

**List of Subjects in 46 CFR Part 506**

Administrative practice and procedure, Claims, Penalties.

For the reasons stated in the preamble, 46 CFR part 506 is amended as follows:

**PART 506—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT**

■ 1. The authority citation for part 506 continues to read as follows:

**Authority:** 28 U.S.C. 2461.

■ 2. Amend § 506.4 by revising paragraph (d) to read as follows:

**§ 506.4 Cost of living adjustments of civil monetary penalties.**

\* \* \* \* \*

(d) *Inflation adjustment.* Maximum civil monetary penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

TABLE 1 TO PARAGRAPH (d)

United States Code citation	Civil monetary penalty description	Maximum penalty as of January 15, 2019	Maximum penalty as of January 15, 2020
46 U.S.C. 42304 .....	Adverse impact on U.S. carriers by foreign shipping practices .....	\$2,103,861	\$2,140,973
46 U.S.C. 41107(a) .....	Knowing and Willful violation/Shipping Act of 1984, or Commission regulation or order.	60,039	61,098
46 U.S.C. 41107(a) .....	Violation of Shipping Act of 1984, Commission regulation or order, not knowing and willful.	12,007	12,219
46 U.S.C. 41108(b) .....	Operating in foreign commerce after tariff suspension .....	120,079	122,197
46 U.S.C. 42104 .....	Failure to provide required reports, etc./Merchant Marine Act of 1920 ....	9,472	9,639
46 U.S.C. 42106 .....	Adverse shipping conditions/Merchant Marine Act of 1920 .....	1,894,261	1,927,676
46 U.S.C. 42108 .....	Operating after tariff or service contract suspension/Merchant Marine Act of 1920.	94,713	96,384
46 U.S.C. 44102, 44104 .....	Failure to establish financial responsibility for non-performance of transportation.	23,924	24,346
46 U.S.C. 44103, 44104 .....	Failure to establish financial responsibility for death or injury .....	798	812
31 U.S.C. 3802(a)(1) .....	Program Fraud Civil Remedies Act/making false claim .....	11,463	11,665
31 U.S.C. 3802(a)(2) .....	Program Fraud Civil Remedies Act/giving false statement .....	11,463	11,665

By the Commission.

**Rachel Dickon,**  
Secretary.

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[WC Docket No. 10-90; DA 19-1165; FRS 16332]

**Connect America Fund**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final action.

**SUMMARY:** In this document, the Wireline Competition Bureau (the Bureau) establishes procedures to ensure swift and efficient administration of the voluntary process for the long-form applicants in the Connect America Phase II Auction (Phase II Auction) to facilitate post-auction review of the defined deployment obligations (and associated support) on a state-by-state basis when the total number of actual locations in eligible areas is less than the number of funded locations.

**DATES:** Effective February 12, 2020.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Order in WC Docket No. 10-90; DA 19-1165, adopted and released on November 12, 2019. The full text of the 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://docs.fcc.gov/public/attachments/DA-19-1165A1.pdf>.

**I. Introduction**

1. The Phase II Auction is one part of a multi-step process comprehensively reforming and modernizing the high-cost component of the Universal Service Fund. At the conclusion of this auction, 103 bidders won \$1.49 billion in support over 10 years to provide fixed broadband and voice services to over 700,000 locations in high-cost areas in 45 states. Then, 134 applicants submitted the long-form application portion of the FCC Form 683 by the October 15, 2018 deadline. For these long-form applicants, the Commission created a voluntary process to facilitate post-auction review of the defined deployment obligations (and associated support) on a state-by-state basis when

the total number of actual locations in eligible areas is less than the number of funded locations. The Bureau in the Order establishes procedures to ensure swift and efficient administration of this process.

**II. Discussion**

2. In the Order, the Bureau establishes an Eligible Locations Adjustment Process (ELAP) consistent with the parameters set forth in the *Phase II Auction Reconsideration Order*, 83 FR 15982, April 13, 2018, and prior Commission guidance for making adjustments to defined deployment obligations. The Bureau adopts a challenge framework, generally as proposed in the *Locations Adjustment Public Notice*, 83 FR 49040, September 28, 2018. After setting forth this framework, the Bureau follows with more detailed information regarding evidentiary standards, location data formatting, confidentiality of information, and future post-adjudication verification. The Bureau conforms this process, where necessary, to the requirements of the Privacy Act of 1974, as amended, and related federal rules.

3. *Participant Submission.* This process begins with a new, one-time collection of information from support recipients that seek to participate in ELAP (participants) that includes

information about all eligible locations within the state as well as evidence substantiating the completeness and accuracy of such information. Participants must certify the accuracy of their submissions as of the date of submission under penalty of perjury in accordance with the proposal in the *Locations Adjustment Public Notice*. As specified in the Bureau's proposal, this certification must be signed by an individual with relevant knowledge (such as an officer of the company), certifying under penalty of perjury that the participant has engaged in due diligence to verify statements and evidence presented in this challenge process and that such information is accurate to the best of the certifying party's knowledge and belief.

4. Participants may certify their submissions at any time and amend and recertify their submissions until the filing deadline. In permitting this flexibility, the Bureau concurs with Verizon's comment that the Bureau's original proposal—requiring certification of submissions at or near the deadline for submitting information—is too onerous because it requires participants to continuously monitor and update their data and submissions as updates are made to a data source/sources; instead, participants will be able to rely on any reasonably current data source, *i.e.*, a source containing data that describes conditions as they exist within the year preceding the submission deadline.

5. In the *Phase II Auction Reconsideration Order*, the Commission required participants to file actual location data “within a year” of the publication of the Phase II auction closing public notice which occurred on August 28, 2018. Pursuant to the delegated authority entrusted to us in the *Phase II Auction Reconsideration Order* to adopt “necessary implementation details,” and to issue an order “detailing instructions, deadlines and requirements for filing valid geolocation data and evidence for both support recipients and commenters,” the Bureau waives and extends this deadline consistent with the timing of the Bureau's implementation. The Bureau's implementation of ELAP has and will continue to involve significant coordination of resources, including the creation of a specific module in the High Cost Universal Broadband (HUBB) portal to accept ELAP-related filings and to facilitate access to such information; the module, in turn, will help facilitate swift implementation of similar processes in other high-cost programs. The Bureau will announce by public notice when the module is ready to

accept the required information from participants as well as the deadline for submitting and certifying such information. The Bureau will set a deadline that provides participants with at least a three-month timeframe to upload information into the module, correct any errors identified through the module's validation processes, and certify such information. The submission deadline cannot occur before the Commission receives OMB approval of the collection pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

6. *Protective Order*. Before the participant's filing deadline, the Bureau will adopt a protective order consistent with the requirements specified herein to protect against disclosure or misuse of information submitted by parties pursuant to ELAP.

7. *Prima Facie Determination*. Within 60 days following the participant submission deadline, the Bureau will release a list of participants that have met the prima facie evidentiary standards for location modification, along with the certain location information for qualifying locations and prospective locations, *i.e.*, state, study area code (SAC), addresses, geocoordinates, and number of units. The Bureau directs the Universal Service Administrative Company (USAC) to use the reported geocoordinates of these locations to populate a publicly available map (ELAP Map) of presumptively eligible locations so that outside parties that qualify as a relevant stakeholder may decide whether to file challenges. The Bureau will dismiss any participant submission that is not certified, that includes incomplete or improperly formatted location data, that fails to include a description of methodology for identifying all eligible locations, or that fails to provide at least some supporting evidence (or show cause why supporting evidence is not needed or unavailable).

8. *Stakeholder Challenge*. Eligible stakeholders will then have 90 days from the public release of the participants' location information to establish their eligibility, sign the protective order, and review and challenge the participants' evidence (challenge window). WISPA recommends that the Bureau limits the challenge window to 60 days, stressing that stakeholders will prepare their challenge information concurrent with the preparation and submission of information by participants. While stakeholders may do some preparation at the same time as participants, stakeholders will submit challenges that

are responsive to the participants' location information by identifying locations, or multiple units, that were not reported or misreported by the participant. For this reason, stakeholders will need time to access and review participants' location information and to compare such information against their own. A 60-day time frame does not afford stakeholders adequate time to complete these steps prior to submitting their challenges, particularly as some stakeholders may be state regulatory or public interest entities that will be responding to participant information for large or widespread geographic areas.

9. The stakeholder location information will be used to further populate and revise the ELAP Map to inform and supplement the work of other stakeholders filing challenges against the same participant in the same state prior to the close of the challenge window. Participants will have access to this information as it is processed but will not be able to file replies until after the close of the challenge window. Unlike participant location information, stakeholder location information will not be publicly available.

10. *Participant Reply*. Challenged participants will have 30 days from the stakeholder submission deadline (response window) to: (1) Access and review certified data submitted by the stakeholder with respect to the challenged area; and (2) submit additional data/information to oppose the challenge (response window). If a challenged participant does not oppose the challenge, the participant need not submit any additional information. A challenged participant, however, will not have a further opportunity to submit any additional information or data for the Bureau's consideration after the response window closes.

11. The response window is for a longer time frame than the Bureau originally proposed, as most commenters stress the need for at least 30 days to review stakeholder filings and prepare a response. Participants must certify, under penalty of perjury, the truth and accuracy of information submitted in the reply. Verizon requests a 45-day window for preparing and filing a reply to “give support recipients enough time to review the diverse forms of evidence and, if necessary, conduct field research to determine whether the additional addresses submitted by commenters meet the Commission's definition of a ‘location.’” Participants, however, should be well familiar with supporting evidence, will have a targeted number of locations to research, and are likely to already have (or should

have) some information about those locations because of their initial submissions. For this reason, the Bureau determines that a 30-day response window strikes the appropriate balance between the interests of the participant and the public interest in swift resolution of these claims.

12. *Location Adjustment.* In the *Phase II Auction Reconsideration Order*, the Commission directed the Bureau to adjudicate participants' requests for adjustment of defined deployment obligations based on the preponderance of the evidence standard. In the *Locations Adjustment Public Notice*, the Bureau proposed that participants would also bear the burden of persuasion. The Bureau received no comments on such proposal. Accordingly, the Bureau will only modify a participant's defined deployment obligation to the extent that the participant produces adequate evidence demonstrating that it is more likely than not that the defined deployment obligation is greater than the number of actual locations within the state. In adjudicating these claims, the Bureau will consider stakeholder challenges and participant replies to determine not only the overall credibility of participants' information but also to adjust the participants' qualifying location count.

13. The Bureau declines WISPA's suggestion that it resolves these cases within 90 days of the reply deadline. While the Bureau acknowledges that expeditious resolution is critical to participants' financial and deployment plans (including adjustments to the letter of credit), it is difficult to predict the number of participants and stakeholders, and the associated amount of information that may be submitted; moreover, the Bureau expects that information is likely to be highly variable. During ELAP, participants may deploy service to, and report as served, any known actual location and must report such locations in their initial ELAP submission. The Bureau expects to resolve all ELAP disputes well in advance of the participants' first deployment milestone. The Bureau also declines to adopt WISPA's suggestion that the Bureau allow participants and stakeholders to bypass the ELAP adjudication process by entering into negotiated settlements, subject to review and adjustment by the Bureau. Allowing for a negotiated settlement process would introduce additional administrative burdens without corresponding efficiencies, as both processes should produce the same result, *i.e.*, a complete and accurate accounting of all qualifying locations.

Without careful Bureau oversight, a settlement process between outside parties is less optimal and could introduce into ELAP additional considerations contrary to USF-related goals as well as disparities in bargaining power and expertise that ELAP protects against.

14. *Support Adjustment.* The Commission has directed that, in circumstances where the Bureau determines that modification of the participant's number of funded locations is warranted, it must reduce the authorized support on a pro rata basis. Consistent with the Bureau's proposal, it will order a pro-rata reduction in future payments for the remainder of the support term proportionally to reflect the total amount of reduction. Participants will be permitted to adjust their letters of credit to reflect the new authorized funding amount once the Bureau's order modifying the authorized support is issued.

15. As an initial step, the Commission requires participants to submit a list of qualifying locations within the state. Qualifying locations include every location eligible for high-cost support, *i.e.*, residential housing unit or small business served with mass market services. In the Bureau's *HUBB Reporting Public Notice*, the Bureau clarified that qualifying locations cannot be abandoned, derelict, condemned, or otherwise uninhabitable. The Bureau and USAC have provided further guidance and clarification on the meaning of a qualifying location for carriers reporting location data into the HUBB to demonstrate compliance with defined deployment obligations, which the Bureau now incorporates here as generally applicable to ELAP. *HUBB Public Notice*, 31 FCC Rcd 12900; HUBB Frequently Asked Questions, [https://www.usac.org/\\_res/documents/hc/pdf/tools/HUBB-FAQ.pdf](https://www.usac.org/_res/documents/hc/pdf/tools/HUBB-FAQ.pdf). Participants should follow this guidance unless and until the Bureau or the Commission issues different guidance.

16. As the Bureau noted in the *Locations Adjustment Public Notice*, however, there are important distinctions in reporting served locations in the HUBB for the purpose of demonstrating compliance with a defined deployment obligation and reporting qualifying locations for the purpose of seeking adjustment to a defined deployment obligation. Carriers reporting information in the HUBB must report information about served locations, *i.e.*, qualifying locations to which the reporting carrier can provide the requisite level of service within ten business days of a customer request.

Such locations need not be occupied but cannot be unfinished or an ongoing or future real estate development. In ELAP, however, participants seeking to reduce their defined deployment obligation are to report all locations that they will be capable of serving within the six-year build out period. Accordingly, the Bureau sought comment on whether participants should be required or permitted to include in their location information, information about unfinished properties or prospective developments that have a reasonable certainty of coming into existence within the six-year build-out period (prospective locations).

17. ITTA argues that participants must report prospective locations to avoid a "perverse" effect on universal service goals where the "net diminution in unserved locations would be undermined by the addition of new unserved locations that would have been served" had the participants' defined deployment obligation not been adjusted. ITTA stresses that this is particularly true when "unfinished residential or business locations are at the edge of participants' service areas and the business case does not exist to extend service to these locations absent universal service support." Most commenters, however, argue against such a requirement, stressing that there are too many variables in determining the probability of whether and, if so, when, an unfinished or planned development or construction project will be completed. These commenters stress that the research and documentation requirements necessary to identify all prospective locations is too burdensome. Further, USTelecom asserts, requiring participants to serve a revised location count that includes prospective locations would be an "unfair burden completely outside of the provider's control."

18. The Bureau agrees with the majority of commenters. Accordingly, the Bureau will not require, but will permit, participants to report prospective locations as part of their initial submission. The Bureau finds that this approach is consistent with the purpose and scope of ELAP, a process designed to address the inherent limitations in the model's underlying data inputs by reducing funded location estimates. This process refines the defined deployment obligation but does not alter the nature of the obligation; participants, like all other funding recipients in the same programs, must serve a specific number of locations with the requisite level of service by certain deadlines. The number of locations that they must serve is based

on data estimates describing conditions at a point in time. Participants may report toward satisfaction of their build-out requirements, any qualifying location within eligible areas, regardless of whether such location preexists the estimates or is newly built. They are also expected to adopt flexible network plans that permit reallocation of resources, as necessary, to deal with inevitable changes in consumer demand, network capacity, as well as location eligibility.

19. The Bureau does not expect significant changes in the net number of actual locations in these high-cost areas within the time-limited build-out period, although it recognizes that there is likely to be some fluctuation in where locations are situated as certain locations become unserviceable and new locations are built. If the Bureau were to require participants to count *all* prospective locations toward their overall qualifying location count, participants would have less overall flexibility in responding to such fluctuations in comparison to a Phase II auction support recipient that did not participate in ELAP and therefore, has a defined deployment obligation that does not include prospective locations. The Bureau agrees with the views of several commenters that mandatory reporting of all prospective locations introduces uncertainty into an otherwise clear evidentiary burden. The Bureau further recognizes, however, consistent with ITTA comments, that there may be circumstances where a participant intentionally excludes from its location counts almost completed developments at the edge of denser communities, where service costs may exceed that of the average qualifying location due to the necessity of extending network facilities. For this reason, the Bureau will permit relevant stakeholders to argue for inclusion of these kinds of locations in actual locations counts.

20. Some participants may want to commit to serving some number of locations greater than the number of qualifying actual locations that it has been able to find, but less than the CAM-estimated number of locations. Accordingly, and consistent with some commenters' suggestion, the Bureau will permit participants to report location data for prospective locations. These prospective locations may include plots, parcels, or partially completed structures in planned unit developments or structures currently undergoing renovation. Participants should exercise due diligence when assessing the likelihood that these reported prospective locations will become qualifying locations and in

assessing the overall probability of fluctuations in the net number of qualifying locations within the six-year buildout time frame to ensure future compliance with adjusted defined deployment obligations.

21. Together, qualifying locations and voluntarily-reported prospective location data form the actual location count that provides the evidentiary basis for adjusting participants' defined deployment obligation. As recognized by the Commission in the *Phase II Auction Reconsideration Order*, however, participants have the incentive to maximize their average ratio of support and build-out costs, even when such maximization means leaving actual locations unserved and support unclaimed. For this reason, the Commission directed the Bureau to adopt requirements that would help ensure that the actual location counts submitted by participants are complete and demonstrate that "no additional locations could be found." As explained more fully in the following, these requirements include the submission of a methods description and some supporting evidence that those methods were applied systematically in the relevant areas.

22. *Methods Description.* In the *Locations Adjustment Public Notice*, the Bureau proposed that participants submit, in addition to location information, information regarding the participants' methodology for identifying all such locations within eligible areas within the state. The Bureau sought comment on whether it should require participants to use specific Global Positioning System (GPS) methods or if they should be permitted to rely on any of the three generally accepted GPS methods outlined by USAC in its HUBB guidance, *i.e.*, field research, computer-based geolocation, or automated address geolocation (databases). All commenters commenting on this issue supported flexibility of method, stating that the best choice of method may be determined by variable geographic features, availability of resources, and the technology used to provide service. The Bureau agrees with commenters' suggestions. Accordingly, participants will be able to use any of the three generally accepted GPS methods to compile location information.

23. In the *Locations Adjustment Public Notice*, the Bureau also sought comment on whether participants should be required to justify their methodological choices and make clear that they systematically and reasonably gathered location data for all eligible areas. Such information is essential to

the Bureau's ability to evaluate whether the participants' location information is accurate and complete. Consistent with this proposal, several commenters acknowledge that a description of method is necessary for the evaluation of location information.

24. The Bureau acknowledges Hughes' concern that many commercial vendors treat their methods for identifying locations as proprietary content and prevent disclosure. The Bureau declines to follow Hughes' suggestion, however, to require all potential commercial vendors or the actual vendors upon which participants rely to establish that their databases meet Commission standards. Commission collection and comparison of such data methods and information from such vendors (which could be numerous), as well as the management of such information, is prohibitively burdensome, particularly given the limited purpose and time constraints of this process. Further, the Bureau lacks delegated authority to impose such obligations.

25. The Bureau also disagrees with Hughes contention that absent such a process, requiring participants to establish that their location data is accurate, reliable and complete excludes reliance on most commercial databases. Participants need not disclose the specific proprietary methods used by vendors to compile location data so long as they demonstrate that the database or geolocation software has an evidentiary basis, such as customer records. Participants must also establish the source's accuracy and reliability in the relevant geographic areas, which may be accomplished through, for example, statistical sampling and verification of sampled locations in eligible areas. While the Bureau encourages participants to use publicly available databases/information, including E911, tax records, real estate records, and other publicly available resources, participants must account for differences between such databases/information and the Commission's requirements (such as in how buildings and other structures are defined as locations).

26. The Bureau also declines to adopt USTelecom's suggestion that the Commission make available to participants all CAM data relevant to CAM funded location estimates so that participants can demonstrate that their information is more accurate than CAM estimates. USTelecom stresses, in particular, the need to access information about the "surrogate" locations that the model randomly placed along roadways when precise

geocoordinates could not be identified. The Connect America Cost Model (CAM), however, is used to provide an estimate of the overall number of locations in eligible areas and, as explained in the *CAM Inputs Order*, 79 FR 29111, May 21, 2014, whether a location is identified by geocoordinates or randomly placed is irrelevant to whether the location is reasonably determined to be a high-cost location in the relevant census block. The Bureau also explained that providing geographic coordinates of locations would require the Bureau to publicly release proprietary commercial data—the geographic coordinates of those locations that came from a commercial data source, and “[a]s a practical matter, after the location demand data are generated, information about whether any individual location was based on a geocoded address or randomly assigned is not retained.” Accordingly, the Bureau cannot release information that no longer exists and it would decline to release it if it did. To meet their evidentiary burdens, participants are not measuring their location information against CAM estimates but providing detailed information about individual actual locations in eligible areas subject to challenge.

27. *Supporting Evidence.* In the *Locations Adjustment Public Notice*, the Bureau also proposed that participants submit evidence supporting their descriptions of methods and location information. Several commenters express concern that this requirement is “excessive” or “overly prescriptive.” The Bureau disagrees. Absent supporting evidence, the Bureau’s evaluation of the *completeness* of the location list would largely be based on the truth and candor of the participant and where applicable, stakeholder challenges. Moreover, requiring the submission of supporting evidence does not impose significantly greater evidentiary burdens since it is the by-product of participants’ research methods and should be kept by participants for future auditing purposes.

28. The Bureau will, however, allow participants flexibility in determining what and how much evidence to submit. Participants may, for example, submit print-outs (or links to) web-based photography, database pages, and/or public records information for a sample of randomly selected land units (*i.e.*, parcels, plots) within the relevant eligible areas cross-referenced against reported locations. Participants may also choose to submit location information for any location that it has affirmatively determined to be a non-

qualifying location together with a description of the reason why such structure should not be counted, *e.g.*, derelict, industrial facility, temporary or mobile unit, or incomplete build. To support such a conclusion, participants may submit, as requested by WISPA in its comment, “qualitative evidence,” such as roof size or other visual evidence.

29. In making these decisions, the Bureau has carefully weighed the burdens on participants (and stakeholders) against the need to have sufficient data and evidence to ensure that the adjusted defined deployment obligations will not undercut service to locations that are the most expensive to serve. As with any process, these benefits and burdens may not fall equally on every participant. WISPA, for example, states that small providers may find participation cost-prohibitive, time-consuming, and generally not worth the benefits, particularly if the participant must purchase expensive software and/or conduct ground studies. To limit potential burdens on small providers, the Bureau has provided participants with considerable discretion in adopting processes to identify locations in eligible areas. The Bureau has only required participants describe the steps that they have taken to ensure that their eligible location lists are complete and accurate and submit a limited amount of readily-available supporting evidence. If such requirements are too expensive or burdensome for successful Phase II Auction applicants, then they may choose not to participate in this process and thereby assume the associated risk of noncompliance if they are unable to meet their defined deployment obligation.

30. *Stakeholder Eligibility.* The Bureau adopts its proposal to define relevant stakeholders eligible to participate as challengers in this process as government entities (state, local, and Tribal) as well as individuals or non-governmental entities with a legitimate and verifiable interest in ensuring service in the relevant areas. In this regard, ELAP is distinguishable from other similar processes designed to test service in eligible areas because, unlike in those processes, entities or individuals are likely to have specific knowledge required to support a challenge: Information about omitted or incorrectly reported locations. Moreover, individuals or entities might have more specific and up-to-date information than possessed by governing authorities and accordingly they may be able to represent their interest in service to eligible areas.

Finally, the Bureau is motivated to conduct an adjustment process that is as open and transparent as possible to ensure the most complete, accurate, and reliable outcomes. Accordingly, the Bureau’s definition includes individuals or entities residing or doing business in the relevant areas as well as those entities with a legitimate and verifiable interest, such as landlords or property developers. Commenters generally supported the Bureau’s proposal.

31. Several commenters also support excluding individuals or entities otherwise meeting the definition of a relevant stakeholder if such individual or entity has a controlling interest in a competitive provider in the same area and market. The Bureau finds that such a restriction is necessary. Competitors have unique incentives that work at cross purposes with this process, including an interest in facilitating future default of participants by obstructing this process. In other challenge processes designed to distinguish between unserved and served areas, competitors were uniquely situated in terms of access to the relevant information, *i.e.*, they have records demonstrating service at a particular location. Here, while competitive providers may have some location information, such information is likely to be more readily available to individuals and other entities in the communities in question. While any individual or entity otherwise eligible to participate as a stakeholder may request waiver of this restriction, the Bureau generally finds that the public interest in protecting the integrity of this process against potential anticompetitive behaviors outweighs the benefits of permitting a limited number of competitive entities to challenge participant location information.

32. To determine the eligibility of non-government entities or individuals to participate as a stakeholder, the Bureau will use one more automated data source that compile public records information, such as LexisNexis Public Records, to verify identity and eligibility. The Bureau will collect from all prospective stakeholders through the HUBB module basic identifying and contact information, *e.g.*, name, residential or business address, phone number, and email addresses. The Bureau may also collect other kinds of information as required by the automated data source to verify identity. To demonstrate eligibility, the prospective stakeholder must also provide the address of the relevant locations in the eligible areas and information regarding the nature of the interest in that location, *e.g.*, residency,

ownership, lease management. To the extent that such information is available in public records, the commercial data source may verify that the interest is held by the individual/entity. If the Bureau cannot verify the identity of the stakeholder and his/her/its interest in ensuring service in eligible areas using automated data sources, the Bureau will not permit the stakeholder to access participant information.

33. As a condition of participating in this process, the stakeholder must acknowledge and consent to the disclosure of its contact information to the relevant participant and the linking of such information to the challenge evidence submitted. The stakeholder must also certify that it satisfies the Bureau's definition of relevant stakeholder. The Bureau will review such information and make an affirmative determination whether to allow further access and participation by the stakeholder.

34. *Stakeholder Location Evidence.* Once a stakeholder demonstrates that it meets the definition of a relevant stakeholder, makes the requisite certifications, and enters into a protective order, as appropriate, a stakeholder may (1) access confidential participant information for areas it wishes to challenge; (2) identify the area(s) it wants to challenge; (3) submit evidence supporting the challenge; and (4) certify its challenge for the specified area(s). Based on the Bureau's consideration of the record and given the policy objectives of this process, it finds that to certify a challenge, a stakeholder must submit location information for omitted or inaccurately reported locations generally in the same format as required of participants, *e.g.*, geocodes, addresses, number of units. Such information may include omitted prospective locations, but such locations must be separately identified as existing and prospective locations.

35. GeoLinks and WISPA assert that, in addition to location information, the Commission should require stakeholders to provide a short description of their methods, including an explanation as to why their methods produce a more accurate data set than that of the participant. These commenters assert that the Commission should reject any challenge that merely alleges deficiencies in participants' methods or evidence without presenting any additional location information since such a challenge would be too onerous to verify or refute when applied to the particular facts relevant to the eligible areas. These commenters also would require stakeholders to submit supporting evidence to the same extent

that the Bureau requires participants to submit this information. WISPA adds to such assertions that any stakeholder relying on publicly-available data must submit such data as part of its challenge.

36. Despite what commenters argue, the Commission decided that participants carry the burden of proof and, therefore, heavier evidentiary burdens. In the Order, the Bureau has determined that participants will also carry the burden of persuasion. The Bureau also notes that the imposing certain evidentiary requirements might dissuade stakeholders with limited experience and expertise from participating. Accordingly, the Bureau is not convinced by the assertions of some commenters that it should impose the same evidentiary requirements on stakeholders that the Bureau imposes on participants. Instead, the Bureau requires stakeholders to submit some but not all the information required of participants.

37. Stakeholders must describe their methods for identifying locations, including any limitations thereof, and must submit proof that the location data describes a qualifying residential or small business location. We expect that there will be a variety of stakeholders responding to participants' submissions. Accordingly, the description of methodology may range from a simple explanation, such as might occur if a homeowner reports that his/her home has been omitted from the participant's list of qualifying locations, or a more in-depth explanation, such as might occur if a local government entity claims that several locations have been omitted from the participant's list. Generally, the Bureau has determined that sets of geocoordinates a distance of 36 feet or more from another will describe separate structures. Accordingly, when a stakeholder's location data falls within 36 feet of the geocoordinates reported by the participant (generally, an overlap in the first three decimal places of geocoordinates), the stakeholder must also explain why the location should be considered a separate and unique location from the location reported (*e.g.*, the location data describes a separate business or residential location or unit within the same property/parcel). These locations will be identified by USAC through its automated validation process. If a stakeholder reports prospective locations as omitted locations, it must explain why such location should be considered when determining participants' defined deployment obligations and submit some supporting evidence that the location will become a qualifying location within the six-year build-out

period. Stakeholders may include factual arguments demonstrating why their methodology produces location information more complete or accurate than that of the participant but are not required to do so. A stakeholder must certify that its submission is true and accurate and may revise and recertify its filing until the filing deadline.

38. Once a stakeholder submits its evidence in the HUBB, the system will conduct an automatic validation process to determine whether the stakeholder provided enough evidence to justify proceeding with each submitted challenge. The system will inform the stakeholder of any problems associated with the prior submission in due course. The stakeholder may submit additional or modified data, as required, to resolve the problem if it can do so before the deadline. Once the challenge window closes, however, the stakeholder will have no further opportunity to correct existing, or provide additional, information in support of its challenge. Only those challenges to areas that are certified by a stakeholder at the close of the window and validated by the HUBB will be considered.

39. The Bureau finds that providing challenged participants with a limited 30-day opportunity to submit additional data in response to a challenge promotes its goals of a fair and balanced process. It will also help ensure that the adjusted defined deployment obligations accurately reflect the actual number of locations (plus any prospective locations that the participant chooses to include). However, the Bureau expects stakeholders to provide irrefutable evidence of any omitted qualified locations overlooked by the participant, making responses largely unnecessary. The Bureau does not adopt specific evidentiary requirements for this reply process, preferring instead to defer to participants' judgment regarding the most probative evidence to rebut the stakeholders' information. The reply should not be used to introduce new evidence not responsive to the challenge or update preexisting evidence that is non-responsive to one or more stakeholder challenges. The information must be submitted in the same format as specified for participants' and stakeholders' data and information. Any information submitted must be certified as true and accurate by an officer of the participant under penalty of perjury.

40. In the *Phase II Auction Reconsideration Order*, the Commission determined that participants should be required to submit addresses and geocoordinates for eligible locations but otherwise requested that the Bureau develop formatting and evidentiary

requirements for location data after seeking notice and comment. In the *Locations Adjustment Public Notice*, the Bureau proposed adopting data format requirements for this process similar to those used for the HUBB, stressing several advantages to such an approach, including streamlined validations and future auditing of data, potential transferability of data to the HUBB, and preexisting and refined guidance for carriers reporting in the HUBB that can be adapted to the locations adjustment process. The Bureau and USAC developed these HUBB formatting standards to help ensure that a location may be easily distinguished from nearby properties and readily determined to be located within eligible areas. By adopting these standards, the Bureau gives both participants and stakeholders a meaningful opportunity to review location data. Commenters generally express support for the adoption of such standards.

41. Participants and stakeholders must submit location information in a tabular format (e.g., a .csv file) into a module within the HUBB. Such information will include (1) basic information, e.g., participant/stakeholder name and contact information; (2) information regarding the relevant geographic area, e.g., the relevant state and SAC; (3) location specific information, e.g., addresses, geocoordinates, and number of units; (4) method information, e.g., GPS methods and/or source used and the “as-of” date of such method or source; and (5) certification information, including the name of the officer certifying that the information is true and correct and his or her contact information. The module will also accept the participants’ methods description (e.g., as a .pdf file) and the supporting evidence (e.g., .pdf, jpeg).

42. In its comment (and in ex parte filings with the Bureau relating to HUBB functionality), USTelecom requests that geocoordinate reporting requirements be limited to the five decimal places rather than the currently required six places. USTelecom asserts that in the predominately rural areas served by participants, reporting at the fifth decimal place adequately ensures that the location will be readily identifiable by stakeholders and for future auditing purposes. USTelecom stresses that, in comparison, requiring a higher degree of accuracy places a significant burden on participants, noting that in CAF areas, the “rooftop level geocoding accuracy” is only approximately 55%. The Bureau generally agrees. Reporting accuracy at the fifth decimal place generally will enable stakeholders (and any future

auditor) to identify attached properties and to distinguish such properties from apartments and other multiple dwelling units. The Bureau does not, however, wish to foreclose a participant or stakeholder from entering more precise coordinates. Accordingly, the Bureau will configure the HUBB to allow participants to enter a trailing “0” in lieu of a sixth decimal place. Such entry will not be interpreted to suggest that the participant is certifying the accuracy of its information to the sixth decimal place.

43. In the *Phase II Auction Reconsideration Order*, the Commission provided that all evidence submitted by participants pursuant to this process would be subject to future audit and directed the Bureau to adopt parameters for such audits. These verifications will mirror HUBB verification processes. Because, however, participants’ submissions produce a “snapshot” of conditions as they exist at a specific point in time, verifying the accuracy, reliability, and completeness of participants’ location information may be increasingly difficult as time passes. For this reason, WISPA suggests that the Bureau limit verification to CAF Phase II support recipients’ six-year deployment period, while USTelecom proposes a more abbreviated time frame, i.e., 18-months after the participants’ certification.

44. The Bureau concludes that these verifications should be limited to the support term (plus any time reserved by USAC for final verification of HUBB deployment information). Such a time frame provides USAC and the participants with a realistic time frame to sample and test location information. The Bureau reminds participants that under section 54.320(b) of the Commission’s rules, all recipients of high-cost support must maintain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules and must maintain such records for a minimum of 10 years from the receipt of funding, and the Bureau interprets such requirement as applicable to this process. Participants may need to produce supporting evidence or documentation that is not already in the record in this proceeding and thus should retain all evidence and documentation gathered to identify all locations, as well as any documentation supporting its methodology.

45. In response to the Bureau’s request for comments, several commenters suggested specific circumstances when verification would be appropriate. For example, Hughes

proposes that verifications should be triggered when a participant frequently misreports location evidence toward its defined deployment obligation or when there are significant differences between the participant’s served location information and its ELAP location information. WISPA suggests that verifications are appropriate when the participant defaults or misreports served locations over 30% in any year or 15% in two years. The Bureau finds such suggestions compelling and will consider them in its verification decisions. The Bureau declines, however, to adopt any limiting criteria that would trigger verification and that might encourage participants to engage in strategic HUBB reporting or that would impliedly limit its discretion to conduct random audits.

46. If the Bureau discovers that actual locations were not reported by the participant, the Bureau will add the locations to the participant’s defined deployment obligation. If the participant cannot demonstrate compliance with the readjusted defined deployment obligation, the Bureau will find the participant in performance default and subject to the Commission’s default measures. In situations where it appears that the participant may have intentionally or negligently misrepresented the number of actual locations in ELAP, the Bureau may refer the case to the FCC’s Enforcement Bureau for further investigation and possible forfeiture penalty. The Bureau stresses that it is not limiting these actions to the deployment or support term and reserves the right, coterminous with Commission authority to recover improperly disbursed support, to act on information about inaccurate participant filings at any future point.

47. *Participant’s Information*. In the *Locations Adjustment Public Notice*, the Bureau noted similarities between served location data, which the Commission treats as non-confidential and makes publicly available, and ELAP location information. The Bureau also noted, however, important differences, namely, that unverified lists of actual locations, particularly when coupled with related evidence, could reveal competitively sensitive information regarding participants’ future deployment plans or link addresses and other information to specific individuals. For this reason, the Bureau will publicly disclose only certain ELAP location information, i.e., information that is generally publicly available from multiple data sources. All other information will be treated as presumptively confidential.

48. Competitors could use the confidential information filed by participants to the competitive disadvantage of the participant. Therefore, as some commenters suggest, the Bureau will permit participants to file such information pursuant to a Protective Order. In particular, as specified in more detail in the Protective Order, the Bureau restricts availability of this information as follows: (1) In the case of commercial entities having a competitive or business relationship with the participant whose confidential information it seeks and which have obtained a waiver of the definition of stakeholder, to In-House Counsel not involved in competitive decision-making, and to their Outside Counsel of Record, their Outside Consultants and experts whom they retain to assist them in this and related proceedings, and employees of such Outside Counsel and Outside Consultants; (2) to employees and representatives of commercial entities having no competitive or business relationship with the participant whose confidential information it seeks; and (3) to individuals with no competitive or business relationship with the company. The Bureau concludes that adopting such procedures in a Protective Order will give stakeholders appropriate access to participant information while protecting competitively sensitive information from improper disclosure, and that disclosure pursuant to the Protective Order thereby serves the public interest.

49. The Bureau will also restrict access to this information. Stakeholders will only be permitted to access confidential participant location data for the census blocks in which the stakeholder has demonstrated a verifiable interest in ensuring service and the bordering census blocks. Stakeholders may access information about the methods used to gather location data for all locations identified in these census blocks by participants, the entire description of the methodology provided by the participant, and the supporting evidence associated with such methodology unless such evidence clearly and exclusively relates to locations and areas outside of the relevant census blocks, *e.g.*, photographic evidence of derelict structures in a different area of the state or in a different state.

50. *Stakeholder Information.* Information submitted by the stakeholder to establish eligibility and to challenge participants' information may also be abused by participants and

outside parties and raises significant privacy concerns. The Bureau sought comment on these concerns as well as the appropriate methods for addressing such concerns but received no comments on these issues. The Bureau determines that it is necessary to treat all stakeholder information as presumptively confidential. All information gathered to determine the stakeholder's eligibility to participate will not be disclosed publicly or to any other participant in this process. Stakeholder contact information and challenge information will be made available to the relevant participant and other stakeholders filing challenges based in the same census block areas but stakeholders may file such information pursuant to a Protective Order that limits the use of such information.

51. Specifically, as a condition of obtaining access to stakeholder information, the participant or stakeholder agrees to use the information solely for the preparation and conduct of this proceeding before the Commission and any subsequent judicial proceeding arising directly from this proceeding and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings. The information may only be accessed by employees and representatives of the participant/stakeholder that have no competitive, business, or legal relationship with the stakeholder.

52. Participants/other stakeholders may discuss stakeholder information with the Commission and its staff and with the stakeholder's employees, representatives, and counsel, including paralegals assisting in this proceeding. Participants/other stakeholders may also discuss location data with third-party contractors involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with this proceeding, or performing other clerical or ministerial functions with regard to documents connected with this proceeding. This location data must not be linked in any manner to the contact information of the stakeholder.

53. The Bureau will work with USAC to create a module in the HUBB to accept and retain ELAP submissions and to control access to such information. The Bureau will also coordinate with USAC in the development of the ELAP Map. To the extent any information submitted to the

module by or about individuals is a "record," and to the extent that the module may function as a "system of records," as those terms are defined in the Privacy Act of 1974, USAC will collect, maintain, and use the information in accordance with that law. In addition, the Bureau directs USAC to ensure that the ELAP module and map complies with all other applicable laws and Federal government guidance on privacy and security and other applicable technology requirements such as those enacted by the Federal Information Security Modernization Act (FISMA). In connection with the creation of these online record systems, the Bureau will coordinate with the Office of Management and Budget (OMB) to ensure compliance with all relevant federal rules and requirements, including the Paperwork Reduction Act of 1995.

### III. Procedural Matters

#### A. Paperwork Reduction Act Analysis

54. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, the Bureau notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### B. Congressional Review Act

55. The Bureau has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is "non-major" under the Congressional Review Act. The Bureau will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

56. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Locations Adjustment Public Notice*. The Bureau sought written public comment on the proposals, including comment on the IRFA. The Commission

received no comments in response to the IRFA.

57. In the Order, the Bureau is implementing a process, established by the Commission in its *Phase II Auction Reconsideration Order* for successful applicants for Phase II auction support, to modify defined deployment obligations where the number of locations within the applicant's relevant bid areas within the state falls short of the number of locations that the applicant must serve within eligible areas in the state. Interested parties received notice and opportunity to comment on the Bureau's proposals for this process.

58. Pursuant to this process, a participant must submit into a module in the HUBB, location information describing the number of actual qualifying locations (and any additional prospective locations), a description of the methods it employed to identify all actual locations, and some additional supporting evidence to demonstrate that all actual locations were identified and reported. The Bureau will identify those participants that have met the prima facie standard for submitting a claim and will order the release of a limited amount of location information in a publicly available map. Outside parties will then use such information to determine whether they can and should submit challenges to specific claims for specific areas. As a condition of accessing relevant participant information and submitting a challenge, parties must demonstrate that they meet certain criteria and must sign a protective order. To make a successful challenge, challengers must submit information similar to the information submitted by participants, including location information, a method description, and some supporting evidence, although the requirements are less rigorous. Participants must also sign a protective order to access stakeholder information. They may then respond to the stakeholder's challenge. Based on the record, the Bureau will adjudicate participants' claims for relief based on a preponderance of the evidence standard, and where such standard has been met, reduce participants' obligations and support on a pro rata basis. Participants' information is subject to future verification.

59. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 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.

60. The Bureau's actions, over time, may affect small entities that are not easily categorized at present. The Bureau therefore describes in this document, 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.

61. 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).

62. 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 Bureau estimates that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

63. Commenters, including small entities, wishing to participate in this

process would be required to comply with the listed reporting and evidentiary standards. Such standards include location information, methodology descriptions, and supporting evidence in specific formats. Such information must be submitted by specific deadlines. In addition, parties may file challenges if they submit information demonstrating that they qualify as a relevant stakeholder. Relevant stakeholder's challenges must include information like that submitted by the participant. Participants may reply to stakeholder challenges.

64. 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.

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

66. This process considers the resources available to small entities by permitting participants flexibility in choosing how to identify locations within eligible areas as well as discretionary control over the amount and nature of the supporting evidence that they will submit. Small entities may also present evidence regarding the available geocoding and other resources necessary to meet the Commission's prima facie evidentiary standards. Further, by participating in this process at the beginning of the term, small entities will be able to more effectively plan their network deployments.

#### IV. Ordering Clauses

67. Accordingly, *it is ordered*, pursuant to the authority contained in sections 254 of the Communications Act of 1934, as amended, 47 U.S.C. 254, and the authority delegated in §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, and §§ 1.1 and 1.427 of the Commission's rules, 47 CFR 1.1, 1.427, that the Order *is adopted*.

68. *It is further ordered* that, pursuant to § 1.103 of the Commission's rules, 47

CFR 1.103, the Order *shall become effective* thirty (30) days after publication of the text or summary thereof in the **Federal Register**, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval.

Federal Communications Commission.

**Kirk Burgee,**

*Chief of Staff, Wireline Competition Bureau.*

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 218**

[Docket No. 191211-0106]

**RIN 0648-B185**

#### **Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Atlantic Fleet Training and Testing Study Area**

##### *Correction*

In rule document 2019-27098, appearing on pages 70712 through

70794, in the issue of Monday, December 23, 2019, make the following correction:

On page 70719, in Table 2—Naval Air Systems Command Testing Activities Analyzed For Seven-Year Period in The AFTT Study Area, in the 5th column, in the sixth line down, “234” should read “928”.

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