financially and technically qualified to meet the public interest obligations for Rural Digital Opportunity Fund support in each area for which it seeks support;

(iii) Certification that the applicant will meet the relevant public interest obligations, including the requirement that it will offer service at rates that are equal or lower to the Commission's reasonable comparability benchmarks for fixed wireline services offered in urban areas;

(iv) A description of the technology and system design the applicant intends

to use to deliver voice and broadband service, including a network diagram which must be certified by a professional engineer. The professional engineer must certify that the network is capable of delivering, to at least 95 percent of the required number of locations in each relevant state, voice and broadband service that meets the requisite performance requirements for Rural Digital Opportunity Fund support;

(v) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the Rural Digital Opportunity Fund for the first two years of its support term and that the applicant will comply with all program requirements, including service milestones;

(vi) A description of how the required construction will be funded, including financial projections that demonstrate the applicant can cover the necessary debt service payments over the life of the loan, if any;

(vii) Certification that the party submitting the application is authorized to do so on behalf of the applicant; and

(viii) Such additional information as the Commission may require.

(3) No later than the number of days provided by public notice, the long-form applicant shall submit a letter from a bank meeting the eligibility requirements outlined in paragraph (c) of this section committing to issue an irrevocable stand-by letter of credit, in the required form, to the long-form applicant. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit.

(4) No later than the number of days provided by public notice, if a long-form applicant or a related entity did not submit audited financial statements in the relevant short-form application as required, the long-form applicant must submit the financial statements from the prior fiscal year that are audited by a certified independent public accountant.

(5) No later than 180 days after the public notice identifying it as a winning bidder, the long-form applicant shall certify that it is an eligible telecommunications carrier in any area for which it seeks support and submit the relevant documentation supporting that certification.

(6) *Application processing.* (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at

any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each long-form applicant that may be authorized to receive Rural Digital Opportunity Fund support after the long-form applicant submits a letter of credit and an accompanying opinion letter as described in paragraph (c) of this section, in a form acceptable to the Commission. Each such long-form applicant shall submit a letter of credit and accompanying opinion letter as required by paragraph (c) of this section, in a form acceptable to the Commission no later than the number of business days provided by public notice.

(vi) After receipt of all necessary information, a public notice will identify each long-form applicant that is authorized to receive Rural Digital Opportunity Fund support.

(c) *Letter of credit.* Before being authorized to receive Rural Digital Opportunity Fund support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) *Value.* Each recipient authorized to receive Rural Digital Opportunity Fund support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to at a minimum the amount of Rural Digital Opportunity Fund support that has been disbursed and that will be disbursed in the coming year, until the Universal Service Administrative

Company has verified that the recipient met the final service milestone as described in § 54.802(c).

(i) Once the recipient has met its 60 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

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

(2) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(i) Any United States bank

(A) That is insured by the Federal Deposit Insurance Corporation, and

(B) That has a bank safety rating issued by Weiss of B – or better; or

(ii) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB – or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB – or better (or an equivalent rating from another nationally recognized credit rating agency); or

(iv) Any non-United States bank:

(A) That is among the 100 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date);

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission;

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB – or better rating by Standard & Poor's; and

(D) Issues the letter of credit payable in United States dollars.

(3) A long-form applicant for Rural Digital Opportunity Fund support shall provide with its letter of credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(4) Authorization to receive Rural Digital Opportunity Fund support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

(i) Failure by a Rural Digital Opportunity Fund support recipient to meet its service milestones as required by § 54.802 will trigger reporting obligations and the withholding of support as described in § 54.320(d). Failure to come into full compliance within 12 months will trigger a recovery action by the Universal Service Administrative Company. If the Rural Digital Opportunity Fund recipient does not repay the requisite amount of support within six months, the Universal Service Administrative Company will be entitled to draw the entire amount of the letter of credit and may disqualify the Rural Digital Opportunity Fund support recipient from the receipt of Rural Digital Opportunity Fund support or additional universal service support.

(ii) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau, or its respective designees, which letter, attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.805 Rural Digital Opportunity Fund public interest obligations.

(a) Recipients of Rural Digital Opportunity Fund support are required to offer broadband service with latency suitable for real-time applications, including Voice over internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas. For purposes of determining reasonable comparable usage capacity, recipients are presumed

to meet this requirement if they meet or exceed the usage level announced by public notice issued by the Wireline Competition Bureau. For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or no more than the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(b) Recipients of Rural Digital Opportunity Fund support are required to offer broadband service meeting the performance standards for the relevant performance tier.

(1) Winning bidders meeting the baseline performance tier standards are required to offer broadband service at actual speeds of at least 25 Mbps downstream and 3 Mbps upstream and offer a minimum usage allowance of 150 GB per month, or that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher, and announced annually by public notice issued by the Wireline Competition Bureau over the 10-year term.

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

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

(4) For each of the tiers in paragraphs (b)(1) through (3) of this section, bidders are required to meet one of two latency performance levels:

(i) Low latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds; and

(ii) High latency bidders will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, demonstrate a score of four or higher using the Mean Opinion Score (MOS).

(c) Recipients of Rural Digital Opportunity Fund support are required to bid on category one

telecommunications and internet access services in response to a posted FCC Form 470 seeking broadband service that meets the connectivity targets for the schools and libraries universal service support program for eligible schools and libraries (as described in § 54.501) located within any area in a census block where the carrier is receiving Rural Digital Opportunity Fund support. Such bids must be at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

§ 54.806 Rural Digital Opportunity Fund reporting obligations, compliance, and recordkeeping.

(a) Recipients of Rural Digital Opportunity Fund support shall be subject to the reporting obligations set forth in §§ 54.313, 54.314, and 54.316.

(b) Recipients of Rural Digital Opportunity Fund support shall be subject to the compliance measures, recordkeeping requirements, and audit requirements set forth in § 54.320.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2019-0074]

RIN 2127-AL87

Federal Motor Vehicle Safety Standards; Technical Corrections and Clarifications Related to Tires and Rims

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes amendments to Federal Motor Vehicle Standard (FMVSS) No. 109 in response to a petition from the Tire and Rim Association to clarify the applicability of the FMVSSs to certain types of tires intended for use on trailers. Based on a review of prior amendments to FMVSS Nos. 109 and 119, NHTSA concludes that it inadvertently made these tires subject to both FMVSS Nos. 109 and 119, when it was the agency's intent to make them subject only to FMVSS No. 119. This document also proposes nonsubstantive technical corrections to tire and rim regulations.

DATES: Submit comments on or before September 20, 2019.

ADDRESSES: You may submit comments electronically to the docket identified in the heading of this document by visiting the following website:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

Regardless of how you submit your comments, you should mention the docket number identified in the heading of this document.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to www.regulations.gov, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through www.dot.gov/privacy. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, by telephone at (202) 366-2992, and by fax at (202) 366-3820. You may send mail to this official at the National Highway Traffic Safety

Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Tire & Rim Association Petition and Background

On June 26, 2003, the agency published a final rule amending several Federal Motor Vehicle Safety Standards (FMVSSs) related to tires and rims.¹ That rulemaking was completed as part of a comprehensive upgrade of existing safety standards and the establishment of new safety standards to improve tire safety, as required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. That final rule included extensive revisions to the tire standards and to the rim and labeling requirements for motor vehicles.

The June 2003 final rule established a new FMVSS No. 139 to provide upgraded requirements for tires for passenger cars and light trucks. In addition, the final rule changed the applicability of FMVSS No. 109 and FMVSS No. 119. Previously, FMVSS No. 109 applied solely to tires for passenger cars and FMVSS No. 119 applied to tires for all other vehicles. The June 2003 final rule made FMVSS No. 109 applicable to bias-ply tires and tires for use on light vehicles (those with a GVWR of 10,000 lb. or lower) and made FMVSS No. 119 applicable to tires used on motorcycles and heavy vehicles (those with a GVWR of over 10,000 lb.) The requirements set forth in the June 2003 final rule were set to become effective on June 1, 2007.

NHTSA received petitions for reconsideration of the June 2003 final rule from eight petitioners addressing 18 different issues. In a January 6, 2006 final rule, NHTSA responded to these petitions.² Pertinent to this rulemaking, we received petitions to amend the applicability section of FMVSS No. 119 to indicate that it applies to Special Trailer (ST), Farm Implement (FI), and tires with rim diameter code of 12 and below (hereinafter collectively referred to as "specialty tires"). In the June 2003 final rule, NHTSA had excluded specialty tires from FMVSS No. 139 and indicated they would remain subject to FMVSS No. 109 and FMVSS No. 119. However, the petitioners indicated that specialty tires have been and should remain subject only to FMVSS No. 119 because they are not used on passenger cars.

In response to the petitions, NHTSA amended the application sections of FMVSS Nos. 109, 119, and 139 in order

¹ 68 FR 38116.

² 71 FR 877.