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(d) Interested parties may file comments with the Commission within 60 days after the audit report is made available for public inspection.

[62 FR 2927, Jan. 21, 1997]

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§ 53.301 [Reserved]

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AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

SOURCE: 62 FR 32948, June 17, 1997, unless otherwise noted.

Subpart A—General Information

§ 54.1 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement section 254 of the Communications Act of 1934, as amended, 47 USC 254.

§ 54.5 Terms and definitions.

Terms used in this part have the following meanings:

Act. The term ''Act'' refers to the Communications Act of 1934, as amended.

Administrator. The term ''Administrator'' or ''USAC'' shall refer to the Universal Service Administrative Company that is an independent subsidiary of the National Exchange Carrier Association, Inc., and that has been appointed the permanent Administrator of the federal universal service support mechanisms.

Community anchor institutions. For the purpose of high-cost support, ''community anchor institutions'' refers to schools, libraries, health care providers, community colleges, other institutions of higher education, and other community support organizations and entities.

Competitive eligible telecommunications carrier. A ''competitive eligible telecommunications carrier'' is a carrier that meets the definition of an ''eligible telecommunications carrier'' below and does not meet the definition of an ''incumbent local exchange carrier'' in § 51.5 of this chapter.

Contributor. The term ''contributor'' shall refer to an entity required to contribute to the universal service support mechanisms pursuant to § 54.706.

Eligible telecommunications carrier. ''Eligible telecommunications carrier'' means a carrier designated as such under subpart C of this part.

High-cost support. ''High-cost support'' refers to those support mechanisms provided pursuant to subparts D, J, K, L, M, and O of this part.

Incumbent local exchange carrier. ''Incumbent local exchange carrier'' or ''ILEC'' has the same meaning as that term is defined in § 51.5 of this chapter.

Information service. ''Information service'' is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Interconnected VoIP Provider. An ''interconnected VoIP provider'' is an entity that provides interconnected VoIP service, as that term is defined in section 9.3 of these rules.

Internet access. ''Internet access'' includes the following elements:

(1) The transmission of information as common carriage; and

(2) The transmission of information as part of a gateway to an information service, when that transmission does not involve the generation or alteration of the content of information, but may include data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access information services, and that do not affect the presentation of such information to users.

Interstate telecommunication. ''Interstate telecommunication'' is a communication or transmission:

(1) From any State, Territory, or possession of the United States (other than the Canal zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia,

(2) From or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or

(3) Between points within the United States but through a foreign country.

Interstate transmission. ''Interstate transmission'' is the same as interstate telecommunication.

Intrastate telecommunication. ''Intrastate telecommunication'' is a communication or transmission from within any State, Territory, or possession of the United States, or the District of Columbia to a location within that same State, Territory, or possession of the United States, or the District of Columbia.

Intrastate transmission. ''Intrastate transmission'' is the same as intrastate telecommunication.

LAN. ''LAN'' is a local area network, which is a set of high-speed links connecting devices, generally computers, on a single shared medium, usually on the user's premises.

Mobile competitive eligible telecommunications carrier. A ''mobile competitive eligible telecommunications carrier'' is a carrier that meets the definition of a ''competitive eligible telecommunications carrier'' in this section and that provides a terrestrial-based service meeting the definition of ''commercial mobile radio service'' in §51.5 of this chapter.

Qualifying competitor. A ''qualifying competitor'' is a facilities-based terrestrial provider of residential fixed voice and broadband service access meeting or exceeding 3 Mbps downstream and 768 kbps upstream.

Rate-of-return carrier. ''Rate-of-return carrier'' shall refer to any incumbent local exchange carrier not subject to price cap regulation as that term is defined in §61.3(ee) of this chapter.

Rural incumbent local exchange carrier. ''Rural incumbent local exchange carrier'' is a carrier that meets the definitions of ''rural telephone company'' and ''incumbent local exchange carrier,'' as those terms are defined in §51.5 of this chapter.

Rural telephone company. ''Rural telephone company'' has the same meaning as that term is defined in §51.5 of this chapter.

State commission. The term ''state commission'' means the commission, board or official (by whatever name designated) that, under the laws of any state, has regulatory jurisdiction with respect to intrastate operations of carriers.

Technically feasible. ''Technically feasible'' means capable of accomplishment as evidenced by prior success under similar circumstances. For example, preexisting access at a particular point evidences the technical feasibility of access at substantially similar points. A determination of technical feasibility does not consider economic, accounting, billing, space or site except that space and site may be considered if there is no possibility of expanding available space.

Telecommunications. ''Telecommunications'' is the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications carrier. A ''telecommunications carrier'' is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services as defined in section 226 of the Act. A telecommunications carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. This definition includes cellular mobile radio service (CMRS) providers, interexchange carriers (IXCs) and, to the extent they are acting as telecommunications carriers, companies that provide both telecommunications and information services. Private mobile radio service (PMRS) providers are telecommunications carriers to the extent they provide domestic or international telecommunications for a fee directly to the public.

Telecommunications channel. ''Telecommunications channel'' means a telephone line, or, in the case of wireless communications, a transmittal line or cell site.

Telecommunications service. ''Telecommunications service'' is the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Tribal lands. For the purposes of high-cost support, ''Tribal lands'' include any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) and Indian Allotments, see §54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, *et seq.*, as amended, and any land designated as such by the Commission.

Unsubsidized competitor. An ''unsubsidized competitor'' is a facilities-based provider of residential fixed voice and

broadband service that does not receive high-cost support.

Website. The term ''website'' shall refer to any websites operated by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high cost mechanism, and the low income mechanism.

Wire center. A wire center is the location of a local switching facility containing one or more central offices, as defined in the Appendix to part 36 of this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located.

[62 FR 32948, June 17, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 54.5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 54.7 Intended use of federal universal service support.

(a) A carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

(b) The use of federal universal service support that is authorized by paragraph (a) of this section shall include investments in plant that can, either as built or with the addition of plant elements, when available, provide access to advanced telecommunications and information services.

(c) For those eligible telecommunications carriers as defined in § 54.5 receiving universal service support pursuant to subparts K and M of this part, ineligible expenses include but are not limited to the following:

(1) Personal expenses of employees, executives, board members, and contractors, and family members thereof, or any other individuals affiliated with the eligible telecommunications carrier, including but not limited to personal expenses for housing, such as rent or mortgages, vehicles for personal use and personal travel, including transportation, lodging and meals;

(2) Gifts to employees; childcare; housing allowances or other forms of mortgage or rent assistance for employees except that a reasonable amount of assistance shall be allowed for work-related temporary or seasonal lodging; cafeterias and dining facilities; food and beverage except that a reasonable amount shall be allowed for work-related travel; entertainment;

(3) Expenses associated with: Tangible property not logically related or necessary to the offering of voice or broadband services; corporate aircraft, watercraft, and other motor vehicles designed for off-road use except insofar as necessary or reasonable to access portions of the study area not readily accessible by motor vehicles travelling on roads; tangible property used for entertainment purposes; consumer electronics used for personal use; kitchen appliances except as part of work-related temporary or seasonal lodging assistance; artwork and other objects which possess aesthetic value;

(4) Political contributions; charitable donations; scholarships; membership fees and dues in clubs and organizations; sponsorships of conferences or community events; nonproduct-related corporate image advertising; and

(5) Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.

[76 FR 73869, Nov. 29, 2011, as amended at 83 FR 18964, May 1, 2018]

§ 54.8 Prohibition on participation: suspension and debarment.

(a) *Definitions*—(1) Activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism. Such matters include the receipt of funds or discounted services through one or more of these support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding one or more of these support mechanisms.

(2) *Civil liability*. The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement with admission of liability, stipulation, or otherwise creating a civil liability for the wrongful acts complained of, or a final determination of liability under the

Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–12).

(3) *Consultant.* A person that for consideration advises or consults a person regarding the schools and libraries support mechanism, but who is not employed by the person receiving the advice or consultation.

(4) *Conviction.* A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered by verdict or a plea, including a plea of *nolo contendere.*

(5) *Debarment.* Any action taken by the Commission in accordance with these regulations to exclude a person from activities associated with or relating to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism. A person so excluded is ''debarred.''

(6) *Person.* Any individual, group of individuals, corporation, partnership, association, unit of government or legal entity, however organized.

(7) *Suspension.* An action taken by the Commission in accordance with these regulations that immediately excludes a person from activities associated with or relating to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism for a temporary period, pending completion of the debarment proceedings. A person so excluded is ''suspended.''

(b) *Suspension and debarment in general.* The Commission shall suspend and debar a person for any of the causes in paragraph (c) of this section using procedures established in this section, absent extraordinary circumstances.

(c) *Causes for suspension and debarment.* Causes for suspension and debarment are conviction of or civil judgment for attempt or commission of criminal fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, obstruction of justice and other fraud or criminal offense arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism.

(d) Effect of suspension and debarment. Unless otherwise ordered, any persons suspended or debarred shall be excluded from activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism. Suspension and debarment of a person other than an individual constitutes suspension and debarment of all divisions and/or other organizational elements from participation in the program for the suspension and debarment period, unless the notice of suspension and proposed debarment is limited by its terms to one or more specifically identified individuals, divisions, or other organizational elements or to specific types of transactions.

(e) *Procedures for suspension and debarment.* The suspension and debarment process shall proceed as follows:

(1) Upon evidence that there exists cause for suspension and debarment, the Commission shall provide prompt notice of suspension and proposed debarment to the person. Suspension shall be effective upon the earlier of receipt of notification or publication in the FEDERAL REGISTER.

(2) The notice shall:

(i) Give the reasons for the proposed debarment in terms sufficient to put a person on notice of the conduct or transaction(s) upon which it is based and the cause relied upon, namely, the entry of a criminal conviction or civil judgment arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism;

(ii) Explain the applicable debarment procedures;

(iii) Describe the effect of debarment.

(3) A person subject to proposed debarment, or who has an existing contract with a person subject to proposed debarment or intends to contract with such a person to provide or receive services in matters arising out of activities associated with or related to

the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism may contest debarment or the scope of the proposed debarment. A person contesting debarment or the scope of proposed debarment must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the FEDERAL REGISTER, whichever is earlier.

(4) A person subject to proposed debarment, or who has an existing contract with a person subject to proposed debarment or intends to contract with such a person to provide or receive services in matters arising out of activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism may also contest suspension or the scope of suspension, but such action will not ordinarily be granted. A person contesting suspension or the scope of suspension must file arguments and any relevant documentation within thirty (30) calendar days of receipt of notice or publication in the FEDERAL REGISTER, whichever is earlier.

(5) Within ninety (90) days of receipt of any information submitted by the respondent, the Commission, in the absence of extraordinary circumstances, shall provide the respondent prompt notice of the decision to debar. Debarment shall be effective upon the earlier of receipt of notice or publication in the FEDERAL REGISTER.

(f) *Reversal or limitation of suspension or debarment.* The Commission may reverse a suspension or debarment, or limit the scope or period of suspension or debarment, upon a finding of extraordinary circumstances, after due consideration following the filing of a petition by an interested party or upon motion by the Commission. Reversal of the conviction or civil judgment upon which the suspension and debarment was based is an example of extraordinary circumstances.

(g) *Time period for debarment.* A debarred person shall be prohibited from involvement with the schools and libraries support mechanism for three (3) years from the date of debarment. The Commission may, if necessary to protect the public interest, set a longer period of debarment or extend the existing period of debarment. If multiple convictions or judgments have been rendered, the Commission shall determine based on the facts before it whether debarments shall run concurrently or consecutively.

[68 FR 36943, June 20, 2003. Redesignated and amended at 72 FR 54218, Sept. 24, 2007]

§ 54.9 Prohibition on use of funds.

(a) *USF support restriction* No universal service support may be used to purchase, obtain, maintain, improve, modify, or otherwise support any equipment or services produced or provided by any company posing a national security threat to the integrity of communications networks or the communications supply chain.

(b) *Designation of Entities Subject to Prohibition.* (1) When the Public Safety and Homeland Security Bureau (PSHSB) determines, either *sua sponte* or in response to a petition from an outside party, that a company poses a national security threat to the integrity of communications networks or the communications supply chain, PSHSB shall issue a public notice advising that such designation has been proposed as well as the basis for such designation.

(2) Upon issuance of such notice, interested parties may file comments responding to the initial designation, including proffering an opposition to the initial designation. If the initial designation is unopposed, the entity shall be deemed to pose a national security threat 31 days after the issuance of the notice. If any party opposes the initial designation, the designation shall take effect only if PSHSB determines that the affected entity should nevertheless be designated as a national security threat to the integrity of communications networks or the communications supply chain. In either case, PSHSB shall issue a second public notice announcing its final designation and the effective date of its final designation. PSHSB shall make a final designation no later than 120 days after release of its initial determination notice.

PSHSB may, however, extend such 120-day deadline for good cause.

(3) PSHSB will act to reverse its designation upon a finding that an entity is no longer a threat to the integrity of communications networks or the communications supply chain. A designated company, or any other interested party, may submit a petition asking PSHSB to remove a designation. PSHSB shall seek the input of Executive Branch agencies and the public upon receipt of such a petition. If the record shows that a designated company is no longer a national security threat, PSHSB shall promptly issue an order reversing its designation of that company. PSHSB may dismiss repetitive or frivolous petitions for reversal of a designation without notice and comment. If PSHSB reverses its designation, PSHSB shall issue an order announcing its decision along with the basis for its decision.

(4) PSHSB shall have discretion to revise this process or follow a different process if appropriate to the circumstances, consistent with providing affected parties an opportunity to respond and with any need to act expeditiously in individual cases.

[85 FR 249, Jan. 3, 2020]

§ 54.10 Prohibition on use of certain Federal subsidies.

(a) A Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications service may not be used to:

(1) Purchase, rent, lease, or otherwise obtain any covered communications equipment or service; or

(2) Maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained.

(b) The term ''covered communications equipment or service'' is defined in § 1.50001 of this chapter.

(c) The prohibition in paragraph (a) of this section applies to any covered communications equipment or service beginning on the date that is 60 days after the date on which such equipment or service is placed on a published list pursuant to § 1.50003 of this chapter. In the case of any covered communications equipment or service that is on the initial list published pursuant to § 1.50002 of this chapter, such equipment or service shall be treated as being placed on the list on the date which such list is published.

[86 FR 2946, Jan. 13, 2021]

§ 54.11 Requirement to remove and replace.

(a) Each Eligible Telecommunications Carrier receiving Universal Service Fund support must certify prior to receiving a funding commitment or support that it does not use covered communications equipment or services.

(b) For the purposes of this section, covered communications equipment or services means any communications equipment or service that is on the Covered List maintained pursuant to § 1.50002 of this chapter, and:

(1) As defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19–121; WC Docket No. 18–89; adopted November 22, 2019 (in this section referred to as the 'Report and Order'); or

(2) as determined to be covered by both the process of the Report and Order and the Designation Orders of the Commission on June 30, 2020 (DA 20–690; PS Docket No. 19–351; adopted June 30, 2020) (DA 20–691; PS Docket No. 19–352; adopted June 30, 2020) (in this section collectively referred to as the 'Designation Orders').

(c) The certification referenced in paragraph (a) of this section is required starting one year after the date the Commission releases a Public Notice announcing that applications are accepted for filing in the corresponding filing window of the Reimbursement Program per § 1.50004(b) for the removal, replacement, and disposal of associated covered communications equipment and services.

(d) Reimbursement Program recipients, as defined in § 1.50001(h) of this chapter, are not subject to paragraph (a) of this section until after the expiration of their corresponding removal, replacement, and disposal term per

§ 1.50004(h) of this chapter for associated covered communications equipment and services.

[86 FR 2946, Jan. 13, 2021, as amended at 86 FR 47022, Aug. 23, 2021]

Subpart B—Services Designated for Support

§ 54.101 Supported services for rural, insular, and high cost areas.

(a) Voice telephony services shall be supported by Federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

(b) An eligible telecommunications carrier eligible to receive high-cost support must offer voice telephony service as set forth in paragraph (a) of this section in order to receive Federal universal service support.

(c) An eligible telecommunications carrier (ETC) subject to a high-cost public interest obligation to offer broadband internet access services and not receiving Phase I frozen high-cost support must offer broadband services within the areas where it receives high-cost support consistent with the obligations set forth in this subpart and subparts D, K, L, and M of this part.

(d) Any ETC must comply with subpart E of this part.

[86 FR 1021, Jan. 7, 2021]

Subpart C—Carriers Eligible for Universal Service Support

§ 54.201 Definition of eligible telecommunications carriers, generally.

(a) *Carriers eligible to receive support.*

(1) Only eligible telecommunications carriers designated under this subpart shall receive universal service support distributed pursuant to subparts D and E of this part. Eligible telecommunications carriers designated under this subpart for purposes of receiving support only under subpart E of this part must provide Lifeline service directly to qualifying low-income consumers.

(2) [Reserved]

(3) This paragraph does not apply to offset or reimbursement support distributed pursuant to subpart G of this part.

(4) This paragraph does not apply to support distributed pursuant to subpart F of this part.

(b) A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.

(c) Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and, except as described in paragraph (d)(3) of this section, shall throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

(3) *Exception*. Price cap carriers that serve census blocks that are identified by the forward-looking cost model as low-cost, census blocks that are served by an unsubsidized competitor as defined in § 54.5 meeting the requisite public interest obligations specified in § 54.309, or census blocks where a subsidized competitor is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations, are not required to comply with paragraphs (d)(1) and (2) of this section in these specific geographic areas. Such price cap carriers remain obligated to maintain existing voice telephony service in these specific geographic areas unless and until a discontinuance is granted pursuant to § 63.71 of this chapter.

(e) For the purposes of this section, the term *facilities* means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.

(f) For the purposes of this section, the term ''own facilities'' includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term ''facilities'' under this subpart.

(g) A state commission shall not require a common carrier, in order to satisfy the requirements of paragraph (d)(1) of this section, to use facilities that are located within the relevant service area, as long as the carrier uses facilities to provide the services designated for support pursuant to subpart B of this part within the service area.

(h) A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.

(i) A state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2125, Jan. 13, 1998; 64 FR 62123, Nov. 16, 1999; 71 FR 65750, Nov. 9, 2006; 77 FR 12966, Mar. 2, 2012; 80 FR 4476, Jan. 27, 2015; 80 FR 40935, July 14, 2015; 81 FR 33089, May 24, 2016; 84 FR 71327, Dec. 27, 2019]

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1)(i) Certify that it will comply with the service requirements applicable to the support that it receives.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements. Except, a common carrier seeking designation as an eligible telecommunications carrier in order to provide supported services only under subpart E of this part does not need to submit such a five-year plan.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.

(5) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

(6) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, submit information describing the terms and conditions of any broadband Internet access service plans offered to Lifeline subscribers, including details on the speeds offered, data usage allotments, additional charges for particular uses, if any, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

(b) *Public interest standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

(c) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send any public notice seeking comment on any petition for designation as an eligible telecommunications carrier on Tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by the most expeditious means available.

[77 FR 12966, Mar. 2, 2012, as amended at 81 FR 33089, May 24, 2016; 84 FR 71327, Dec. 27, 2019]

§ 54.203 Designation of eligible telecommunications carriers for unserved areas.

(a) If no common carrier will provide the services that are supported by federal universal service support mechanisms under section 254(c) of the Act and subpart B of this part to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a state commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(b) Any carrier or carriers ordered to provide such service under this section shall meet the requirements of section 54.201(d) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

§ 54.205 Relinquishment of universal service.

(a) A state commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the state commission of such relinquishment.

(b) Prior to permitting a telecommunications carrier designated as

an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

[81 FR 33089, May 24, 2016, as amended at 84 FR 71327, Dec. 27, 2019]

§ 54.207 Service areas.

(a) The term *service area* means a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.

(b) In the case of a service area served by a rural telephone company, *service area* means such company's ''study area'' unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company.

(c) If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.

(1) A state commission or other party seeking the Commission's agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission. The petition shall contain:

(i) The definition proposed by the state commission; and

(ii) The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

(2) The Commission shall issue a Public Notice of any such petition within fourteen (14) days of its receipt.

(3) The Commission may initiate a proceeding to consider the petition within ninety (90) days of the release date of the Public Notice.

(i) If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with paragraph (b) of this section and section 214(e)(5) of the Act.

(ii) If the Commission does not act on the petition within ninety (90) days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.

(d) The Commission may, on its own motion, initiate a proceeding to consider a definition of a service area served by a rural telephone company that is different from that company's study area. If it proposes such different definition, the Commission shall seek the agreement of the state commission according to this paragraph.

(1) The Commission shall submit a petition to the state commission according to that state commission's procedures. The petition submitted to the relevant state commission shall contain:

(i) The definition proposed by the Commission; and

(ii) The Commission's decision presenting its reasons for adopting the proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

(2) The Commission's proposed definition shall not take effect until both the

state commission and the Commission agree upon the definition of a rural service area, in accordance with paragraph (b) of this section and section 214(e)(5) of the Act.

(e) The Commission delegates its authority under paragraphs (c) and (d) of this section to the Chief, Wireline Competition Bureau.

(f) *Geographic flexibility provided for mobile competitive eligible telecommunications carriers receiving legacy high-cost support.* A mobile competitive eligible telecommunications carrier receiving legacy high-cost support pursuant to § 54.307(e)(5), (6), or (7) for a particular subsidized service area may use the support for the provision, maintenance, and upgrading of facilities and services within any of the designated service areas for which it or an affiliated mobile competitive eligible telecommunications carrier (*e.g.*, where several mobile competitive eligible telecommunications carriers share a common holding company) receives legacy high-cost support regardless of whether the service areas span more than one state or territory. This paragraph does not affect a mobile competitive eligible telecommunications carrier's obligations and requirements pursuant to §§ 54.7 and 54.322.

[62 FR 32948, June 17, 1997, as amended at 67 FR 13226, Mar. 21, 2002; 85 FR 75817, Nov. 25, 2020]

Subpart D—Universal Service Support for High Cost Areas

§ 54.302 Monthly per-line limit on universal service support.

(a) Beginning July 1, 2012 and until June 30, 2013, each study area's universal service monthly support (not including Connect America Fund support provided pursuant to § 54.304) on a per-line basis shall not exceed $250 per-line plus two-thirds of the difference between its uncapped per-line monthly support and $250. Beginning July 1, 2013 and until June 30, 2014, each study area's universal service monthly support on a per-line basis shall not exceed $250 per-line plus one third of the difference between its uncapped per-line monthly support and $250. Beginning July 1, 2014, each study area's universal service monthly per-line support shall not exceed $250. Beginning July 1, 2019, until June 30, 2021, each study area's universal service monthly per-line support shall not exceed $225. Beginning July 1, 2021, each study area's universal service monthly per-line support shall not exceed $200.

(b) For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§ 54.1304, 54.1310, 54.305, and 54.901 through 54.904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 54.903(a)(1).

(c) The Administrator, in order to limit support for carriers pursuant to paragraph (a) of this section, shall reduce safety net additive support, high-cost loop support, safety valve support, and Connect America Fund Broadband Loop Support in proportion to the relative amounts of each support the study area would receive absent such limitation.

[76 FR 73870, Nov. 29, 2011, as amended at 79 FR 39188, July 9, 2014; 82 FR 14339, Mar. 20, 2017; 84 FR 4730, Feb. 19, 2019]

§ 54.303 Eligible Capital Investment and Operating Expenses.

(a) *Eligible Operating Expenses.* Each study area's eligible operating expenses for purposes of calculating universal service support pursuant to subparts K and M of this part shall be adjusted as follows:

(1) Total eligible annual operating expenses per location shall be limited as follows: Calculate Exp($\hat{Y}$ + 1.5 * mean square error of the regression), where

$$\hat{Y} = \hat{\alpha} + \hat{\beta}_1 X_1 + \hat{\beta}_2 X_2 + \hat{\beta}_3 X_3$$

$\hat{\alpha}$, $\hat{\beta}_1$, $\hat{\beta}_2$, and $\hat{\beta}_3$ are the coefficients from the regression,

X_1 is the natural log of the number of housing units in the study area,

X_2 is the natural log of the number of density (number of housing units per square mile), and

X_3 is the square of the natural log of the density

(2) Eligible operating expenses are the sum of Cable and Wire Facilities Expense, Central Office Equipment Expense, Network Support and General Expense, Network Operations Expense, Limited Corporate Operations Expense, Information Origination/Termination

Expense, Other Property Plant and Equipment Expenses, Customer Operations Expense: Marketing, and Customer Operations Expense: Services.

(3) For purposes of this section, the number of housing units will be determined per the most recently available U.S Census data for each census block in that study area. If a census block is partially within a study area, the number of housing units in that portion of the census block will be determined based upon the percentage geographic area of the census block within the study area.

(4) Notwithstanding the provisions of paragraph (a) of this section, total eligible annual operating expenses for 2016 will be limited to the total eligible annual operating expenses as defined in this section plus one half of the amount of total eligible annual expense as calculated prior to the application of this section.

(5) For any study area subject to the limitation described in this paragraph, a required percentage reduction will be calculated for that study area's total eligible annual operating expenses. Each category or account used to determine that study area's total eligible annual operating expenses will then be reduced by this required percentage reduction.

(6) For a period of five years following the implementation of paragraph (a) of this section, the total eligible annual operating expenses per location in paragraph (a) shall be adjusted annually to account for changes to the Department of Commerce's Gross Domestic Product Chain-type Price Index (GDP–CPI).

(7) For those study areas where a majority of the housing units are on Tribal lands, as determined by the Wireline Competition Bureau, and meet the following conditions, total eligible annual operating expenses per location shall be limited by calculating Exp ($\hat{Y}$ + 2.5 * mean square error of the regression): The carrier serving the study area has not deployed broadband service of 10 Mbps download/1 Mbps upload to 90 percent or more of the housing units on the Tribal lands in its study area and unsubsidized competitors have not deployed broadband service of 10 Mbps download/1 Mbps upload to 85 percent or more of the housing units on the Tribal lands in its study area.

(b) [Reserved]

[81 FR 24337, Apr. 25, 2016, as amended at 82 FR 14339, Mar. 20, 2017; 82 FR 16127, Apr. 3, 2017; 82 FR 22903, May 19, 2017; 83 FR 18964, May 1, 2018 ;83 FR 30884, July 2, 2018; 84 FR 4730, Feb. 19, 2019]

§ 54.304 Administration of Connect America Fund Intercarrier Compensation Replacement.

(a) The Administrator shall administer CAF ICC support pursuant to § 51.915 and § 51.917 of this chapter.

(b) The funding period is the period beginning July 1 through June 30 of the following year.

(c) For price cap carriers that are eligible and elect, pursuant to § 51.915(f) of this chapter, to receive CAF ICC support, the following provisions govern the filing of data with the Administrator, the Commission, and the relevant state commissions and the payment by the Administrator to those carriers of CAF ICC support amounts that the carrier is eligible to receive pursuant to § 51.915 of this chapter.

(1) A Price Cap Carrier seeking CAF ICC support pursuant to § 51.915 of this chapter shall file data with the Administrator, the Commission, and the relevant state commissions no later than June 30, 2012, for the first year, and on the date it files its annual access tariff filing with the Commission, in subsequent years, establishing the amount of the Price Cap Carrier's eligible CAF ICC funding during the upcoming funding period pursuant to § 51.915 of this chapter. The amount shall include any true-ups, pursuant to § 51.915 of this chapter, associated with an earlier funding period.

(2) The Administrator shall monthly pay each price cap carrier one-twelfth (1/12) of the amount the carrier is eligible to receive during that funding period.

(d) For rate-of-return carriers that are eligible and elect, pursuant to § 51.917(f) of this chapter, to receive CAF ICC support, the following provisions govern the filing of data with the Administrator, the Commission, and the relevant state commissions and the payment by the Administrator to those carriers of CAF ICC support amounts

that the rate-of-return carrier is eligible to receive pursuant to § 51.917 of this chapter.

(1) A Rate-of-Return Carrier seeking CAF ICC support shall file data with the Administrator, the Commission, and the relevant state commissions no later than June 30, 2012, for the first year, and on the date it files its annual access tariff filing with the Commission, in subsequent years, establishing the Rate-of-Return Carrier's projected eligibility for CAF ICC funding during the upcoming funding period pursuant to § 51.917 of this chapter. The projected amount shall include any true-ups, pursuant to § 51.917 of this chapter, associated with an earlier funding period.

(2) The Administrator shall monthly pay each rate-of-return carrier one-twelfth (1/12) of the amount the carrier is to be eligible to receive during that funding period.

[76 FR 73871, Nov. 29, 2011, as amended at 78 FR 26268, May 6, 2013]

§ 54.305 Sale or transfer of exchanges.

(a) The provisions of this section shall not be used to determine support for any price cap incumbent local exchange carrier or a rate-of-return carrier, as that term is defined in § 54.5, that is affiliated with a price cap incumbent local exchange carrier.

(b) Beginning January 1, 2012, any carrier subject to the provisions of this paragraph shall receive support pursuant to this paragraph or support based on the actual costs of the acquired exchanges, whichever is less. Except as provided in paragraph (c) of this section, a carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges. If the acquired exchanges are incorporated into an existing rural incumbent local exchange carrier study area, the rural incumbent local exchange carrier shall maintain the costs associated with the acquired exchanges separate from the costs associated with its pre-acquisition study area. The transferred exchanges may be eligible for safety valve support for loop related costs pursuant to paragraph (d) of this section.

(c) A carrier that has entered into a binding agreement to buy or acquire exchanges from an unaffiliated carrier prior to May 7, 1997 will receive universal service support for the newly acquired lines based upon the average cost of all of its lines, both those newly acquired and those it had prior to execution of the sales agreement.

(d) Transferred exchanges in study areas operated by rural telephone companies that are subject to the limitations on loop-related universal service support in paragraph (b) of this section may be eligible for a safety valve loop cost expense adjustment based on the difference between the rural incumbent local exchange carrier's index year expense adjustment and subsequent year loop cost expense adjustments for the acquired exchanges. Safety valve loop cost expense adjustments shall only be available to rural incumbent local exchange carriers that, in the absence of restrictions on high-cost loop support in paragraph (b) of this section, would qualify for high-cost loop support for the acquired exchanges under § 54.1310.

(1) For carriers that buy or acquire telephone exchanges on or after January 10, 2005, from an unaffiliated carrier, the index year expense adjustment for the acquiring carrier's first year of operation shall equal the selling carrier's loop-related expense adjustment for the transferred exchanges for the 12-month period prior to the transfer of the exchanges. At the acquiring carrier's option, the first year of operation for the transferred exchanges, for purposes of calculating safety valve support, shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. For the first year of operation, a loop cost expense adjustment, using the costs of the acquired exchanges submitted in accordance with §§ 54.1305 and 54.1306, shall be calculated pursuant to § 54.1310 and then compared to the index year expense adjustment. Safety valve support for the first period of operation will then be calculated pursuant to paragraph (d)(3) of this section. The index year expense adjustment for years after the first year of operation shall

be determined using cost data for the first year of operation of the transferred exchanges. Such cost data for the first year of operation shall be calculated in accordance with §§ 54.1305, 54.1306, and 54.1310. For each year, ending on the same calendar quarter as the first year of operation, a loop cost expense adjustment, using the loop costs of the acquired exchanges, shall be submitted and calculated pursuant to §§ 54.1305, 54.1306, and 54.1310 and will be compared to the index year expense adjustment. Safety valve support for the second year of operation and thereafter will then be calculated pursuant to paragraph (d)(3) of this section.

(2) For carriers that bought or acquired exchanges from an unaffiliated carrier before January 10, 2005, and are not subject to the exception in paragraph (c) of this section, the index year expense adjustment for acquired exchange(s) shall be equal to the rural incumbent local exchange carrier's high-cost loop expense adjustment for the acquired exchanges calculated for the carrier's first year of operation of the acquired exchange(s). At the carrier's option, the first year of operation of the transferred exchanges shall commence at the beginning of either the first calendar year or the next calendar quarter following the transfer of exchanges. The index year expense adjustment shall be determined using cost data for the acquired exchange(s) submitted in accordance with §§ 54.1305 and 54.1306 and shall be calculated in accordance with § 54.1310. The index year expense adjustment for rural telephone companies that have operated exchanges subject to this section for more than a full year on August 8, 2014 shall be based on loop cost data submitted in accordance with § 54.1306 for the year ending on the nearest calendar quarter following August 8, 2014. For each subsequent year, ending on the same calendar quarter as the index year, a loop cost expense adjustment, using the costs of the acquired exchanges, will be calculated pursuant to § 54.1310 and will be compared to the index year expense adjustment. Safety valve support is calculated pursuant to paragraph (d)(3) of this section.

(3) Up to fifty (50) percent of any positive difference between the transferred exchanges loop cost expense adjustment and the index year expense adjustment will be designated as the transferred exchange's safety valve loop cost expense adjustment and will be available in addition to the per-line loop-related support transferred from the selling carrier to the acquiring carrier pursuant to paragraph (b) of this section. In no event shall a study area's safety valve loop cost expense adjustment exceed the difference between the carrier's study area loop cost expense adjustment calculated pursuant to § 54.1310 and transferred support amounts available to the acquired exchange(s) under paragraph (b) of this section. Safety valve support shall not transfer with acquired exchanges.

(e) The sum of the safety valve loop cost expense adjustment for all eligible study areas operated by rural telephone companies shall not exceed five (5) percent of the total rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 54.1302. The five (5) percent cap on the safety valve mechanism shall be based on the lesser of the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment calculated pursuant to § 54.1302 or the sum of rural incumbent local exchange carrier expense adjustments calculated pursuant to § 54.1310. The percentage multiplier used to derive study area safety valve loop cost expense adjustments for rural telephone companies shall be the lesser of fifty (50) percent or a percentage calculated to produce the maximum total safety valve loop cost expense adjustment for all eligible study areas pursuant to this paragraph. The safety valve loop cost expense adjustment of an individual rural incumbent local exchange carrier also may be further reduced as described in paragraph (d)(3) of this section.

(f) Once an acquisition is complete, the acquiring rural incumbent local exchange carrier shall provide written notice to the Administrator that it has acquired access lines that may be eligible for safety valve support. Rural telephone companies also shall provide written notice to the Administrator defining their index year for those years

after the first year of operation for purposes of calculating the safety valve loop cost expense adjustment.

[70 FR 10060, Mar. 2, 2005, as amended at 76 FR 73871, Nov. 29, 2011; 79 FR 39188, July 9, 2014; 81 FR 24339, Apr. 25, 2016]

§ 54.306 Alaska Plan for Rate-of-Return Carriers Serving Alaska.

(a) *Election of support.* For purposes of subparts A, B, C, D, H, I, J, K and M of this part, rate-of-return carriers (as that term is defined in § 54.5) serving Alaska have a one-time option to elect to participate in the Alaska Plan on a state-wide basis. Carriers exercising this option shall receive the lesser of;

(1) Support as described in paragraph (c) of this section or

(2) $3,000 annually for each line for which the carrier is receiving support as of the effective date of this rule.

(b) *Performance plans.* In order to receive support pursuant to this section, a rate-of-return carrier must be subject to a performance plan approved by the Wireline Competition Bureau. The performance plan must indicate specific deployment obligations and performance requirements sufficient to demonstrate that support is being used in the public interest and in accordance with the requirements adopted by the Commission for the Alaska Plan. Performance plans must commit to offer specified minimum speeds to a set number of locations by the end of the fifth year of support and by the end of the tenth year of support, or in the alternative commit to maintaining voice and Internet service at a specified minimum speeds for the 10-year term. The Bureau may reassess performance plans at the end of the fifth year of support. If the specific deployment obligations and performance requirements in the approved performance plan are not achieved, the carrier shall be subject to § 54.320(c) and (d).

(c) *Support amounts and support term.* For a period of 10 years beginning on or after January 1, 2017, at a date set by the Wireline Competition Bureau, each Alaska Plan participant shall receive monthly Alaska Plan support in an amount equal to:

(1) One-twelfth (1/12) of the amount of Interstate Common Line Support disbursed to that carrier for 2011, less any reduction made to that carrier's support in 2012 pursuant to the corporate operations expense limit in effect in 2012, and without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012; plus

(2) One-twelfth (1/12) of the total expense adjustment (high cost loop support) disbursed to that carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012.

(d) *Transfers.* Notwithstanding any provisions of § 54.305 or other sections in this part, to the extent an Alaska Plan participant (as defined in § 54.306 or § 54.317) transfers some or all of its customers in Alaska to another eligible telecommunications carrier, it may also transfer a proportionate amount of its Alaska Plan support and any associated performance obligations as determined by the Wireline Competition Bureau or Wireless Telecommunications Bureau if the acquiring eligible telecommunications carrier certifies it will meet the associated obligations agreed to in the approved performance plan.

[81 FR 69712, Oct. 7, 2016]

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) *Calculation of support.* A competitive eligible telecommunications carrier shall receive universal service support to the extent that the competitive eligible telecommunications carrier captures the subscriber lines of an incumbent local exchange carrier (LEC) or serves new subscriber lines in the incumbent LEC's service area.

(1) A competitive eligible telecommunications carrier serving loops in the service area of a rural incumbent local exchange carrier, as that term is defined in § 54.5 of this chapter, shall receive support for each line it serves in a particular service area based on the support the incumbent LEC would receive for each such line, disaggregated by cost zone if disaggregation zones have been established within the service area pursuant to § 54.315 of this subpart. A competitive eligible telecommunications carrier serving loops in the service area of

a non-rural incumbent local exchange carrier shall receive support for each line it serves in a particular wire center based on the support the incumbent LEC would receive for each such line. A competitive eligible telecommunications carrier serving loops in the service area of a rate-of-return carrier shall be eligible to receive Interstate Common Line Support for each line it serves in the service area in accordance with the formula in § 54.901.

(2) A competitive eligible telecommunications carrier that uses switching purchased as unbundled network elements pursuant to § 51.307 of this chapter to provide the supported services shall receive the lesser of the unbundled network element price for switching or the per-line DEM support of the incumbent LEC, if any. A competitive eligible telecommunications carrier that uses loops purchased as unbundled network elements pursuant to § 51.307 of this chapter to provide the supported services shall receive the lesser of the unbundled network element price for the loop or the incumbent LEC's per-line payment from the high-cost loop support, LTS, and Interstate Common Line Support mechanisms, if any. The incumbent LEC providing nondiscriminatory access to unbundled network elements to such competitive eligible telecommunications carrier shall receive the difference between the level of universal service support provided to the competitive eligible telecommunications carrier and the per-customer level of support that the incumbent LEC would have received.

(3) A competitive eligible telecommunications carrier that provides the supported services using neither unbundled network elements purchased pursuant to § 51.307 of this chapter nor wholesale service purchased pursuant to section 251(c)(4) of the Act will receive the full amount of universal service support that the incumbent LEC would have received for that customer.

(b) In order to receive support pursuant to this subpart, a competitive eligible telecommunications carrier must report to the Administrator the number of working loops it serves in a service area pursuant to the schedule set forth in paragraph (c) of this section. For a competitive eligible telecommunications carrier serving loops in the service area of a rural incumbent local exchange carrier, as that term is defined in § 54.5, the carrier must report, by customer class, the number of working loops it serves in the service area, disaggregated by cost zone if disaggregation zones have been established within the service area pursuant to § 54.315. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area, by customer class if the non-rural telephone company receives Interstate Common Line Support pursuant to § 54.901 and by disaggregation zone if disaggregation zones have been established within the service area pursuant to § 54.315 of this subpart, and the number of working loops it serves in each wire center in the service area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. Competitive eligible telecommunications carriers providing mobile wireless service in an incumbent LEC's service area shall use the customer's billing address for purposes of identifying the service location of a mobile wireless customer in a service area.

(c) A competitive eligible telecommunications carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule.

(1) No later than July 31st of each year, submit data as of December 31st of the previous calendar year;

(2) No later than September 30th of each year, submit data as of March 31st of the existing calendar year;

(3) No later than December 30th of each year, submit data as of June 30th of the existing calendar year;

(4) No later than March 30th of each year, submit data as of September 30th of the previous calendar year.

(d) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (c) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it submits the data required pursuant to paragraph (b) of this section within 60 days of that effective date. Thereafter, the eligible telecommunications carrier must submit the data required in paragraph (b) of this section pursuant to the schedule in paragraph (c) of this section.

(e) *Support Beginning January 1, 2012.* Competitive eligible telecommunications carriers will, beginning January 1, 2012, receive support based on the methodology described in this paragraph and not based on paragraph (a) of this section.

(1) *Baseline Support Amount.* Each competitive eligible telecommunication carrier will have a ''baseline support amount'' equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower. Each competitive eligible telecommunications carrier will have a ''monthly baseline support amount'' equal to its baseline support amount divided by twelve.

(i) ''Total 2011 support'' is the amount of support disbursed to a competitive eligible telecommunication carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by the Administrator on January 31, 2012.

(ii) For the purpose of calculating the $3,000 per line limit, the average of lines reported by a competitive eligible telecommunication carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011 shall be used. The $3,000 per line limit shall be applied to support amounts determined for each incumbent study area served by the competitive eligible telecommunications carrier.

(2) *Monthly support amounts.* Competitive eligible telecommunications carriers shall receive the following support amounts, except as provided in paragraphs (e)(3) through (7) of this section.

(i) From January 1, 2012, to June 30, 2012, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(ii) From July 1, 2012 to June 30, 2013, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(iii) Beginning July 1, 2013, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(3) *Delayed Phase Down for Remote Areas in Alaska.* Certain competitive eligible telecommunications carriers serving remote areas in Alaska shall have their support phased down on a later schedule than that described in paragraph (e)(2) of this section.

(i) *Remote Areas in Alaska.* For the purpose of this paragraph, ''remote areas in Alaska'' includes all of Alaska except;

(A) The ACS-Anchorage incumbent study area;

(B) The ACS-Juneau incumbent study area;

(C) The fairbankszone1 disaggregation zone in the ACS-Fairbanks incumbent study area; and

(D) The Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matunuska Telephone Association incumbent study area.

(ii) *Carriers Subject to Delayed Phase Down.* A competitive eligible telecommunications carrier shall be subject to the delayed phase down described in paragraph (e)(3) of this section to the extent that it serves remote areas in Alaska, and it certified that it served covered locations in its September 30, 2011, filing of line counts with the Administrator. To the extent a competitive eligible telecommunications carrier serving Alaska is not subject to the delayed phase down, it will be subject to the phase down of support on the schedule described in paragraph (e)(2) of this section.

(iii) *Baseline for Delayed Phase Down.* For purpose of the delayed phase down for remote areas in Alaska, the baseline amount for each competitive eligible telecommunications carrier subject to the delayed phase down shall be the

annualized monthly support amount received for June 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later.

(iv) *Monthly Support Amounts*. Competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall receive the following support amounts, except as provided in paragraphs (e)(4) through (e)(6) of this section.

(A) From July 1, 2014 to June 30, 2015, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(B) From July 1, 2015, to June 30, 2016, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(C) From July 1, 2016, to June 30, 2017, each competitive eligible telecommunications carrier shall receive 40 percent of its monthly baseline support amount each month.

(D) From July 1, 2017, to June 30, 2018, each competitive eligible telecommunications carrier shall receive 20 percent of its monthly baseline support amount each month.

(E) Beginning July 1, 2018, no competitive eligible telecommunications carrier serving remote areas in Alaska shall receive universal service support pursuant to this section.

(v) *Interim Support for Remote Areas in Alaska*. From January 1, 2012, until June 30, 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall continue to receive the support, as calculated by the Administrator, that each competitive telecommunications carrier would have received under the frozen per-line support amount as of December 31, 2011 capped at $3,000 per year, provided that the total amount of support for all such competitive eligible telecommunications carriers shall be capped pursuant to paragraph (e)(3)(v)(A) of this section.

(A) *Cap Amount*. The total amount of support available on an annual basis for competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall be equal to the sum of ''total 2011 support,'' as defined in paragraph (e)(1)(i) of this section, received by all competitive eligible telecommunications carriers subject to the delayed phase down for serving remote areas in Alaska.

(B) *Reduction Factor*. To effectuate the cap, the Administrator shall apply a reduction factor as necessary to the support that would otherwise be received by all competitive eligible telecommunications carriers serving remote areas in Alaska subject to the delayed phase down. The reduction factor will be calculated by dividing the total amount of support available amount by the total support amount calculated for those carriers in the absence of the cap.

(4) *Further reductions*. If a competitive eligible telecommunications carrier ceases to provide services to high-cost areas it had previously served, the Commission may reduce its baseline support amount.

(5) *Eligibility for interim support before 5G Fund Phase I auction*. Beginning the first day of the month following the effective date of the Report and Order, FCC 20–150, a competitive eligible telecommunications carrier that receives support pursuant to paragraph (a) or (e)(2) of this section shall no longer receive such support and shall instead receive support as described in this paragraph.

(i) A competitive eligible telecommunications carrier that is not a mobile competitive eligible telecommunications carrier, as that term is defined in § 54.5, shall no longer receive monthly baseline support.

(ii) Until the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the final areas eligible for support in the 5G Fund Phase I auction:

(A) A mobile competitive eligible telecommunications carrier that receives support pursuant to paragraph (a) of this section shall receive ''monthly baseline support'' in an amount equal to one-twelfth (1/12) of its

total support received for the preceding 12-month period.

(B) A mobile competitive eligible telecommunications carrier that receives support pursuant to paragraph (e)(2) of this section shall receive support at the same level described in paragraph (e)(2)(iii) of this section.

(iii) Beginning the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the final areas eligible for support in the 5G Fund Phase I auction and until the first day of the month following release of a public notice announcing the close of the 5G Fund Phase I auction, a mobile competitive eligible telecommunications carrier that receives support pursuant to paragraph (e)(5)(ii) of this section for any such eligible area shall receive an adjusted, disaggregated amount of monthly support for that area, which shall be calculated by multiplying the monthly support level described in paragraph (e)(5)(ii) of this section by the areal percentage of the eligible portion of the competitive eligible telecommunications carrier's service area, weighted by applying the 5G Fund adjustment factor methodology and values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice.

(iv) Beginning the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the final areas eligible for support in the 5G Fund Phase I auction, a mobile competitive eligible telecommunications carrier that receives support pursuant paragraph (e)(5)(ii) of this section for any ineligible area shall receive an adjusted, disaggregated amount of monthly support for that area, which shall be calculated by multiplying the monthly support level described in paragraph (e)(5)(ii) of this section by the areal percentage of the ineligible portion of the competitive eligible telecommunications carrier's service area, weighted by applying the 5G Fund adjustment factor methodology and values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice, and reduced as follows:

(A) For the first 12 months, each mobile competitive eligible telecommunications carrier shall receive monthly support that is two-thirds (⅔) of the level described in paragraph (e)(5)(iv) of this section for the ineligible area.

(B) For 12 months starting the first day of the month following the period described in paragraph (e)(5)(iv)(A) of this section, each mobile competitive eligible telecommunications carrier shall receive monthly support that is one-third (⅓) of the level described in paragraphs (e)(5)(iv) of this section for the ineligible area.

(C) Following the period described in paragraph (e)(5)(iv)(B) of this section, no mobile competitive eligible telecommunications carrier shall receive monthly support for any ineligible area pursuant to this section.

(6) *Eligibility for support after 5G Fund Phase I auction.* (i) Notwithstanding the schedule described in paragraph (e)(5)(iii) of this section, a mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(5)(iii) of this section and is a winning bidder in the 5G Fund Phase I auction shall continue to receive support at the same level it was receiving support for such area at the time of the release of a public notice announcing the close of the 5G Fund Phase I auction until such time as the Office of Economics and Analytics and Wireline Competition Bureau determine whether or not to authorize the carrier to receive 5G Fund Phase I support.

(A) Upon the Office of Economics and Analytics and Wireline Competition Bureau's release of a public notice approving a mobile competitive eligible telecommunications carrier's application for support submitted pursuant to § 54.1014(b) and authorizing the carrier to receive 5G Fund Phase I support, the carrier shall no longer receive support at the level of monthly support described in paragraph (e)(5)(iii) of this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its 5G Fund Phase I

winning bid pursuant to § 54.1017, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support the carrier received during the period between the close of the 5G Fund Phase I auction and the release of the public notice authorizing the carrier to receive 5G Fund Phase I support.

(B) A mobile competitive eligible telecommunications carrier that is a winning bidder in the 5G Fund Phase I auction but is not subsequently authorized to receive 5G Fund Phase I support shall no longer receive support at the level of monthly support described in paragraph (e)(5)(iii) of this section for such area following the determination not to authorize the carrier for 5G Fund Phase I support. Thereafter, the carrier shall receive monthly support as set forth in paragraph (e)(6)(iv) of this section for such area, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support the carrier received during the period between the close of the 5G Fund Phase I auction and the Office of Economics and Analytics and Wireline Competition Bureau's authorization determination.

(ii) A mobile competitive eligible telecommunications carrier that does not receive monthly support pursuant to this section and is a winning bidder in the 5G Fund Phase I auction shall receive monthly support pursuant to § 54.1017.

(iii) A mobile eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(5)(iii) of this section for an area for which support is not won in the 5G Fund Phase I auction shall continue to receive support at the level of monthly support described in paragraph (e)(5)(iii) of this section provided that it is the carrier receiving the minimum level of sustainable support for the area, but for no more than 60 months from the first day of the month following the release of a public notice by the Office of Economics and Analytics and Wireline Competition Bureau announcing the close of the 5G Fund Phase I auction. The ''minimum level of sustainable support'' is the lowest monthly support received by a mobile competitive eligible telecommunications carrier for the area that has deployed the highest level of technology (*e.g.*, 5G) within the state encompassing the area.

(iv) All other mobile competitive eligible telecommunications carriers that receive monthly support pursuant to paragraph (e)(5)(iii) of this section for eligible areas shall instead receive the following monthly support amounts for such areas:

(A) For 12 months starting the first day of the month following release of a public notice announcing the close of the 5G Fund Phase I auction, each mobile competitive eligible telecommunications carrier shall receive monthly support that is two-thirds (⅔) of the level described in paragraph (e)(5)(iii) of this section for the area.

(B) For 12 months starting the month following the period described in paragraph (e)(6)(iv)(A) of this section, each mobile competitive eligible telecommunications carrier shall receive monthly support that is one-third (⅓) of the level described in paragraph (e)(5)(iii) of this section for the area.

(C) Following the period described in paragraph (e)(6)(iv)(B) of this section, no mobile competitive eligible telecommunications carrier shall receive monthly support for the area pursuant to this section.

(7) *Eligibility for support after 5G Fund Phase II auction.* (i) Notwithstanding the schedule described in paragraphs (e)(6)(iii) or (iv) of this section, a mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraphs (e)(6)(iii) or (iv) of this section, as applicable, and is a winning bidder in the 5G Fund Phase II auction shall receive support at the same level it was receiving support for such area at the time of the release of a public notice announcing the close of the 5G Fund Phase II auction until such time as the Office of Economics and Analytics and Wireline Competition Bureau determine whether or not to authorize the carrier to receive 5G Fund Phase II support.

(A) Upon the Office of Economics and Analytics and Wireline Competition Bureau's release of a public notice approving a mobile competitive eligible

telecommunications carrier's application for support submitted pursuant to § 54.1014(b) and authorizing the carrier to receive 5G Fund Phase II support, the carrier shall no longer receive support at the level of monthly support pursuant to this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its 5G Fund Phase II winning bid pursuant to § 54.1017, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support the carrier received during the period between the close of the 5G Fund Phase II auction and the release of the public notice authorizing the carrier to receive 5G Fund Phase II support.

(B) A mobile competitive eligible telecommunications carrier that is a winning bidder in the 5G Fund Phase II auction but is not subsequently authorized to receive 5G Fund Phase II support shall no longer receive support at the level of monthly support pursuant to paragraph (e)(6)(iii) or (iv) of this section for such area, as applicable, following the determination not to authorize the carrier for 5G Fund Phase II support. Thereafter, the carrier shall receive monthly support as set forth in paragraphs (e)(7)(iv) or (v) of this section for such area, as applicable, provided that the Administrator shall decrease the amount of the carrier's support to the extent necessary to account for any support received during the period between the close of the 5G Fund Phase II auction and the Office of Economics and Analytics and Wireline Competition Bureau's authorization determination.

(ii) A mobile competitive eligible telecommunications carrier that does not receive monthly support pursuant to this section and is a winning bidder in the 5G Fund Phase II auction shall receive monthly support pursuant to § 54.1017.

(iii) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(6)(iii) of this section for an area for which support is not won in the 5G Fund Phase II auction shall continue to receive support for that area as described in paragraph (e)(6)(iii) of this section.

(iv) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to paragraph (e)(6)(iii) of this section for an area for which support is won in the 5G Fund Phase II auction and for which the carrier is not the winning bidder shall receive the following monthly support amounts for such areas:

(A) For 12 months starting the first day of the month following release of a public notice announcing the close of the 5G Fund Phase II auction, the mobile competitive eligible telecommunications carrier shall receive monthly support that is two-thirds (⅔) of the level described in paragraph (e)(6)(iii) of this section for the area.

(B) For 12 months starting the month following the period described in paragraph (e)(7)(iv)(A) of this section, the mobile competitive eligible telecommunications carrier shall receive monthly support that is one-third (⅓) of the level described in paragraph (e)(6)(iii) of this section for the area.

(C) Following the period described in paragraph (e)(7)(iv)(B) of this section, the mobile competitive eligible telecommunications carrier shall not receive monthly support for the area pursuant to this section.

(v) All other mobile competitive eligible telecommunications carriers that receive monthly support pursuant to paragraph (e)(6)(iv) of this section for an area shall continue to receive support for the area pursuant to that paragraph.

(8) *Line Count Filings.* Competitive eligible telecommunications carriers, except those subject to the delayed phase down described in paragraph (e)(3) of this section, shall no longer be required to file line counts beginning January 1, 2012. Competitive eligible telecommunications carriers subject to the delayed phase down described in paragraph (e)(3) of this section shall no longer be required to file line counts beginning July 1, 2014, or the date after the first line count filing following the implementation of Mobility Fund Phase II, whichever is later.

(9) *Eligibility for support after Connect America Phase II auction.* Starting the first day of the month following the first authorization of Connect America Phase II auction support nationwide,

fixed competitive eligible telecommunications carriers shall have the option of receiving support pursuant to paragraph (e)(2)(iii) of this section as described in the following paragraphs (e)(8)(i) through (iv):

(i) For 12 months following the first authorization of Connect America Phase II auction support nationwide, each fixed competitive eligible telecommunications carrier shall receive two-thirds (⅔) of the carrier's total support pursuant to paragraph (e)(2)(iii) of this section.

(ii) For 12 months starting the month following the period described in paragraph (e)(8)(i) of this section, each fixed competitive eligible telecommunications carrier shall receive one-third (⅓) of the carrier's total support pursuant to paragraph (e)(2)(iii) of this section.

(iii) Following the period described in paragraph (e)(8)(ii) of this section, no fixed competitive eligible telecommunications carrier shall receive any support pursuant to paragraph (e)(2)(iii) of this section.

(iv) Notwithstanding the foregoing schedule, the phase-down of support below the level described in paragraph (e)(2)(iii) of this section shall be subject to the restrictions in Consolidated Appropriations Act, 2016, Public Law 114–113, Div. E, Title VI, section 631, 129 Stat. 2242, 2470 (2015), unless and until such restrictions are no longer in effect.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2128, Jan. 13, 1998; 64 FR 67431, Dec. 1, 1999; 65 FR 26516, May 8, 2000; 66 FR 30087, June 5, 2001; 66 FR 59726, Nov. 30, 2001; 68 FR 31623, May 28, 2003; 69 FR 34602, June 22, 2004; 70 FR 29979, May 25, 2005; 76 FR 73871, Nov. 29, 2011; 77 FR 14302, Mar. 9, 2012; 77 FR 30913, May 24, 2012; 77 FR 52618, Aug. 30, 2012; 82 FR 15449, Mar. 28, 2017; 84 FR 8623, Mar. 11, 2019; 85 FR 75817, Nov. 25, 2020]

§ 54.308 Broadband public interest obligations for recipients of high-cost support.

(a) Rate-of-return carrier recipients of high-cost support are required to offer broadband service, at speeds described below, 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 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.

(1) Carriers that have elected to receive Connect America Fund-Alternative Connect America Cost Model (CAF–ACAM) support pursuant to § 54.311, other than Enhanced A–CAM support, are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream to a defined number of locations as specified by public notice, with a minimum usage allowance of 150 GB per month, subject to the requirement that usage allowances remain consistent with mean usage in the United States over the course of the term. In addition, such carriers must offer other speeds to subsets of locations, as specified in paragraphs (a)(1)(i) through (v) of this section:

(i) *Fully funded locations*. Fully funded locations are those locations identified by the Alternative-Connect America Cost Model (A–CAM) where the average cost is above the funding benchmark and at or below the funding cap. Carriers are required to offer broadband speeds to locations that are fully funded, as specified by public notice at the time of authorization, as follows:

(A) Carriers with a state-level density of more than 10 housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 75 percent of all fully funded locations in the state by the end of the ten-year period.

(B) Carriers with a state-level density of 10 or fewer, but more than five, housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 50 percent of fully funded locations in the state by the end of the ten-year period.

(C) Carriers with a state-level density of five or fewer housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 25 percent of fully funded locations in the state by the end of the ten-year period.

(ii) *Capped locations.* Capped locations are those locations in census blocks for which A–CAM calculates an average cost per location above the funding cap. Carriers are required to offer broadband speeds to locations that are receiving capped support, as specified by public notice at the time of authorization, as follows:

(A) Carriers with a state-level density of more than 10 housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 4 Mbps downstream/1 Mbps upstream to 50 percent of all capped locations in the state by the end of the ten-year period.

(B) Carriers with a state-level density of 10 or fewer housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 4 Mbps downstream/1 Mbps upstream to 25 percent of capped locations in the state by the end of the ten-year period.

(C) Carriers shall provide to all other capped locations, upon reasonable request, broadband at actual speeds of at least 4 Mbps downstream/1 Mbps upstream.

(iii) Revised A–CAM I carriers, as defined by § 54.311(a)(2), must offer the following broadband speeds to locations that are fully funded, as specified by public notice at the time of the authorizations, as follows:

(A) Revised A–CAM I carriers with a state-level density of more than 10 housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 85 percent of all fully funded locations in the state by the end of the term.

(B) Revised A–CAM I carriers with a state-level density of 10 or fewer, but more than five, housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 65 percent of fully funded locations in the state by the end of the term.

(C) Revised A–CAM I carriers with a state-level density of five or fewer housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 50 percent of fully funded locations in the state by the end of the term.

(iv) A–CAM II carriers, as defined by § 54.311(a)(3), must offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 100 percent of fully funded locations in the state by the end of the term, and therefore have no additional 10/1 Mbps obligation.

(v) After December 31, 2023, to the extent that an Enhanced A–CAM carrier was previously subject to the foregoing deployment obligations pursuant to A–CAM I, Revised A–CAM I, or A–CAM II, the Enhanced A–CAM carrier will instead be subject to § 54.308(a)(3).

(2) Rate-of-return recipients of Connect America Fund Broadband Loop Support (CAF BLS) shall be required to offer broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream, over a five-year period, to a defined number of unserved locations as specified by public notice, as determined by the following methodology:

(i) *Percentage of CAF BLS.* Each rate-of-return carrier is required to target a defined percentage of its five-year forecasted CAF BLS support to the deployment of broadband service to locations that are unserved with 25 Mbps downstream/3 Mbps upstream broadband service as follows:

(A) Rate-of-return carriers with less than 20 percent deployment of 25/3 Mbps broadband service in their study areas, as determined by the Bureau, will be required to use 35 percent of their five-year forecasted CAF BLS support to extend broadband service where it is currently lacking.

(B) Rate-of-return carriers with more than 20 percent but less than 40 percent deployment of 25/3 Mbps broadband

service in their study areas, as determined by the Bureau, will be required to use 25 percent of their five-year forecasted CAF BLS support to extend broadband service where it is currently lacking.

(C) Rate-of-return carriers with more than 40 percent deployment of 25/3 Mbps broadband service in their study areas, as determined by the Bureau, will be required to use 20 percent of their five-year forecasted CAF BLS support to extend broadband service where it is currently lacking.

(ii) *Cost per location.* The deployment obligation shall be determined by dividing the amount of support set forth in paragraph (a)(2)(i) of this section by a cost per location figure based on one of two methodologies, at the carrier's election:

(A) The higher of:

(*1*) The weighted average unseparated cost per loop for carriers of similar density that offer 25/3 Mbps or better broadband service to at least 95 percent of locations, based on the most current FCC Form 477 data as determined by the Bureau, but excluding carriers subject to the current per-line per-month cap set forth in § 54.302 and carriers subject to limitations on operating expenses set forth in § 54.303; *or*

(*2*) 150% of the weighted average of the cost per loop for carriers of similar density, but excluding carriers subject to the per line per month cap set forth in § 54.302 and carriers subject to limitations on operating expenses set forth in § 54.303, with a similar level of deployment of 25/3 Mbps or better broadband based on the most current FCC Form 477 data, as determined by Bureau; or

(B) The average cost per location for census blocks lacking 25/3 Mbps broadband service in the carrier's study area as determined by the A–CAM.

(iii) *Restrictions on deployment obligations.* No rate-of-return carrier shall deploy terrestrial wireline technology in any census block if doing so would result in total support per line in the study area to exceed the per-line per-month cap in § 54.302.

(iv) *Future deployment obligations.* Prior to publishing the deployment obligations for subsequent five-year periods, the Administrator shall update the unseparated average cost per loop amounts for carriers with 95 percent or greater deployment of the then-current standard, based on the then-current NECA cost data, and the Wireline Competition Bureau shall examine the density groupings and make any necessary adjustments based on then-current U.S. Census data.

(3) An Enhanced A–CAM carrier, as defined by § 54.311(a)(4), must offer broadband speeds of at least 100 Mbps downstream/20 Mbps upstream to 100 percent of locations in its study areas within the state by the end of 2028.

(i) Enhanced A–CAM required locations are those locations identified in the National Broadband Map within the carrier's service area where voice and terrestrial broadband services of speeds 100 Mbps downstream/20 Mbps upstream or faster are not yet available or lack an enforceable commitment for deployment of such broadband service. In the context of Enhanced A–CAM, an enforceable commitment exists where a carrier commits to deploying broadband service as a condition of any federal or state grants or other funding. The Wireline Competition Bureau shall provide a list of Enhanced A–CAM required locations for each carrier concurrently with the Enhanced A–CAM offer pursuant to § 54.311(a), and will update such list to reflect any additional information related locations, broadband coverage, or enforceable commitments determined to have existed at the time of the offer.

(ii) An Enhanced A–CAM carrier that has reported deployment of 100 Mbps downstream/20 Mbps upstream or faster service to particular locations in its Enhanced A–CAM study area(s) in the National Broadband Map or the Universal Service Administrative Company's High Cost Universal Broadband Portal must maintain the same or faster service at those locations through the end of the Enhanced A–CAM term.

(b) Rate-of-return carrier recipients of high-cost support are required upon reasonable request 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) within that carrier's service area. Such bids must be at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

(c) Alaskan rate-of-return carriers receiving support from the Alaska Plan pursuant to § 54.306 are exempt from paragraph (a) of this section and are instead required to offer voice and 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, subject to any limitations in access to backhaul as described in § w(g). Alaska Plan recipients' specific broadband deployment and speed obligations shall be governed by the terms of their approved performance plans as described in § 54.306(b). Alaska Plan recipients must also comply with paragraph (b) of this section.

(d) Mobile carriers that are receiving support from the Alaska Plan pursuant to § 54.317(e) shall certify in their annual compliance filings that their rates are reasonably comparable to rates for comparable offerings in urban areas. The mobile carrier must also demonstrate compliance at the end of the five-year milestone and 10-year milestone and may do this by showing that its required stand-alone voice plan, and one service plan that offers broadband data services, if it offers such plans, are:

(1) Substantially similar to a service plan offered by at least one mobile wireless service provider in the cellular market area (CMA) for Anchorage, Alaska, and

(2) Offered for the same or a lower rate than the matching plan in the CMA for Anchorage.

(e) *Enhanced A–CAM Cybersecurity and Supply Chain Risk Management Requirements.* (1) An Enhanced A–CAM carrier shall implement operational cybersecurity and supply chain risk management plans meeting the requirements of this section by January 1, 2024.

(2) An Enhanced A–CAM carrier shall certify that it has implemented plans required under paragraph (e)(1) of this section and submit the plans to the Administrator by January 2, 2024 or within 30 days of approval under the Paperwork Reduction Act, whichever is *later*.

(3) Enhanced A–CAM carriers that fail to comply with Enhanced A–CAM cybersecurity and supply chain risk management requirements are subject to the following non-compliance measures:

(i) The Wireline Competition Bureau shall direct the Administrator to withhold 25 percent of the Enhanced A–CAM carrier's monthly support for failure to comply with paragraph (e)(2) of this section until the carrier makes the required certification and submits the required plans.

(ii) At any time during the support term, if an Enhanced A–CAM carrier does not have in place operational cybersecurity and supply chain risk management plans meeting the requirements of this section, Wireline Competition Bureau shall direct the Administrator to withhold 25 percent of the carrier's monthly support.

(iii) Once the carrier comes into compliance, the Administrator shall stop withholding support, and the carrier will receive all of the support that had been withheld pursuant to this section.

(4) An Enhanced A–CAM carrier's cybersecurity risk management plans shall reflect the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity, and shall reflect an established set of cybersecurity best practices, such as the standards and controls set forth in the Cybersecurity & Infrastructure Security Agency (CISA) Cybersecurity Cross-sector Performance Goals and Objectives or the Center for Internet Security Critical Security Controls.

(5) An Enhanced A–CAM carrier's supply chain risk management plans shall incorporate the key practices discussed in NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry, and related supply chain risk management guidance from NIST 800–161.

(6) If an Enhanced A–CAM carrier makes a substantive modification to its plans under this section, the carrier shall file an updated plan with the Administrator within 30 days of making the modification. A modification to a plan under this section is substantive if at least one of the following conditions apply:

(i) There is a change in the plan's scope, including any addition, removal, or significant alternation to the types of risks covered by the plan (*e.g.*, expanding a plan to cover new areas such as supply chain risks to Internet of Things devices or cloud security could be a substantive change);

(ii) There is a change in the plan's risk mitigation strategies (*e.g.*, implementing a new encryption protocol or deploying a different firewall architecture);

(iii) There is a shift in organizational structure (*e.g.*, creating a new information technology department or hiring a Chief Information Security Officer);

(iv) There is a shift in the threat landscape prompting the organization to recognize that emergence of new threats or vulnerabilities that weren't previously accounted for in the plan;

(v) Any updates made to comply with new cybersecurity regulations, standards, or laws;

(vi) Significant changes in the supply chain, including offboarding major suppliers or vendors, or shifts in procurement strategies that may impact the security of the supply chain; or

(vii) Any large-scale technological changes, including the adoption of new systems or technologies, migrating to a new information technology infrastructure, or significantly changing the information technology architecture.

[80 FR 4477, Jan. 27, 2015, as amended at 80 FR 5987, Feb. 4, 2015; 81 FR 24339, Apr. 25, 2016; 81 FR 69712, Oct. 7, 2016; 82 FR 14339, Mar. 20, 2017; 84 FR 4730, Feb. 19, 2019; 88 FR 59934, Aug. 17, 2023]

EFFECTIVE DATE NOTE: At 88 FR 55934, Aug. 17, 2023, § 54.308 was amended by adding paragraphs (e)(2) and (e)(6) however, these paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 54.309 Connect America Fund Phase II Public Interest Obligations.

(a) Recipients of Connect America Phase II 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.

(1) Recipients of Connect America Phase II model-based support are required to offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream.

(2) Recipients of Connect America Phase II support awarded through a competitive bidding process are required to offer broadband service meeting the performance standards required in bid tiers based on performance standards.

(i) Winning bidders meeting the minimum performance tier standards are required to offer broadband service at actual speeds of 10 Mbps downstream and 1 Mbps upstream and to offer at least 150 gigabytes of monthly usage.

(ii) 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.

(iii) 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.

(iv) 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.

(v) For each of the tiers in paragraphs (a)(2)(i) through (iv) of this section, bidders are required to meet one of two latency performance levels:

(A) 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

(B) 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).

(b) Recipients of Connect America Phase II model-based support, recipients of Phase II Connect America support awarded through a competitive bidding process, and non-contiguous price cap carriers receiving Phase II frozen support in lieu of model-based 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 Phase II model-based support. Such bids must be at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

[80 FR 4477, Jan. 27, 2015, as amended at 80 FR 5987, Feb. 4, 2015; 81 FR 44448, July 7, 2016; 83 FR 23380, May 21, 2018]

§ 54.310 Connect America Fund for Price Cap Territories—Phase II.

(a) *Geographic areas eligible for support.* Connect America Phase II support may be made available for census blocks or other areas identified as eligible by public notice, including locations identified by the forward-looking cost model as extremely high-cost. The number of supported locations will be identified for each area eligible for support will be identified by public notice.

(b) *Term of support.* Connect America Phase II model-based support shall be provided to price cap carriers that elect to make a state-level commitment for six years. Connect America Phase II support awarded through a competitive bidding process shall be provided for ten years.

(c) *Deployment obligation.* Recipients of Connect America Phase II model-based support must complete deployment to 40 percent of supported locations by December 31, 2017, to 60 percent of supported locations by December 31, 2018, to 80 percent of supported locations by December 31, 2019, and to 100 percent of supported locations by December 31, 2020. Recipients of Connect America Phase II awarded through a competitive bidding process 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.

(1) For purposes of meeting the obligation to deploy to the requisite number of supported locations in a state, recipients of Connect America Phase II model-based support may serve unserved locations in census blocks with costs above the extremely high-cost threshold instead of locations in eligible census blocks, provided that they meet the public interest obligations set forth in § 54.309(a) introductory text and (a)(1) for those locations and provided that the total number of locations covered is greater than or equal to the number of supported locations in the state.

(2) Recipients of Connect America Phase II 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 Phase II 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.

(e) *Provider eligibility.* Any eligible telecommunications carrier is eligible to receive Connect America Phase II support in eligible areas.

(1) An entity may obtain eligible telecommunications carrier designation after public notice of winning bidders in a competitive bidding process for the offer of Phase II Connect America support. An applicant in the competitive bidding process shall certify that it is financially and technically qualified to provide the services supported by Connect America Phase II in order to receive such support.

(2) To the extent an applicant in the competitive bidding process seeks eligible telecommunications carrier designation prior to public notice of winning bidders for Phase II Connect America support, its designation as an eligible telecommunications carrier may be conditional subject to the receipt of Phase II Connect America support.

(f) *Transition to model-based support.* Eligible telecommunications carriers electing model-based support in states where that support is less than their Phase I frozen support will transition to model-based support as follows: In addition to model-based support, in the first year of Phase II, they will receive 75% of the difference between Phase I frozen support and model-based support; in the second year of Phase II, they will receive 50% of the difference between Phase I frozen support and model-based support; and in the third year of Phase II, they will receive 25% of the difference between Phase I frozen support and model-based support.

(g) *Extended term of model-based support.* Eligible telecommunications carriers receiving model-based support may elect to receive a seventh year of such support. An eligible telecommunications carrier electing to receive this additional year of support makes a state-level commitment to maintain the required voice and broadband services in the areas for which it receives support during this extended term. The Wireline Competition Bureau will implement a mechanism to enable an eligible telecommunications carrier to elect whether to receive an additional seventh year of support.

(h) *Transition to Rural Digital Opportunity Fund support.* (1) In areas where the eligible telecommunications carrier elects to receive an optional seventh year of model-based support pursuant to paragraph (g) of this section, it shall receive such support for a full calendar year, regardless of the disposition of these areas in the Rural Digital Opportunity Fund auction.

(i) If the eligible telecommunications carrier becomes the winning bidder in the Rural Digital Opportunity Fund auction in these areas, it shall continue to receive model-based support through December 31, 2021. Thereafter, it shall receive monthly support in the amount of its Rural Digital Opportunity Fund winning bid.

(ii) If another provider is the winning bidder in the Rural Digital Opportunity Fund auction in these areas, the new provider shall receive monthly support in the amount of its Rural Digital Opportunity Fund winning bid starting the first day of the month following its authorization by the Wireline Competition Bureau. The eligible telecommunications carrier shall continue to receive model-based support for these areas through December 31, 2021.

(iii) If there is no authorized Rural Digital Opportunity Fund auction support recipient in these areas or if these areas are deemed ineligible for the Rural Digital Opportunity Fund auction, the eligible telecommunications carrier shall continue to receive model-based support for these areas through December 31, 2021. Thereafter, it shall receive no additional support.

(2) In areas where the eligible telecommunications carrier declines to receive an optional seventh year of model-based support pursuant to paragraph (g) of this section, it shall cease

receiving model-based support for these areas on December 31, 2020.

[79 FR 11335, Feb. 28, 2014, as amended at 79 FR 39188, July 9, 2014; 80 FR 4477, Jan. 27, 2015; 81 FR 44449, July 7, 2016; 85 FR 13797, Mar. 10, 2020]

§ 54.311 Connect America Fund Alternative-Connect America Cost Model Support.

(a) *Voluntary election of model-based support.* A rate-of-return carrier (as that term is defined in § 54.5) receiving support pursuant to subparts K or M of this part shall have the opportunity to voluntarily elect, on a state-level basis, to receive Connect America Fund–Alternative Connect America Cost Model (CAF–ACAM) support as calculated by the Alternative–Connect America Cost Model (A–CAM) adopted by the Commission in lieu of support calculated pursuant to subparts K or M of this part, subject to the conditions specific to each A–CAM offer as determined by the Commission. Any rate-of-return carrier not electing support pursuant to this section shall continue to receive support calculated pursuant to those mechanisms as specified in Commission rules for high-cost support.

(1) For the purposes of this section, ''A–CAM I'' refers to carriers initially authorized to receive CAF–ACAM support as of January 24, 2017, including any carriers that later elected revised offers, except for carriers described in paragraph (a)(2) of this section. For such carriers, the first program year of CAF–ACAM is 2017.

(2) For the purposes of this section, ''Revised A–CAM I'' refers to carriers initially authorized to receive CAF–ACAM support as of January 24, 2017, and were subsequently authorized to receive CAF–ACAM pursuant to a revised offer on April 29, 2019. For such carriers, the first program year of CAF–ACAM is 2017.

(3) For the purposes of this section, ''A–CAM II'' refers to carriers initially authorized to receive A–CAM support on August 22, 2019 or November 13, 2020. For such carriers, the first program year of CAF–ACAM is 2019.

(4) For purposes of this section, ''Enhanced A–CAM'' refers to carriers authorized to receive Enhanced A–CAM support after October 1, 2023. For the purpose of determining deployment obligations for such carriers, the first program year of CAF–ACAM is 2025.

(b) *Geographic areas eligible for support.* (1) CAF–ACAM model-based support, except for Enhanced A–CAM support, will be made available for a specific number of locations in census blocks identified as eligible for each carrier by public notice. The eligible areas and number of locations for each state identified by the public notice shall not change during the term of support identified in paragraph (c) of this section.

(2) Enhanced A–CAM support will be made available for each carrier's service areas within the state, in consideration for the deployment and maintenance obligations described in § 54.308(a)(3).

(c) *Term of support.* CAF–ACAM model-based support shall be provided to A–CAM I carriers for a term that extends until December 31, 2026, to Revised A–CAM I and A–CAM II carriers for a term that extends until December 31, 2028, and to Enhanced A–CAM carriers for a term that extends from January 1, 2024, until December 31, 2038.

(d) *Interim deployment milestones.* Recipients of CAF–ACAM model-based support must meet the following interim milestones with respect to their deployment obligations set forth in §§ 54.308(a)(1)(i) and 54.308(a)(3).

(1) A–CAM I and Revised A–CAM I carriers must complete deployment of 10/1 Mbps service to a number of eligible locations equal to 40 percent of fully funded locations by the end of 2020, to 50 percent of fully funded locations by the end of 2021, to 60 percent of fully funded locations by the end of 2022, to 70 percent of fully funded locations by the end of 2023, to 80 percent of fully funded locations by the end of 2024, to 90 percent of fully funded locations by the end of 2025, and to 100 percent of fully funded locations by the end of 2026. By the end of 2026, A–CAM I carriers must complete deployment of broadband meeting a standard of at least 25 Mbps downstream/3 Mbps upstream to the requisite number of locations specified in § 54.308(a)(1)(i). For Revised A–CAM I carriers, the deployment milestones for 10/1 Mbps service described in this paragraph shall be

based on the number of locations that were fully funded pursuant to authorizations made prior to January 1, 2019.

(2) Revised A–CAM I and A–CAM II carriers must complete deployment of 25/3 Mbps service to a number of eligible locations equal to 40 percent of locations required by § 54.308(a)(1) of this subpart by the end of 2022, 50 percent of requisite locations by the end of 2023, 60 percent of requisite locations by the end of 2024, 70 percent of requisite location by the end of 2025, 80 percent of requisite locations by the end of 2026, 90 percent of requisite locations by the end of 2027, and 100 percent of requisite locations by the end of 2028.

(3) For the purposes of A–CAM I, Revised A–CAM I, and A–CAM II, compliance shall be determined based on the total number of fully funded locations in a state. Carriers that complete deployment to at least 95 percent of the requisite number of locations will be deemed to be in compliance with their deployment obligations. The remaining locations that receive capped support are subject to the standard specified in § 54.308(a)(1)(ii).

(4) Enhanced A–CAM carriers must complete deployment of 100/20 Mbps service to a number of locations equal to 50 percent of locations required by § 54.308(a)(3)(i) by the end of 2026, 75 percent of requisite locations by the end of 2027, and 100 percent of requisite locations by the end of 2028. After December 31, 2023, to the extent that an Enhanced A–CAM carrier was subject to the interim deployment milestones set forth in § 54.311(d)(1) and (2), the Enhanced A–CAM carrier will instead be subject to the interim deployment milestones set forth in this paragraph (d)(4).

(e) *Transition to CAF–ACAM Support.* An A–CAM I, Revised A–CAM I, A–CAM II, or Enhanced A–CAM carrier not previously subject to A–CAM support, any of whose final model-based support is less than the carrier's legacy rate-of-return support in its base year as defined in paragraph (e)(4) of this section, will transition as follows:

(1) If the difference between a carrier's model-based support and its base year support, as determined by paragraph (e)(4) of this section, is ten percent or less, it will receive, in addition to model-based support, 50 percent of that difference in program year one, and then will receive model support in program years two through ten.

(2) If the difference between a carrier's model-based support and its base year support, as determined in paragraph (e)(4) of this section, is 25 percent or less, but more than 10 percent, it will receive, in addition to model-based support, an additional transition payment for up to four years, and then will receive model support in program years five through ten. The transition payments will be phased-down 20 percent per year, provided that each phase-down amount is at least five percent of the total base year support amount. If 20 percent of the difference between a carrier's model-based support and base year support is less than five percent of the total base year support amount, the transition payments will be phased-down five percent of the total base year support amount each year.

(3) If the difference between a carrier's model-based support and its base year support, as determined in paragraph (e)(4) of this section, is more than 25 percent, it will receive, in addition to model-based support, an additional transition payment for up to nine years, and then will receive model support in year ten. The transition payments will be phased-down ten percent per year, provided that each phase-down amount is at least five percent of the total base year support amount. If ten percent of the difference between a carrier's model-based support and its base year support is less than five percent of the total base year support amount, the transition payments will be phased-down five percent of the total base year support amount each year.

(4) The carrier's base year support for purposes of the calculation of transition payments is:

(i) For A–CAM I and Revised A–CAM I carriers, the amount of high-cost loop support and interstate common line support disbursed to the carrier for 2015 without regard to prior period adjustments related to years other than 2015, as determined by the Administrator as

of January 31, 2016 and publicly announced prior to the election period for the voluntary path to the model; and

(ii) For A–CAM II carriers, the amount of high-cost loop support and Connect America Fund—Broadband Loop Support disbursed to the carrier for 2018 without regard to prior period adjustments related to years other than 2018, as determined by the Administrator as of January 31, 2019 and publicly announced prior to the election period for the voluntary path to the model.

(iii) For Enhanced A–CAM carriers not previously subject to A–CAM I, Revised A–CAM I, or A–CAM II, the amount of high-cost loop support and Connect America Fund—Broadband Loop Support disbursed to the carrier for 2022 without regard to prior period adjustments related to years other than 2022, as determined by the Administrator as of July 31, 2023 and publicly announced prior to the election period for the voluntary path to the model. The first year of the transition pursuant to this paragraph (e) will be 2035.

(5) An Enhanced A–CAM carrier not previously subject to A–CAM I, Revised A–CAM I, or A–CAM II, and whose final model-based support is less than the carrier's legacy rate-of-return support in its base year as defined in paragraph (e)(4)(iii) of this section, will transition from its frozen base year support to its full Enhanced A–CAM support on the following schedule:

(i) In 2024–2029, it will receive its frozen base year support.

(ii) In 2030, it will receive its base year support minus 4% of the base year support;

(iii) In 2031, it will receive its base year support minus 8% of the base year support;

(iv) In 2032, it will receive its base year support minus 12% of the base year support;

(v) In 2033, it will receive its base year support minus 16% of the base year support;

(vi) In 2034, it will receive its base year support minus 20% of the base year support;

(vii) In 2035–2038, it will transition to its Enhanced A–CAM support pursuant to paragraphs (e)(1) through (3) of this section.

(6) An Enhanced A–CAM carrier that was previously subject to A–CAM I, Revised A–CAM I, or A–CAM II and will continue to receive transitional support consistent with its prior A–CAM I, Revised A–CAM I, or A–CAM II authorization, and will not have its transitional support amount adjusted to reflect its Enhanced A–CAM support amounts.

(f) *Legacy Carrier Transitioning to Higher Enhanced A–CAM.* An Enhanced A–CAM carrier that was not subject to A–CAM I, Revised A–CAM I, or A–CAM II and whose final model-based support is more than the carrier's legacy rate-of-return support in its base year as defined in paragraph (f)(2) of this section, will transition from its frozen base year support to its full Enhanced A–CAM support.

(1) The transition will occur on the following schedule:

(i) In 2024–2029, it will receive its frozen base year support.

(ii) In 2030, it will receive its base year support plus 20% of the difference between its base year support and its Enhanced A–CAM support;

(iii) In 2031, it will receive its base year support plus 40% of the difference between its base year support and its Enhanced A–CAM support;

(iv) In 2032, it will receive its base year support plus 60% of the difference between its base year support and its Enhanced A–CAM support;

(v) In 2033, it will receive its base year support plus 80% of the difference between its base year support and its Enhanced A–CAM support; and

(vi) In 2034, it will receive its Enhanced A–CAM support.

(2) The carrier's base year support for purposes of the calculation of transition payments is the amount of high-cost loop support and Connect America Fund—Broadband Loop Support disbursed to the carrier for 2022 without regard to prior period adjustments related to years other than 2022, as determined by the Administrator as of July 31, 2023 and publicly announced prior to the election period for the voluntary path to the model.

81 FR 24340, Apr. 25, 2016, as amended at 82 FR 14339, Mar. 20, 2017; 84 FR 4731, Feb. 19, 2019; 88 FR 55935, Aug. 17, 2023]

§ 54.312 Connect America Fund for Price Cap Territories—Phase I.

(a) *Frozen High-Cost Support.* Beginning January 1, 2012, each price cap local exchange carrier and rate-of-return carrier affiliated with a price cap local exchange carrier will have a ''baseline support amount'' equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower. For purposes of this section, price cap carriers are defined pursuant to § 61.3(aa) of this chapter and affiliated companies are determined by § 32.9000 of this chapter. Each price cap local exchange carrier and rate-of-return carrier affiliated with a price cap local exchange carrier will have a ''monthly baseline support amount'' equal to its baseline support amount divided by twelve. Beginning January 1, 2012, on a monthly basis, eligible carriers will receive their monthly baseline support amount.

(1) ''Total 2011 support'' is the amount of support disbursed to a price cap local exchange carrier or rate-of-return carrier affiliated with a price cap local exchange carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012.

(2) For the purpose of calculating the $3,000 per line limit, the average of lines reported by a price cap local exchange carrier or rate-of-return carrier affiliated with a price cap local exchange carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011 shall be used.

(3) A carrier receiving frozen high cost support under this rule shall be deemed to be receiving Interstate Access Support and Interstate Common Line Support equal to the amount of support the carrier to which the carrier was eligible under those mechanisms in 2011.

(b) *Incremental Support in 2012.* From January 1, 2012, to December 31, 2012, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows.

(1) For each carrier for which the Wireline Competition Bureau determines that it has appropriate data or for which it determines that it can make reasonable estimates, the Bureau will determine an average per-location cost for each wire center using a simplified cost-estimation function derived from the Commission's cost model. Incremental support will be based on the wire centers for which the estimated per-location cost exceeds the funding threshold. The funding threshold will be determined by calculating which funding threshold would allocate all available incremental support, if each carrier that would be offered incremental support were to accept it.

(2) An eligible telecommunications carrier accepting incremental support must deploy broadband to a number of unserved locations, as shown as unserved by fixed broadband on the then-current version of the National Broadband Map, equal to the amount of incremental support it accepts divided by $775.

(3) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 90 days of being notified of any incremental support for which it would be eligible. Along with its notification, a carrier accepting incremental support must also submit a certification that the locations to be served to satisfy the deployment obligation are not shown as served by fixed broadband provided by any entity other than the certifying entity or its affiliate on the then-current version of the National Broadband Map; that, to

the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation. If a carrier intends to deploy to census blocks not initially identified at the time of election, it must inform the Commission, the Administrator, relevant state commissions, and any affected Tribal government of the change at least 90 days prior to commencing deployment in the new census blocks. No sooner than 46 days after the Wireline Competition Bureau issues a public notice announcing the updated deployment plans but prior to commencing deployment, the carrier must make the certifications described in this paragraph with respect to the new census blocks. If a carrier no longer intends to deploy to a previously identified census block, it must inform the Commission, the Administrator, relevant state commission, and any affected Tribal government prior to filing its certification pursuant to § 54.313(b)(2).

(c) *Incremental Support in 2013.* From January 1, 2013, to December 31, 2013, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows:

(1) For each carrier for which the Wireline Competition Bureau determines that it has appropriate data or for which it determines that it can make reasonable estimates, the Bureau will determine an average per-location cost for each wire center using a simplified cost-estimation function derived from the Commission's high-cost proxy model. Incremental support will be based on the wire centers for which the estimated per-location cost exceeds the funding threshold. The funding threshold will be determined by calculating which funding threshold would allocate all available incremental support, if each carrier that would be offered incremental support were to accept it.

(2) An eligible telecommunications carrier accepting incremental support must deploy broadband to a number of unserved locations, shown as unserved by fixed Internet access with speeds of at least 768 kbps downstream and 200 kbps upstream on the then-current version of the National Broadband Map, equal to the amount of incremental support it accepts divided by $775.

(3) An eligible telecommunications carrier must accept funding pursuant to paragraph (c)(2) of this section before it may accept funding pursuant to paragraph (c)(3) of this section. If an eligible telecommunications carrier has committed to deploy to all locations eligible for support under paragraph (c)(2) of this section on routes or projects that can economically be built with $775 in Connect America funding for each location unserved by 768 kbps downstream and 200 kbps upstream plus an equal amount of non-Connect America carrier capital expenditure funding, but the carrier has not fully utilized its allotted funding, it may also count towards its deployment obligation locations shown as unserved by fixed Internet access with speeds of at least 3 Mbps downstream and 768 kbps upstream equal to the amount of remaining incremental support divided by $550.

(4) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, the Administrator, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept, the number of locations at the $775 amount, and the number of locations at the $550 amount, and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy

broadband to meet its deployment obligation; or stating that it declines incremental support. Such notification must be made within 75 days of being notified of any incremental support for which it would be eligible. If a carrier intends to deploy to census blocks not initially identified at the time of election, it must inform the Commission, the Administrator, relevant state commissions, and any affected Tribal government of the change at least 90 days prior to commencing deployment in the new census blocks. No sooner than 46 days after the Wireline Competition Bureau issues a public notice announcing the updated deployment plans but prior to commencing deployment, the carrier must make the certifications described in paragraph (c)(5) of this section with respect to the new census blocks. If a carrier no longer intends to deploy to a previously identified census block, it must inform the Commission, the Administrator, relevant state commission, and any affected Tribal government prior to filing its certification pursuant to § 54.313(b)(2).

(5) Along with its notification, an eligible telecommunications carrier accepting incremental support must submit the following certifications:

(i) The locations to be served to satisfy the deployment obligation are not shown as served by fixed broadband at the speeds specified in paragraph (c)(2) or (c)(3) of this section provided by any entity other than the certifying entity or its affiliate on the then-current version of the National Broadband Map or that it is challenging the National Broadband Map's designation of that census block under the challenge process in paragraph (c)(7) of this section;

(ii) To the best of the carrier's knowledge, the locations are, in fact, unserved by fixed Internet access with speeds of at least 3 Mbps downstream and 768 kbps upstream, or 768 kbps downstream and 200 kbps upstream, as appropriate;

(iii) The carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation;

(iv) Incremental support will not be used to satisfy any merger commitment or similar regulatory obligation; and

(v) The carrier has undertaken due diligence to determine the locations in question are not within the service area of either Broadband Initiatives Program or the Broadband Technology Opportunities Program projects that will provide Internet access with speeds of at least 3 Mbps downstream and 768 upstream.

(6) An eligible telecommunications carrier deploying to locations unserved by 3 Mbps downstream and 768 kbps upstream under paragraph (c)(3) of this section must also certify that it has prioritized its planned projects or routes so as to maximize the deployment of broadband-capable infrastructure to locations lacking Internet access with speeds of 768 kbps downstream and 200 kbps upstream.

(7) A person may challenge the designation of a census block as served or unserved by a certain speed as shown on the National Broadband Map. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as served by broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream, that locations in that census block will be treated as served by broadband and therefore ineligible to be counted for the purposes of paragraph (c)(3) of this section. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as served by Internet service with speeds of 768 kbps downstream and 200 kbps upstream, but unserved by broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream, locations in that census block will be treated as served by Internet access with speeds of 768 kbps downstream and 200 kbps upstream and therefore eligible to be counted for the purposes of paragraph (c)(3) of this section. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as unserved by Internet service with speeds of 768 kbps downstream and 200

kbps upstream, locations in that census block will be treated as unserved by Internet access with speeds of 768 kbps downstream and 200 kbps upstream and therefore eligible to be counted for the purposes of paragraph (c)(2) of this section.

(8) If no entity other than the carrier or its affiliate provides Internet service with speeds of 3 Mbps downstream and 768 kbps upstream or greater as shown on the National Broadband Map or as determined by the process described in paragraph (c)(7), the carrier may satisfy its deployment obligations at a location shown by the National Broadband Map as being served by that carrier or its affiliate with such service by certifying that it is the only entity providing such service, that the location does not actually receive speeds of 3 Mbps downstream and 768 kbps upstream, and the location is served through a copper-fed digital subscriber line access multiplexer. The carrier must specifically identify such locations in its election. Such locations will be treated the same as locations under paragraph (c)(3) of this section.

(9) An eligible telecommunications carrier must complete deployment of broadband-capable infrastructure to two-thirds of the required number of locations within two years of providing notification of acceptance of funding, and must complete deployment to all required locations within three years. To satisfy its deployment obligation, the eligible telecommunications carrier must offer broadband service to such locations of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas.

(d) *Eligibility for support after Connect America Phase II auction.* (1) A price cap carrier that receives monthly baseline support pursuant to this section and is a winning bidder in the Connect America Phase II auction shall receive support at the same level as described in paragraph (a) of this section for such area until the Wireline Competition Bureau determines whether to authorize the carrier to receive Connect America Phase II auction support for the same area. Upon the Wireline Competition Bureau's release of a public notice approving a price cap carrier's application submitted pursuant to § 54.315(b) and authorizing the carrier to receive Connect America Fund Phase II auction support, the carrier shall no longer receive support at the level of monthly baseline support pursuant to this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its Connect America Phase II winning bid.

(2) Starting the first day of the month following the first authorization of Connect America Phase II auction support nationwide, no price cap carrier that receives monthly baseline support pursuant to this section shall receive such monthly baseline support for areas that are ineligible for Connect America Phase II auction support.

(3) To the extent Connect America Phase II auction support is not awarded at auction for an eligible area, as determined by the Wireline Competition Bureau, the price cap carrier shall have the option of continuing to receive support at the level described in paragraph (a) of this section until further Commission action.

(4) Starting the first day of the month following the authorization of Connect America Phase II auction support to a winning bidder other than the price cap carrier that receives monthly baseline support pursuant to this section for such area, the price cap carrier shall no longer receive monthly baseline support pursuant to this section.

(5) Notwithstanding the foregoing schedule, the phase-down of support below the level described in paragraph (a) of this section shall be subject to the restrictions in Consolidated Appropriations Act, 2016, Public Law 114–113, Div. E, Title VI, section 631, 129 Stat. 2242, 2470 (2015), unless and until such restrictions are no longer in effect.

(e) *Eligibility for support after Rural Digital Opportunity Fund auction.* (1) A price cap carrier that receives monthly baseline support pursuant to this section and is a winning bidder in the Rural Digital Opportunity Fund auction shall receive support at the same

level as described in paragraph (a) of this section for such area until the Wireline Competition Bureau determines whether to authorize the carrier to receive Rural Digital Opportunity Fund auction support for the same area. Upon the Wireline Competition Bureau's release of a public notice approving a price cap carrier's application submitted pursuant to § 54.315(b) and authorizing the carrier to receive Rural Digital Opportunity Fund auction support, the carrier shall no longer receive support at the level of monthly baseline support pursuant to this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its Rural Digital Opportunity Fund winning bid.

(2) Starting the first day of the month following the release of the final eligible areas list for the Rural Digital Opportunity Fund auction, as determined by the Wireline Competition Bureau, no price cap carrier that receives monthly baseline support pursuant to this section shall receive such monthly baseline support for areas that are ineligible for the Rural Digital Opportunity Fund auction.

(3) Starting the first day of the month following the close of Phase I of the Rural Digital Opportunity Fund auction, no price cap carrier that receives monthly baseline support pursuant to this section shall receive such monthly baseline support for areas where Rural Digital Opportunity Fund auction support is not awarded at auction for an eligible area.

(4) Starting the first day of the month following the authorization of Rural Digital Opportunity Fund auction support to a winning bidder other than the price cap carrier that receives monthly baseline support pursuant to this section for such area, the price cap carrier shall no longer receive monthly baseline support pursuant to this section.

[76 FR 73872, Nov. 29, 2011, as amended at 77 FR 31536, May 29, 2012; 78 FR 38233, June 26, 2013; 78 FR 48624, Aug. 9, 2013; 84 FR 8624, Mar. 11, 2019; 85 FR 13797, Mar. 10, 2020]

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) Any recipient of high-cost support shall provide the following:

(1) Certification that the carrier is able to function in emergency situations as set forth in § 54.202(a)(2);

(2) A certification that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the Wireline Competition Bureau and Wireless Telecommunications Bureau;

(3) A certification that the pricing of a service that meets the Commission's broadband public interest obligations is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support;

(4) The recipient's holding company, operating companies, affiliates, and any branding (a ''dba,'' or ''doing-business-as company'' or brand designation), as well as universal service identifiers for each such entity by Study Area Codes, as that term is used by the Administrator. For purposes of this paragraph, ''affiliates'' has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended;

(5) To the extent the recipient serves Tribal lands, documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements. Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the

relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

(6) The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology.

(b) In addition to the information and certifications in paragraph (a) of this section:

(1) Any recipient of incremental Connect America Phase I support pursuant to § 54.312(b) and (c) shall provide:

(i) In its next annual report due after two years after filing a notice of acceptance of funding pursuant to § 54.312(b) and (c), a certification that the company has deployed to no fewer than two-thirds of the required number of locations; and

(ii) In its next annual report due after three years after filing a notice of acceptance of funding pursuant to § 54.312(b) and (c), a certification that the company has deployed to all required locations and that it is offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas.

(2) In addition to the information and certifications required in paragraph (b)(1) of this section, any recipient of incremental Connect America Phase I support pursuant to § 54.312(c) shall provide:

(i) In its annual reports due after one, two, and three years after filing a notice of acceptance of funding pursuant to § 54.312(c), a certification that, to the best of the recipient's knowledge, the locations in question are not receiving support under the Broadband Initiatives Program or the Broadband Technology Opportunities Program for projects that will provide broadband with speeds of at least 4 Mbps/1 Mbps; and

(ii) In its annual reports due after one, two, and three years after filing a notice of acceptance of funding pursuant to § 54.312(c), a statement of the total amount of capital funding expended in the previous year in meeting Connect America Phase I deployment obligations, accompanied by a list of census blocks indicating where funding was spent.

(c) In addition to the information and certifications in paragraph (a) of this section, price cap carriers that receive frozen high-cost support pursuant to § 54.312(a) shall provide:

(1) *By July 1, 2013.* A certification that frozen high-cost support the company received in 2012 was used consistent with the goal of achieving universal availability of voice and broadband;

(2) *By July 1, 2014.* A certification that at least one-third of the frozen-high cost support the company received in 2013 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor;

(3) *By July 1, 2015.* A certification that at least two-thirds of the frozen-high cost support the company received in 2014 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor; and

(4) By July 1, 2016 and in subsequent years. A certification that all frozen-high cost support the company received in the previous year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor. Recipients of frozen high-cost support under § 54.1504(b), for annual reports due July 1, 2024, 2025, and 2026, shall certify that such support received after June 1, 2023 was used for resiliency and redundancy measures and to maintain their network footprint for voice and broadband services as of June 1, 2023.

(d) In addition to the information and certifications in paragraph (a) of this section, beginning July 1, 2013, price cap carriers receiving high-cost support to offset reductions in access charges shall provide a certification that the support received pursuant to § 54.304 in the prior calendar year was used to build and operate broadband-

capable networks used to offer provider's own retail service in areas substantially unserved by an unsubsidized competitor.

(e) In addition to the information and certifications in paragraph (a) of this section, the requirements in paragraphs (e)(1) and (2) of this section apply to recipients of Phase II, Rural Digital Opportunity Fund, Uniendo a Puerto Rico Fund Stage 2 fixed support, and Connect USVI Fund Stage 2 fixed support:

(1) Any price cap carrier that elects to receive Connect America Phase II model-based support shall provide:

(i) On July 1, 2016 a list of the geocoded locations already meeting the § 54.309 public interest obligations at the end of calendar year 2015, and the total amount of Phase II support, if any, the price cap carrier used for capital expenditures in 2015.

(ii) On July 1, 2017 and every year thereafter ending July 1, 2021, the following information:

(A) The number, names, and addresses of community anchor institutions to which the eligible telecommunications carrier newly began providing access to broadband service in the preceding calendar year;

(B) The total amount of Phase II support, if any, the price cap carrier used for capital expenditures in the previous calendar year; and

(C) A certification that it bid on category one telecommunications and Internet access services in response to all FCC Form 470 postings 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 Phase II model-based support, and that such bids were at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

(2) Any recipient of Phase II, Rural Digital Opportunity Fund, Uniendo a Puerto Rico Fund Stage 2 fixed, or Connect USVI Fund Stage 2 fixed support awarded through a competitive bidding or application process shall provide:

(i) Starting the first July 1st after receiving support until the July 1st after the recipient's support term has ended:

(A) The number, names, and addresses of community anchor institutions to which the eligible telecommunications carrier newly began providing access to broadband service in the preceding calendar year;

(B) The total amount of support, if any, the recipient used for capital expenditures in the previous calendar year; and

(C) A certification that it bid on category one telecommunications and Internet access services in response to all FCC Form 470 postings 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 support awarded through auction, and that such bids were at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

(ii) Starting the first July 1st after receiving support until the July 1st after the recipient's penultimate year of support, a certification that the recipient has available funds for all project costs that will exceed the amount of support that will be received for the next calendar year.

(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 Phase II recipient's or Rural Digital Opportunity Fund recipient's support term has ended, a certification that the Phase II–funded network that the 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 in § 54.805 for the Rural Digital Opportunity Fund.

(f) In addition to the information and certifications in paragraph (a) of this section, any rate-of-return carrier shall provide:

(1) Beginning July 1, 2015 and Every Year Thereafter. The following information:.

(i) If the rate-of-return carrier is receiving support pursuant to subparts K and M of this part, a certification that it is taking reasonable steps to provide upon reasonable request broadband service at actual speeds of at least 25 Mbps downstream/3 Mbps upstream, 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 as determined in an annual survey, and that requests for such service are met within a reasonable amount of time; if the rate-of-return carrier receives CAF–ACAM support, a certification that it is meeting the relevant reasonable request standard; or if the rate-of-return carrier is receiving Alaska Plan support pursuant to § 54.306, a certification that it is offering 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, and at speeds committed to in its approved performance plan to the locations it has reported pursuant to § 54.316(a), subject to any limitations due to the availability of backhaul as specified in paragraph (g) of this section.

(ii) The number, names, and addresses of community anchor institutions to which the ETC newly began providing access to broadband service in the preceding calendar year; and

(iii) A certification that it bid on category one telecommunications and Internet access services in response to all reasonable requests in posted FCC Form 470s 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) within its service area, and that such bids were at rates reasonably comparable to rates charged to eligible schools and libraries in urban areas for comparable offerings.

(2) *Privately held rate-of-return carriers only*. A full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year.

(i) Recipients of loans from the Rural Utility Service (RUS) shall provide copies of their RUS Operating Report for Telecommunications Borrowers as filed with the RUS. Such carriers must make their underlying audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

(ii) All privately held rate-of-return carriers that are not recipients of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide either: A copy of their audited financial statement; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company's financial audit. A carrier choosing the latter option must make its audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

(iii) All other privately held rate-of-return carriers must provide either: A copy of their financial statement which has been subject to review by an independent certified public accountant; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification that: The carrier was not audited in the ordinary course of business for the preceding fiscal year; and that the reported data are accurate. If the carrier elects the second option, it must make the review and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

(3) For rate-of-return carriers participating in the Alaska Plan, funding recipients must certify as to whether any terrestrial backhaul or other satellite backhaul became commercially available in the previous calendar year in areas that were previously served exclusively by performance-limiting satellite backhaul. To the extent that such new terrestrial backhaul facilities are constructed, or other satellite backhaul become commercially available, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the Alaska Plan, the funding recipient must provide a description of the backhaul technology, the date at which that backhaul was made commercially available to the carrier, and the number of locations that are newly served by the new terrestrial backhaul or other satellite backhaul. Within twelve months of the new backhaul facilities becoming commercially available, funding recipients must certify that they are offering 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. Funding recipients' minimum speed deployment obligations will be reassessed as specified by the Commission.

(4) If applicable, the name of any cost consultant and cost consulting firm, or other third-party, retained to prepare financial and operations data disclosures submitted to the National Exchange Carrier Association (NECA), the Administrator or the Commission pursuant to subpart D, K, or M of this part.

(5) Rate-of-return carriers receiving support pursuant to the Alternative Connect America Model or the Alaska Plan, that are not otherwise required to file count data pursuant to § 54.903(a)(1) of this subpart, must file the line count data required by § 54.903(a)(1).

(6) Enhanced A–CAM carriers must provide the following:

(i) Enhanced A–CAM carriers must certify that, in the previous calendar year, they participated, in good faith, in any relevant BEAD Program challenge processes or other processes conducted by states or other BEAD Program eligible entities to determine the eligibility of locations for the BEAD Program, and that they otherwise coordinated with states, Tribes, and other eligible entities to help avoid duplicative federal broadband funding. Additionally, Enhanced A–CAM carriers must certify that, in the previous calendar year, they complied with the obligation not to receive or use BEAD Program funding or other future federal grant funding, unless otherwise specified by the Commission or Bureau, that supports broadband deployment for those locations for which they are receiving Enhanced A–CAM support.

(ii) Enhanced A–CAM carriers must describe how and certify that, in the previous calendar year, they continued to participate in the Affordable Connectivity Program or any substantially similar successor program, as required by the terms of their Enhanced A–CAM offers.

(iii) Enhanced A–CAM carriers must certify that they have maintained their cybersecurity and supply chain risk management plans pursuant to § 54.308(e), report whether they filed any substantive modifications pursuant to § 54.308(e)(6) in the prior year, and report the date they filed any substantive modifications.

(g) *Areas with no terrestrial backhaul.* Carriers without access to terrestrial backhaul that are compelled to rely exclusively on satellite backhaul in their study area must certify annually that no terrestrial backhaul options exist. Any such funding recipients must certify they offer broadband service at actual speeds of at least 1 Mbps downstream and 256 kbps upstream within the supported area served by satellite middle-mile facilities. To the extent that new terrestrial backhaul facilities are constructed, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the Connect America Fund, within twelve months of the new backhaul facilities becoming commercially available, funding recipients must provide the certifications required in paragraphs

(e) or (f) of this section in full. Carriers subject to this paragraph must comply with all other requirements set forth in the remaining paragraphs of this section. These obligations may be modified for carriers participating in the Alaska Plan.

(h) In their annual reporting due by July 1, 2019 and July 1, 2020, all incumbent local exchange carrier recipients of high-cost support must report all of their rates for residential local service for all portions of their service area, as well as state regulated fees, to the extent the sum of those rates and fees are below $18, and the number of lines for each rate specified. Carriers shall report lines and rates in effect as of June 1. For purposes of this subsection, state regulated fees shall be limited to state subscriber line charges, state universal service fees and mandatory extended area service charges.

(i) All reports pursuant to this section shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, with the Administrator, and with the relevant state commissions or relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

(j) *Filing deadlines.* (1) In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the July 1 deadline, but by July 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that files on or after July 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(2) *Grace period.* An eligible telecommunications carrier that submits the annual reporting information required by this section after July 1 but before July 5 will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to paragraph (a)(8) of this section have not missed the July 1 deadline in any prior year.

(k) This section does not apply to recipients that solely receive support from Phase I of the Mobility Fund.

(l) In addition to the information and certifications in paragraph (a) of this section, any competitive eligible telecommunications carrier participating in the Alaska Plan must provide the following:

(1) Funding recipients that have identified in their approved performance plans that they rely exclusively on satellite backhaul for a certain portion of the population in their service area must certify as to whether any terrestrial backhaul or other satellite backhaul became commercially available in the previous calendar year in areas that were previously served exclusively by satellite backhaul. To the extent that new terrestrial backhaul facilities are constructed or other satellite backhaul become commercially available, the funding recipient must:

(i) Provide a description of the backhaul technology;

(ii) Provide the date on which that backhaul was made commercially available to the carrier;

(iii) Provide the number of the population within their service area that are served by the newly available backhaul option; and

(iv) To the extent the funding recipient has not already committed to providing 4G LTE at 10/1 Mbps to the population served by the newly available backhaul by the end of the plan term, submit a revised performance commitment factoring in the availability of the new backhaul option no later than the due date of the Form 481 in which they have certified that such backhaul became commercially available.

(2) [Reserved]

(m) Any price cap carrier or fixed competitive eligible telecommunications carrier that elects to continue receiving support pursuant to § 54.312(d) or § 54.307(e)(2)(iii) shall provide certifications, starting July 1, 2020 and for

each subsequent year they receive such support, that all such support the company received in the previous year was used to provide voice service throughout the high-cost and extremely high-cost census blocks where they continue to have the federal high-cost eligible telecommunications carrier obligation to provide voice service pursuant to § 54.201(d) at rates that are reasonably comparable to comparable offerings in urban areas. Any price cap carrier or fixed competitive eligible telecommunications carrier that solely receives support pursuant to § 54.312(d) or§ 54.307(e)(2)(iii) in its designated service area shall not be subject to reporting requirements in any other paragraphs in this section for such support.

(n) Recipients of Uniendo a Puerto Rico Fund Stage 2 fixed and mobile support and Connect USVI Fund Stage 2 fixed and mobile support shall certify that such support was not used for costs that are (or will be) reimbursed by other sources of support, including Federal or local government aid or insurance reimbursements; and that support was not used for other purposes, such as the retirement of company debt unrelated to eligible expenditures, or other expenses not directly related to network restoration, hardening, and expansion consistent with the framework of the Uniendo a Puerto Rico Fund or Connect USVI Fund, respectively. Recipients of fixed and mobile support from Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund shall certify that they have conducted an annual review of the documentation required by § 54.1515(a) through (c) to determine the need for and to implement changes or revisions to disaster preparation and recovery documentation.

(o) Recipients of Uniendo a Puerto Rico Fund or Connect USVI Fund Stage 2 mobile support and recipients of transitional support under § 54.1516 shall certify that they are in compliance with all requirements in this part for receipt of such support to continue.

(p) [Reserved]

(q) Recipients of transitional support under § 54.1516, as part of either the Uniendo a Puerto Rico Fund or Connect USVI Fund shall certify that such support was not used for costs that are (or will be) reimbursed by other sources of support, including Federal or local government aid or insurance reimbursements; and that support was not used for other purposes, such as the retirement of company debt unrelated to eligible expenditures, or other expenses not directly related to network restoration, hardening, and expansion consistent with the framework of the Uniendo a Puerto Rico Fund or Connect USVI Fund, respectively. Recipients of transitional support under § 54.1516 shall certify that they have conducted an annual review of the documentation required by § 54.1515(a) through (c) or § 54.1524, respectively, to determine the need for and to implement changes or revisions to disaster preparation and recovery documentation.

[76 FR 73873, Nov. 29, 2011, as amended at 77 FR 14302, Mar. 9, 2012; 77 FR 30914, May 24, 2012; 78 FR 22201, Apr. 15, 2013; 78 FR 29656, May 21, 2013; 78 FR 3843, Jan. 17, 2013; 78 FR 38233, June 26, 2013; 79 FR 11336, Feb. 28, 2014; 79 FR 39189, July 9, 2014; 80 FR 4477, Jan. 27, 2015; 81 FR 24341, Apr. 25, 2016; 81 FR 44449, July 7, 2016; 81 FR 69713, Oct. 7, 2016; 82 FR 15450, Mar. 28, 2017; 82 FR 39969, Aug. 23, 2017; 83 FR 18964, May 1, 2018; 84 FR 4732, Feb. 19, 2019; 84 FR 8624, Mar. 11, 2019; 84 FR 19876, May 7, 2019; ;85 FR 59963, Nov. 7, 2019; 85 FR 13797, Mar. 10, 2020; 85 FR 75819, Nov. 25, 2020; 88 FR 28999, May 5, 2023; 88 FR 55936, Aug. 17, 2023]

EFFECTIVE DATE NOTES: 1. At 79 FR 11336, Feb. 28, 2014, § 54.313(e)(1), (e)(2), and (e)(3) introductory text were revised. These paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

2. At 80 FR 4476, Jan. 27, 2015, § 54.313 (a)(12) was added and (e) was revised. These paragraphs contain information collection and record keeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

3. At 85 FR 75819, Nov. 25, 2020, § 54.313 was amended by revising paragraph (n). This paragraph has a delayed effective date, the revised text is set forth to read as follow.

§ 54.313 Annual reporting requirements for high-cost recipients.

(n) In addition to the information and certifications in paragraph (a) of this section, a mobile competitive eligible telecommunications carrier receiving legacy high-cost support pursuant to § 54.307(e)(5), (e)(6), or

(e)(7) shall certify whether it used any support pursuant to § 54.207(f), and if so, whether it used such support in compliance with § 54.7.

4. 88 FR 55936, Aug. 17, 2023, § 54.313 was amended by revising paragraph (f)(1)(i) and adding (f)(6)(i), however these paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 54.314 Certification of support for eligible telecommunications carriers.

(a) *Certification*. States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

(b) *Carriers not subject to State jurisdiction*. An eligible telecommunications carrier not subject to the jurisdiction of a State that desires to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carrier was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to the high-cost program shall only be provided to the extent that the carrier has filed the requisite certification pursuant to this section.

(c) *Certification format*. (1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, and with the Administrator of the high-cost support mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certificates filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 14–58, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section. All affidavits filed pursuant to this section shall become part of the public record maintained by the Commission.

(d) *Filing deadlines*. (1) In order for an eligible telecommunications carrier to receive federal high-cost support, the state or the eligible telecommunications carrier, if not subject to the jurisdiction of a state, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission by October 1 of each year. If a state or eligible telecommunications carrier files the annual certification after the October 1 deadline, the carrier subject to the certification shall receive a reduction in its support pursuant to the following schedule:

(i) An eligible telecommunications carrier subject to certifications filed

after the October 1 deadline, but by October 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier subject to certifications filed on or after October 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction.

(2) *Grace period*. If an eligible telecommunications carrier or state submits the annual certification required by this section after October 1 but before October 5, the eligible telecommunications carrier subject to the certification will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) have not missed the October 1 deadline in any prior year.

[76 FR 73875, Nov. 29, 2011; 79 FR 39189, July 9, 2014; 80 FR 4477, Jan. 27, 2015]

§ 54.315 Application process for Connect America Fund phase II support distributed through competitive bidding.

(a) Application to participate in competitive bidding for Phase II support. In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Phase II auction 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 of § 54.309 for each relevant tier and in each area for which it seeks 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) Indicate the tier of bids that the applicant plans to make and describe the technology or technologies that will be used to provide service for each tier of 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 at least 10 years from the date of the funding authorization; and

(7) Submit specified operational and financial information.

(i) Submit a certification that the applicant 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 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.

(b) *Application by winning bidders for Phase II auction support*—(1) *Deadline*. As provided by public notice, winning bidders for Phase II auction support shall file an application for Phase II auction 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 Phase II auction 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 of § 54.309 for each tier in which it is a winning bidder and in each area for which it seeks support;

(iii) Certification that the applicant will meet the relevant public interest obligations for each relevant tier, 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 in § 54.309;

(v) Certification that the applicant will have available funds for all project costs that exceed the amount of support to be received from the Phase II auction 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 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 winning bidder. 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 180 days after the public notice identifying them as a winning bidder, bidders that did not submit audited financial statements in their short-form application pursuant to paragraph (a)(7)(i) of this section 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 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 nonmaterial 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 winning bidder that may be authorized to receive Phase II auction support after the winning bidder 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 winning bidder 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 winning bidder that is authorized to receive Phase II auction support.

(c) *Letter of credit.* Before being authorized to receive Phase II auction 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 Phase II 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 Phase II auction 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 § 54.310(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:

(*1*) Located in the District of Columbia; or

(*2*) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations;

(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 winning bidder for Phase II auction 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 Phase II auction 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 Phase II auction support recipient to meet its service milestones as required by § 54.310 will trigger reporting obligations and the withholding of support as described in § 54.320(c). Failure to come into full compliance within 12 months will trigger a recovery action by the Universal Service Administrative Company. If the Phase II 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 Phase II auction support recipient from the receipt of Phase II auction 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 the Wireless Telecommunications Bureau, or their 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.

[81 FR 44449, July 7, 2016, as amended at 83 FR 15994, Apr. 13, 2018; 83 FR 18454, Apr. 27, 2018; 85 FR 75819, Nov. 25, 2020]

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

(a) *Broadband deployment reporting.* Rate-of Return ETCs, ETCs that elect to receive Connect America Phase II model-based support, and ETCs awarded support to serve fixed locations through a competitive bidding process shall have the following broadband reporting obligations:

(1) Recipients of high-cost support with defined broadband deployment obligations pursuant to § 54.308(a), 54.308(c), or § 54.310(c) shall provide to the Administrator on a recurring basis information regarding the locations to which the eligible telecommunications carrier is offering broadband service in satisfaction of its public interest obligations, as defined in either § 54.308 or § 54.309.

(2) Recipients subject to the requirements of § 54.308(a)(1) shall report the number of locations for each state and locational information, including geocodes, separately indicating whether they are offering service providing speeds of at least 4 Mbps downstream/1 Mbps upstream, 10 Mbps downstream/1 Mbps upstream, and 25 Mbps downstream/3 Mbps upstream.

(3) Recipients subject to the requirements of § 54.308(a)(2) shall report the number of newly served locations for each study area and locational information, including geocodes, separately indicating whether they are offering service providing speeds of at least 4 Mbps downstream/1 Mbps upstream, 10 Mbps downstream/1 Mbps upstream, and 25 Mbps downstream/3 Mbps upstream.

(4) Recipients subject to the requirements of § 54.310(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 shall also report the technology they use to serve those locations.

(5) Recipients subject to the requirements of § 54.308(c) shall report the number of newly deployed and upgraded locations and locational information, including geocodes, where they are offering service providing speeds they committed to in their adopted performance plans pursuant to § 54.306(b).

(6) Recipients subject to the requirements of § 54.308(c) or § 54.317(e) shall submit fiber network maps or microwave network maps covering eligible areas. At the end of any calendar year for which middle-mile facilities were deployed, these recipients shall also submit updated maps showing middle-mile facilities that are or will be used to support their services in eligible areas.

(7) Recipients subject to the requirements of § 54.1506 shall report the number of locations for Puerto Rico and the U.S. Virgin Islands and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients shall also report the technologies they use to serve those locations.

(8) Recipients subject to the requirements of § 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 Rural Digital Opportunity Fund support shall also report the technology they use to serve those locations.

(b) *Broadband deployment certifications.* Rate-of Return ETCs, ETCs that elect to receive Connect America Phase II model-based support, and ETCs awarded support through a competitive bidding process shall have the following broadband deployment certification obligations:

(1) Price cap carriers that elect to receive Connect America Phase II model-based support shall provide: No later than March 1, 2017, and every year thereafter ending on no later than March 1, 2021, a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations specified in § 54.309 to the required percentage of its supported locations in each state as set forth in § 54.310(c).

(2) Rate-of-return carriers electing CAF–ACAM support pursuant to § 54.311, other than Enhanced A–CAM carriers, shall provide:

(i) No later than March 1, 2021, and every year thereafter ending on no later than March 1, 2029, a certification that by the end of the prior calendar year, it was offering broadband meeting the requisite public interest obligations specified in § 54.308 to the required percentage of its fully funded locations in the state, pursuant to the interim deployment milestones set forth in § 54.311(d).

(ii) No later than March 1, 2027, a certification that as of December 31, 2026, it was offering broadband meeting the requisite public interest obligations specified in § 54.308(a)(1) to all of its fully funded locations in the state and to the required percentage of its capped locations in the state.

(3) Rate-of-return carriers receiving support pursuant to subparts K and M of this part shall provide:

(i) No later than March 1, 2024, a certification that it fulfilled the deployment obligation meeting the requisite public interest obligations as specified in § 54.308(a)(2) to the required number of locations as of December 31, 2023.

(ii) Every subsequent five-year period thereafter, a certification that it fulfilled the deployment obligation meeting the requisite public interest obligations as specified in § 54.308(a)(2)(iv).

(4) Recipients of Connect America Phase II auction support shall provide: By the last business day of the second calendar month following each service milestone in § 54.310(c), a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specific in § 54.309 to the required percentage of its supported locations in each state as set forth in § 54.310(c).

(5) Recipients of Rural Digital Opportunity Fund support shall provide: No later than March 1 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.

(6) A rate-of-return carrier authorized to receive Alaska Plan support pursuant to § 54.306 shall provide:

(i) No later than March 1, 2022 a certification that it fulfilled the deployment obligations and is offering service meeting the requisite public interest obligations as specified in § 54.308(c) to the required number of locations as of December 31, 2021.

(ii) No later than March 1, 2027 a certification that it fulfilled the deployment obligations and is offering service meeting the requisite public interest obligations as specified in § 54.308(c) to the required number of locations as of December 31, 2026.

(7) Recipients of Uniendo a Puerto Rico Fund Stage 2 fixed and Connect USVI Fund fixed Stage 2 fixed support shall provide: On an annual basis by the last business day of the second calendar month following each service milestone in § 54.1506, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specified in § 54.1507 to the required percentage of its supported locations in Puerto Rico and the U.S. Virgin Islands as set forth in § 54.1506. The annual certification shall quantify the carrier's progress toward or, as applicable, completion of deployment in accordance with the resilience and redundancy commitments in its application and in accordance with the detailed network plan it submitted to the Wireline Competition Bureau.

(c) *Filing deadlines*. In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designations, it must submit the annual reporting information as set forth below.

(1) Price cap carriers that accepted Phase II model-based support, rate-of-return carriers, and recipients of Rural Digital Opportunity Fund support must submit the annual reporting information required by March 1 as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the March 1 deadline, but by March 8, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that files on or after March 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;

(iii) *Grace period*. An eligible telecommunications carrier that submits the annual reporting information required by this section after March 1 but before March 5 will not receive a reduction in support if the eligible telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) in their report due July 1 of the prior year have not missed the March 1 deadline in any prior year.

(2) Recipients of support to serve fixed locations awarded through a competitive bidding process must submit the annual reporting information required by the last business day of the second calendar month following the relevant support years as described in paragraphs (a) and (b) of this section. Eligible telecommunications carriers that file their reports after the deadline shall receive a reduction in support pursuant to the following schedule:

(i) An eligible telecommunications carrier that files after the deadline, but within seven days of the deadline, will have its support reduced in an amount equivalent to seven days in support;

(ii) An eligible telecommunications carrier that filed on or after the eighth day following the deadline will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction;

(iii) *Grace period*. An eligible telecommunications carrier that submits the annual reporting information required by this section within three days of the deadline will not receive a reduction in support if the eligible

telecommunications carrier and its holding company, operating companies, and affiliates as reported pursuant to § 54.313(a)(8) in their report due July 1 of the prior year have not missed the deadline in any prior year.

[81 FR 24341, Apr. 25, 2016, as amended at 81 FR 44451, July 7, 2016; 81 FR 69713, Oct. 7, 2016; 82 FR 14340, Mar. 20, 2017; 84 FR 4732, Feb. 19, 2019; 84 FR 59964, Nov. 7, 2019, 85 FR 13798, Mar. 10, 2020; 87 FR 13948, Mar. 11, 2022; 88 FR 55937, Aug. 17, 2023]

EFFECTIVE DATE NOTE: At 88 FR 55937, Aug. 17, 2023, § 54.316 was amended by adding paragraph (a)(9) and (b)(8) However, these paragraphs contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 54.317 Alaska Plan for competitive eligible telecommunications carriers serving remote Alaska.

(a) *Election of support.* Subject to the requirements of this section, certain competitive eligible telecommunications carriers serving remote areas in Alaska, as defined in § 54.307(e)(3)(i), shall have a one-time option to elect to participate in the Alaska Plan. Carriers exercising this option with approved performance plans shall have their support frozen for a period of ten years beginning on or after January 1, 2017, at a date set by the Wireless Telecommunications Bureau, notwithstanding § 54.307.

(b) *Carriers eligible for support.* A competitive eligible telecommunications carrier shall be eligible for frozen support pursuant to the Alaska Plan if that carrier serves remote areas in Alaska as defined by § 54.307(e)(3)(i) and if that carrier certified that it served covered locations in Alaska in its September 30, 2011, filing of line counts with the Administrator and submitted a performance plan by August 23, 2016.

(c) *Interim support for remote areas in Alaska.* From January 1, 2012, until December 31, 2016, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska pursuant to § 54.307(e)(3) shall receive support as calculated in § 54.307(e)(3)(v).

(d) *Support amounts and support term.* For a period of 10 years beginning on or after January 1, 2017, at a date set by the Wireless Telecommunications Bureau, notwithstanding § 54.307, each Alaska Plan participant shall receive monthly Alaska Plan support in an amount equal to the annualized monthly support amount it received for December 2014. Alaska Plan participants shall no longer be required to file line counts.

(e) *Use of frozen support.* Frozen support allocated through the Alaska Plan may only be used to provide mobile voice and mobile broadband service in those census blocks in remote areas of Alaska, as defined in § 54.307(e)(3)(i), that did not, as of December 31, 2014, receive 4G LTE service directly from providers that were either unsubsidized or ineligible to claim the delayed phase down under § 54.307(e)(3) and covering, in the aggregate, at least 85 percent of the population of the block. Nothing in this section shall be interpreted to limit the use of frozen support to build or upgrade middle-mile infrastructure outside such remote areas of Alaska if such middle mile infrastructure is necessary to the provision of mobile voice and mobile broadband service in such remote areas. Alaska Plan participants may use frozen support to provide mobile voice and mobile broadband service in remote areas of Alaska served by competitive eligible telecommunications carrier partners of ineligible carriers if those areas are served using the competitive eligible telecommunications carrier's infrastructure.

(f) *Performance plans.* In order to receive support pursuant to this section, a competitive eligible telecommunications carrier must be subject to a performance plan approved by the Wireless Telecommunications Bureau. The performance plan must indicate specific deployment obligations and performance requirements sufficient to demonstrate that support is being used in the public interest and in accordance with paragraph (e) of this section and the requirements adopted by the Commission for the Alaska Plan. For each level of wireless service offered (2G/Voice, 3G, and 4G LTE) and each type of middle mile used in connection with that level of service, the performance plan must specify minimum speeds that will be offered to a specified population by the end of the fifth year of support and by the end of the

tenth year of support. Alaska Plan participants shall, no later than the end of the fourth year of the ten-year term, review and modify their end-of-term commitments in light of any new developments, including newly available infrastructure. The Wireless Telecommunications Bureau may require the filing of revised commitments at other times if justified by developments that occur after the approval of the initial performance commitments. If the specific performance obligations are not achieved in the time period identified in the approved performance plans the carrier shall be subject to § 54.320(c) and (d).

(g) *Phase down of non-participating competitive eligible telecommunications carrier high-cost support.* Notwithstanding § 54.307, and except as provided in paragraph (h) of this section, support distributed in Alaska on or after January 1, 2017 to competitive eligible telecommunications carriers that serve areas in Alaska other than remote areas of Alaska, that are ineligible for frozen support under paragraphs (b) or (e) of this section, or that do not elect to receive support under this section, shall be governed by this paragraph. Such support shall be subject to phase down in three years as provided in paragraph (g) of this section, except that carriers that are not signatories to the Alaska Plan will instead be subject to a three-year phase down commencing on September 1, 2017, and competitive eligible telecommunications carriers that are signatories to the Alaska Plan but did not submit a performance plan by August 23, 2016 shall not receive support in remote areas beginning January 1, 2017.

(1) From January 1, 2017, to December 31, 2017, each such competitive eligible telecommunications carrier shall receive two-thirds of the monthly support amount the carrier received for December 2014 for the relevant study area.

(2) From January 1, 2018, to December 31, 2018, each such competitive eligible telecommunications carrier shall receive one-third of the monthly support amount the carrier received for December 2014 for the relevant study area.

(3) Beginning January 1, 2019, no such competitive eligible telecommunications carrier shall receive universal service support for the relevant study area pursuant to this section or § 54.307.

(h) *Support for unserved remote areas of Alaska.* Beginning January 1, 2017, support that, but for paragraph (g) of this section, would be allocated to carriers subject to paragraph (g) of this section shall be allocated for a reverse auction, with performance obligations established at the time of such auction, for deployment of mobile service to remote areas of Alaska, as defined in § 54.307(e)(3)(i), that are without commercial mobile radio service as of December 31, 2014.

[81 FR 69714, Oct. 7, 2016]

§ 54.318 [Reserved]

§ 54.319 Elimination of high-cost support in areas with 100 percent coverage by an unsubsidized competitor.

(a)–(c) [Reserved]

(d) High-cost universal service support pursuant to subpart K of this part shall be eliminated for those census blocks of an incumbent rate-of-return local exchange carrier study area where an unsubsidized competitor, or combination of unsubsidized competitors, as defined in § 54.5, offer(s) voice and broadband service meeting the public interest obligations in § 54.308(a)(2) to at least 85 percent of residential locations in the census block. Qualifying competitors must be able to port telephone numbers from consumers.

(e) After a determination that a particular census block is served by a competitor as defined in paragraph (d) of this section, support provided pursuant to subpart K of this part shall be disaggregated pursuant to a method elected by the incumbent local exchange carrier. The sum of support that is disaggregated for competitive and non-competitive areas shall equal the total support available to the study area without disaggregation.

(f) For any incumbent local exchange carrier for which the disaggregated support for competitive census blocks represents less than 25 percent of the support the carrier would have received

in the study area in the absence of this rule, support provided pursuant to subpart K of this part shall be reduced according to the following schedule:

(1) In the first year, 66 percent of the incumbent's disaggregated support for the competitive census block will be provided;

(2) In the second year, 33 percent of the incumbent's disaggregated support for the competitive census blocks will be provided;

(3) In the third year and thereafter, no support shall be provided pursuant to subpart K of this part for any competitive census block.

(g) For any incumbent local exchange carrier for which the disaggregated support for competitive census blocks represents 25 percent or more of the support the carrier would have received in the study area in the absence of this rule, support shall be reduced for each competitive census block according to the following schedule:

(1) In the first year, 83 percent of the incumbent's disaggregated support for the competitive census blocks will be provided;

(2) In the second year, 66 percent of the incumbent's disaggregated support for the competitive census blocks will be provided;

(3) In the third year, 49 percent of the incumbent's disaggregated support for the competitive census blocks will be provided;

(4) In the fourth year, 32 percent of the incumbent's disaggregated support the competitive census block will be provided;

(5) In the fifth year, 15 percent of the incumbent's disaggregated support the competitive census blocks will be provided;

(6) In the sixth year and thereafter, no support shall be paid provided pursuant to subpart K of this part for any competitive census block.

(h) The Wireline Competition Bureau shall update its analysis of competitive overlap in census blocks every seven years, utilizing the current public interest obligations in § 54.308(a)(2) as the standard that must be met by an unsubsidized competitor.

[80 FR 4478, Jan. 27, 2015, as amended at 81 FR 24342, Apr. 25, 2016; 82 FR 14340, Mar. 20, 2017; 83 FR 14189, Apr. 3, 2018; 84 FR 4732, Feb. 19, 2019]

§ 54.320 Compliance and recordkeeping for the high-cost program.

(a) Eligible telecommunications carriers authorized to receive universal service high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.

(b) All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. This documentation must be maintained for at least ten years from the receipt of funding. All such documents shall be made available upon request to the Commission and any of its Bureaus or Offices, the Administrator, and their respective auditors.

(c) Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.

(d) Eligible telecommunications carriers subject to defined build-out milestones must notify the Commission and USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days after the applicable deadline if they have failed to meet a build-out milestone.

(1) *Interim build-out milestones.* Upon notification that an eligible telecommunications carrier has defaulted on an interim build-out milestone after it has begun receiving high-cost support, the Wireline Competition Bureau—or Wireless Telecommunications Bureau in the case of mobile carrier

participants—will issue a letter evidencing the default. For purposes of determining whether a default has occurred, a carrier must be offering service meeting the requisite performance obligations. The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the eligible telecommunication carrier's total monthly high-cost support, if applicable, starting the month following the issuance of the letter:

(i) *Tier 1.* If an eligible telecommunications carrier has a compliance gap of at least five percent but less than 15 percent of the number of locations that the eligible telecommunications carrier is required to have built out to or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone, the Wireline Competition Bureau or Wireless Telecommunications Bureau, will issue a letter to that effect. Starting three months after the issuance of this letter, the eligible telecommunications carrier will be required to file a report every three months identifying the geocoded locations to which the eligible telecommunications carrier has newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the previous quarter, or, in the case of Alaska Plan mobile-carrier participants, the populations to which the competitive eligible telecommunications carrier has extended or upgraded service meeting their approved performance plan and obligations. Eligible telecommunications carriers that do not file these quarterly reports on time will be subject to support reductions as specified in § 54.313(j). The eligible telecommunications carrier must continue to file quarterly reports until the eligible telecommunications carrier reports that it has reduced the compliance gap to less than five percent of the required number of locations (or population, if applicable) for that interim milestone and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect.

(ii) *Tier 2.* If an eligible telecommunications carrier has a compliance gap of at least 15 percent but less than 25 percent of the number of locations that the eligible telecommunications carrier is required to have built out to or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone, USAC will withhold 15 percent of the eligible telecommunications carrier's monthly support for that support area and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 15 percent of the required number of locations (or population, if applicable) for that interim milestone for that support area, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, USAC will stop withholding support, and the eligible telecommunications carrier will receive all of the support that had been withheld. The eligible telecommunications carrier will then move to Tier 1 status.

(iii) *Tier 3.* If an eligible telecommunications carrier has a compliance gap of at least 25 percent but less than 50 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, USAC will withhold 25 percent of the eligible telecommunications carrier's monthly support for that support area and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 25 percent of the required number of locations (or population, if applicable) for that interim milestone for that support area, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect,

the eligible telecommunications carrier will move to Tier 2 status.

(iv) *Tier 4.* If an eligible telecommunications carrier has a compliance gap of 50 percent or more of the number of locations that the eligible telecommunications carrier is required to have built out to or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone:

(A) USAC will withhold 50 percent of the eligible telecommunications carrier's monthly support for that support area, and the eligible telecommunications carrier will be required to file quarterly reports.As with the other tiers, as the eligible telecommunications carrier reports that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone).

(B) If after having 50 percent of its support withheld for six months the eligible telecommunications carrier has not reported that it is eligible for Tier 3 status (or one of the other lower tiers), USAC will withhold 100 percent of the eligible telecommunications carrier's monthly support and will commence a recovery action for a percentage of support that is equal to the eligible telecommunications carrier's compliance gap plus 10 percent of the ETC's support that has been disbursed to that date.

(v) If at any point during the support term, the eligible telecommunications carrier reports that it is eligible for Tier 1 status, it will have its support fully restored, USAC will repay any funds that were recovered or withheld, and it will move to Tier 1 status.

(2) *Final milestone.* Upon notification that the eligible telecommunications carrier has not met a final milestone, the eligible telecommunications carrier will have twelve months from the date of the final milestone deadline to come into full compliance with this milestone. If the eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve months, the Wireline Competition Bureau—or Wireless Telecommunications Bureau in the case of mobile carrier participants—will issue a letter to this effect. In the case of Alaska Plan mobile carrier participants, USAC will then recover the percentage of support that is equal to 1.89 times the average amount of support per location received by that carrier over the support term for the relevant percentage of population. For other recipients of high-cost support, USAC will then recover the percentage of support that is equal to 1.89 times the average amount of support per location received in the support area for that carrier over the term of support for the relevant number of locations plus 10 percent of the eligible telecommunications carrier's total relevant high-cost support over the support term for that support area. Where a recipient is unable to demonstrate compliance with a final performance testing milestone, USAC will recover the percentage of support that is equal to 1.89 times the average amount of support per location received in the support area for the relevant number of locations for that carrier plus 10 percent of the eligible telecommunications carrier's total relevant high cost-support over the support term for that support area, the total of which will then be multiplied by the percentage of time since the carrier was last able to demonstrate compliance based on performance testing, on a quarterly basis. In the event that a recipient fails to meet a final milestone both for build-out and performance compliance, USAC will recover the total of the percentage of support that is equal to 1.89 times the average amount of support per location received by that carrier over the support term for the relevant number of locations to which the carrier failed to build out; the percentage of support that is equal to 1.89 times the average amount of support per location received in the support area for the relevant number of locations for that carrier multiplied by the percentage of time since the carrier was last able to demonstrate compliance based on performance testing; and 10 percent

of the eligible telecommunications carrier's total relevant high-cost support over the support term for that support area.

(3) *Compliance reviews.* If subsequent to the eligible telecommunications carrier's support term, USAC determines in the course of a compliance review that the eligible telecommunications carrier does not have sufficient evidence to demonstrate that it is offering service to all of the locations required by the final milestone or, in the case of Alaska Plan participants, did not provide service consistent with the carrier's approved performance plan, USAC shall recover a percentage of support from the eligible telecommunications carrier as specified in paragraph (d)(2) of this section.

[76 FR 73876, Nov. 29, 2011, as amended at 80 FR 4478, Jan. 27, 2015; 81 FR 69714, Oct. 7, 2016; 84 FR 67235, Dec. 9, 2019]

§ 54.321 Reporting and certification requirements for Alaska Plan participants.

Any competitive eligible telecommunications carrier authorized to receive Alaska Plan support pursuant to § 54.317 shall provide:

(a) No later than 60 days after the end of each participating carrier's first five-year term of support, a certification that it has met the obligations contained in the performance plan approved by the Wireless Telecommunications Bureau, including any obligations pursuant to a revised approved performance plan and that it has met the requisite public interest obligations contained in the Alaska Plan Order. For Alaska Plan participants receiving more than $5 million annually in support, this certification shall be accompanied by data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plan.

(b) No later than 60 days after the end of each participating carrier's second five-year term of support, a certification that it has met the obligations contained in the performance plan approved by the Wireless Telecommunications Bureau, including any obligations pursuant to a revised approved performance plan, and that it has met the requisite public interest obligations contained in the Alaska Plan Order. For Alaska Plan participants receiving more than $5 million annually in support, this certification shall be accompanied by data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plan.

[81 FR 69716, Oct. 7, 2016]

§ 54.322 Public interest obligations and performance requirements, reporting requirements, and non-compliance mechanisms for mobile legacy high-cost support recipients.

(a) *General.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall deploy voice and broadband data services that meet at least the 5G–NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15, or any successor release that may be adopted by the Office of Economics and Analytics and the Wireline Competition Bureau after notice and comment.

(b) *Service milestones and deadlines.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall deploy 5G service that meets the performance requirements specified in paragraph (d) of this section to a percentage of the service areas for which the carrier receives monthly support and on a schedule as specified and adopted by the Office of Economics and Analytics and Wireline Competition Bureau after notice and comment.

(c) *Support usage.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii) or (e)(7)(iii) shall use an increasing percentage of such support for the deployment, maintenance, and operation of mobile networks that provide 5G service as specified in paragraph (a) of this section and that meet the performance requirements specified in paragraph (d) of this section as follows:

(1) *Year one support usage.* The carrier shall use at least one-third (⅓) of the total monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) in calendar year 2021 as specified in paragraph (c) of this section by December 31, 2021.

(2) *Year two support usage.* The carrier shall use at least two-thirds (⅔) of the total monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) in calendar year 2022 as specified in paragraph (c) of this section by December 31, 2022.

(3) *Year three and subsequent year support usage.* The carrier shall use all monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) as specified in paragraph (c) of this section in 2023 and thereafter.

(4) *Year one support usage flexibility.* If the carrier is unable to meet the support usage requirement in paragraph (c)(1) of this section, the carrier shall have the flexibility to instead proportionally increase the support usage requirement in paragraph (c)(2) of this section such that its combined usage of monthly support received pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) in calendar years 2021 and 2022 is equal to the total amount of such support that the carrier receives annually, provided that the carrier certifies to the Wireline Competition Bureau this amount and that it will make up for any shortfall in a filing due by March 31, 2021 or 30 days after Paperwork Reduction Act approval, whichever is later.

(d) *Performance requirements.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall meet the following minimum baseline performance requirements for data speeds, data latency, and data allowances in areas that it has deployed 5G service as specified in paragraph (a) of this section and for which it receives support for at least one plan that it offers:

(1) Median data transmission rates of 35 Mbps download and 3 Mbps upload, and with at least 90 percent of measurements recording data transmission rates of not less than 7 Mbps download and 1 Mbps upload;

(2) Transmission latency of 100 milliseconds or less round trip for successfully transmitted measurements (*i.e.*, ignoring lost or timed-out packets); with at least 90 percent of measurements recording latency of 100 milliseconds or less round trip, and

(3) At least one service plan offered must include a data allowance that is equivalent to the average United States subscriber data usage as specified and adopted by the Office of Economics and Analytics and Wireline Competition Bureau after notice and comment.

(e) *Collocation obligations.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall allow for reasonable collocation by other carriers of services that would meet the technological requirements specified in paragraph (a) of this section on all cell-site infrastructure constructed with universal service funds that it owns or manages in the area for which it receives such monthly support. In addition, during the time that the mobile competitive eligible telecommunications carrier receives such support, the carrier may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the cell-site infrastructure.

(f) *Voice and data roaming obligations.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall comply with the Commission's voice and data roaming requirements that are currently in effect on networks that are built with universal service funds.

(g) *Reasonably comparable rates.* A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall offer its services in the areas for which it receives such monthly support at rates that are reasonably comparable to those rates offered in urban areas and must advertise the voice and broadband services it offers in its subsidized service areas. A mobile competitive eligible telecommunications carrier's rates shall be considered reasonably comparable to urban rates, based upon the most recently-available decennial U.S. Census Bureau data identifying areas as urban, if rates for services in rural areas fall within a reasonable range of urban rates for reasonably comparable voice and broadband services.

(1) If the carrier offers service in urban areas, it may demonstrate that it offers reasonably comparable rates if it offers the same rates, terms, and conditions (including usage allowances, if any, for a specific rate) in both urban and rural areas or if one of the carrier's stand-alone voice service plans and one service plan offering data are substantially similar to plans it offers in urban areas.

(2) If the carrier does not offer service in urban areas, it may demonstrate that it offers reasonably comparable rates by identifying a carrier that does offer service in urban areas and the specific rate plans to which its plans are reasonably comparable, along with submission of corroborating evidence that its rates are reasonably comparable, such as marketing materials from the identified carrier.

(h) *Initial report of current service offerings.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall submit an initial report describing its current service offerings in its subsidized service areas and how the monthly support it is receiving is being used in such areas no later than three months after the effective date of the Report and Order, FCC 20–150, and Paperwork Reduction Act approval. This report shall include the following information:

(i) Information regarding the carrier's current service offerings in its subsidized service areas, including the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements specified in paragraph (d) of this section will be deployed within the subsidized service area, and an estimate of the percentage of area covered by 5G deployment meeting the performance requirements specified in paragraph (d) of this section within the subsidized service area;

(ii) A brief narrative describing its current service offerings and providing an accounting of how monthly support has been used to provide mobile wireless services for the 12-month period prior to the deadline of this report;

(iii) Detailed cell-site and sector infrastructure information for infrastructure that the carrier uses to provide service in its subsidized service areas;

(iv) Certification that the carrier has filed relevant deployment data (either via FCC Form 477 or the Digital Opportunity Data Collection, as appropriate) that reflect its current deployment covering its subsidized service areas;

(v) Certification that the carrier is in compliance with the public interest obligations as set forth in this section and all of the terms and conditions associated with the continued receipt of such monthly support disbursements; and

(vi) Additional information as required by the Office of Economics and Analytics and Wireline Competition Bureau after release of a public notice detailing the procedures to file this report.

(2) The party submitting the report must certify that it has been authorized to do so by the mobile competitive eligible telecommunications carrier that receives support.

(3) Each initial report of current service offerings shall be submitted solely via the Administrator's online portal.

(i) The Commission and the Administrator shall treat infrastructure data submitted as part of such reports as presumptively confidential.

(ii) The Administrator shall make such reports available to the Commission and to the relevant state, territory, and Tribal governmental entities, as applicable.

(4) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall have a continuing obligation to maintain the accuracy and completeness of the information provided in its initial report. Any substantial change in the accuracy or completeness of such a report must be reported as an update to its submitted report within ten (10) business days after the reportable event occurs.

(5) The Commission shall retain the authority to look behind a mobile competitive eligible telecommunications carrier's initial report and to take action to address any violations.

(i) *Annual reports.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5) (e)(6), or (e)(7) shall submit an annual report no later than July 1 in each year following the year in which its initial report of current service offerings as specified in paragraph (h) of this section is submitted. Each such report shall include the following information:

(i) Except for areas for which the carriers receives monthly support pursuant to § 54.307(e)(5)(iv), (e)(6)(iv) or (e)(7)(iv), updated information regarding the carrier's current service offerings in its subsidized service areas for the previous calendar year, including the highest level of technology deployed, a target date for when 5G broadband service meeting the performance requirements specified in paragraph (d) of this section will be deployed within the subsidized service area, and an estimate of the percentage of area covered by 5G deployment meeting the performance requirements specified in paragraph (d) of this section within the subsidized service area;

(ii) A brief narrative providing an accounting of the support the carrier has received and how monthly support has been used to provide mobile wireless services for the previous calendar year, with an indication of which of these expenditures were used to meet the requirements specified in paragraph (c) of this section within the subsidized service area;

(iii) Detailed cell-site and sector infrastructure information for infrastructure that the carrier uses to provide service in its subsidized service areas;

(iv) Certification that the carrier has filed relevant deployment data (either via FCC Form 477 or the Digital Opportunity Data Collection, as appropriate) that reflect its current deployment covering its subsidized service areas;

(v) Certification that the carrier is in compliance with the public interest obligations as set forth in this section and all of the terms and conditions associated with the continued receipt of monthly support; and

(vi) Additional information as required by the Office of Economics and Analytics and Wireline Competition Bureau after release of a public notice detailing the procedures to file these reports.

(2) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall supplement the information provided to the Administrator in any annual report within ten (10) business days from the onset of any reduction in the percentage of areas for which the recipient receives support being served after the filing of an initial or annual certification report or in the event of any failure to comply with any of the requirements for continued receipt of such support.

(3) The party submitting the annual report must certify that it has been authorized to do so by mobile competitive eligible telecommunications carrier that receives support.

(4) Each annual report shall be submitted solely via the Administrator's online portal.

(i) The Commission and the Administrator shall treat infrastructure data submitted as part of such a report as presumptively confidential.

(ii) The Administrator shall make such reports available to the Commission and to the relevant state, territory, and Tribal governmental entities, as applicable.

(5) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) shall have a continuing obligation to maintain the accuracy and completeness of the information provided in its annual reports. Any substantial change in the accuracy or completeness of any such report must be reported as an update to the submitted annual report within ten (10) business days after the reportable event occurs.

(6) The Commission shall retain the authority to look behind a mobile competitive eligible telecommunications carrier's annual reports and to take action to address any violations.

(j) *Service milestone reports.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5)(ii), (e)(5)(iii), (e)(6)(iii), or (e)(7)(iii) shall submit a report after each of the service milestones described in paragraph (b) of this section by the deadlines established by the Office of Economics and Analytics and Wireline Competition Bureau demonstrating that it has deployed 5G service that meets the performance requirements specified in paragraph (d) of this section, which shall include information as required by the Office of Economics and Analytics and Wireline Competition Bureau in a public notice.

(2) All data submitted in or certified to in any service milestone report shall be subject to verification by the Administrator for compliance with the performance requirements specified in paragraph (d) of this section.

(k) *Non-compliance measures for failure to comply with performance requirements or public interest obligations.* (1) A mobile competitive eligible telecommunications carrier that receives monthly support pursuant to § 54.307(e)(5) (e)(6), or (e)(7) that fails to comply with the public interest obligations set forth in paragraphs (e) through (j) of this section, fails to comply with the performance requirements set forth in paragraph (d) of this section at the prescribed level by the applicable service milestone deadline established in paragraph (b) of this section, or that fails to use monthly support as set forth in paragraph (c) of this section must notify the Wireline Competition Bureau and the Administrator within 10 business days of its non-compliance.

(2) Upon notification by a carrier of its non-compliance pursuant to paragraph (k) of this section, or a determination by the Administrator or Wireline Competition Bureau of a carrier's non-compliance with any of the public interest obligations set forth in paragraphs (e) through (j) of this section or the performance requirements set forth in paragraph (d) of this section, the carrier will be deemed to be in default, and for monthly support received pursuant to § 54.307(e)(5), (e)(6), or (e)(7), will no longer be eligible to receive such support, will receive no further support disbursements, and may be subject to recovery of up to the amount of support received since the effective date of the Report and Order, FCC 20–150, that was not used for the deployment, maintenance, and operation of mobile networks that provide 5G service as specified in paragraph (a) of this section and that meet the performance requirements specified in paragraph (d) of this section. The carrier may also be subject to further action, including the Commission's existing enforcement procedures and penalties, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.

(3) A mobile competitive eligible telecommunications carrier that voluntarily relinquishes receipt of monthly support pursuant to § 54.307(e)(5), (e)(6), or (e)(7) will no longer be required to comply with the public interest obligations specified in this section, except that the carrier may be deemed to be in default and subject to recovery of support as set forth in paragraph (k)(2) of this section.

[85 FR 75819, Nov. 25, 2020]

EFFECTIVE DATE NOTE: At 85 FR 75819, Nov. 25, 2020, § 54.322 was added, However, paragraphs (b), (g), (h), (i) and (j), have a delayed effective date.

Subpart E—Universal Service Support for Low-Income Consumers

54.400 Terms and definitions.

As used in this subpart, the following terms shall be defined as follows:

(a) *Qualifying low-income consumer.* A ''qualifying low-income consumer'' is a consumer who meets the qualifications for Lifeline, as specified in § 54.409.

(b) *Toll blocking service.* ''Toll blocking service'' is a service provided by an eligible telecommunications carrier that lets subscribers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(c) *Toll control service.* ''Toll control service'' is a service provided by an eligible telecommunications carrier that allows subscribers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(d) *Toll limitation service.* ''Toll limitation service'' denotes either toll blocking service or toll control service for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, ''toll limitation service'' denotes both toll blocking service and toll control service.

(e) *Eligible resident of Tribal lands.* An ''eligible resident of Tribal lands'' is a ''qualifying low-income consumer,'' as defined in paragraph (a) of this section, living on Tribal lands. For purposes of this subpart, ''Tribal lands'' include any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands—areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, *et. seq.*, as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in § 54.412.

(f) *Income.* ''Income'' means gross income as defined under section 61 of the Internal Revenue Code, 26 U.S.C. 61, for all members of the household. This means all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 U.S.C. 101 *et seq.*

(g) *Duplicative support.* ''Duplicative support'' exists when a Lifeline subscriber is receiving two or more Lifeline services concurrently or two or more subscribers in a household are receiving Lifeline services or Tribal Link Up support concurrently.

(h) *Household.* A ''household'' is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An ''economic unit'' consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.

(i) *National Lifeline Accountability Database or Database.* The ''National Lifeline Accountability Database'' or ''Database'' is an electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Commission.

(j) *Qualifying assistance program.* A ''qualifying assistance program'' means any of the federal or Tribal assistance programs the participation in which, pursuant to § 54.409(a) or (b), qualifies a consumer for Lifeline service, including Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; Veterans and Survivors Pension Benefit; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the

Food Distribution Program on Indian Reservations (FDPIR).

(k) *Direct service.* As used in this subpart, direct service means the provision of service directly to the qualifying low-income consumer.

(l) *Broadband Internet access service.* ''Broadband Internet access service'' is defined as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

(m) *Voice telephony service.* ''Voice telephony service'' is defined as voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

(n) *Supported service.* Voice telephony service is the supported service for the Lifeline program.

(o) *National Lifeline Eligibility Verifier.* The ''National Lifeline Eligibility Verifier'' or ''National Verifier'' is an electronic and manual system with associated functions, processes, policies and procedures, to facilitate the determination of consumer eligibility for the Lifeline program, as directed by the Commission.

(p) *Enrollment representatives.* An employee, agent, contractor, or subcontractor, acting on behalf of an eligible telecommunications carrier or third-party entity, who directly or indirectly provides information to the Universal Service Administrative Company or a state entity administering the Lifeline Program for the purpose of eligibility verification, enrollment, recertification, subscriber personal information updates, benefit transfers, or de-enrollment.

[77 FR 12966, Mar. 2, 2012, as amended at 80 FR 40935, July 14, 2015; 81 FR 33089, May 24, 2016; 84 FR 71327, Dec. 27, 2019; 86 FR 1021, Jan.7, 2021]

§ 54.401 Lifeline defined.

(a) As used in this subpart, Lifeline means a non-transferable retail service offering provided directly to qualifying low-income consumers:

(1) For which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in § 54.403; and

(2) That provides qualifying low-income consumers with voice telephony service or broadband Internet access service as defined in § 54.400. Toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service. If an eligible telecommunications carrier charges Lifeline subscribers a fee for toll calls that is in addition to the per month or per billing cycle price of the subscribers' Lifeline service, the carrier must offer toll limitation service at no charge to its subscribers as part of its Lifeline service offering.

(b) Eligible telecommunications carriers may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan with the minimum service levels set forth in § 54.408 that includes fixed or mobile voice telephony service, broadband Internet access service, or a bundle of broadband Internet access service and fixed or mobile voice telephony service; and plans that include optional calling features such as, but not limited to, caller identification, call waiting, voicemail, and three-way calling.

(1) Eligible telecommunications carriers may permit qualifying low-income consumers to apply their Lifeline discount to family shared data plans.

(2) Eligible telecommunications carriers may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan that includes voice telephony service without qualifying broadband Internet access service prior to December 1, 2021.

(3) Beginning December 1, 2016, eligible telecommunications carriers must

provide the minimum service levels for each offering of mobile voice service as defined in § 54.408.

(4) Beginning December 1, 2021, eligible telecommunications carriers must provide the minimum service levels for broadband Internet access service in every Lifeline offering.

(c) Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline for voice-only service plans that:

(1) Do not charge subscribers additional fees for toll calls; or

(2) That charge additional fees for toll calls, but the subscriber voluntarily elects toll limitation service.

(d) When an eligible telecommunications carrier is designated by a state commission, the state commission shall file or require the eligible telecommunications carrier to file information with the Administrator demonstrating that the carrier's Lifeline plan meets the criteria set forth in this subpart and describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart.

(e) Consistent with § 52.33(a)(1)(i)(C) of this chapter, eligible telecommunications carriers may not charge Lifeline customers a monthly number-portability charge.

(f) Eligible telecommunications carriers may aggregate eligible subscribers' benefits to provide a collective service to a group of subscribers, provided that each qualifying low-income consumer subscribed to the collective service receives residential service that meets the requirements of paragraph (a) of this section and § 54.408.

[77 FR 12967, Mar. 2, 2012, as amended at 80 FR 40935, July 14, 2015; 81 FR 33090, May 24, 2016]

§ 54.403 Lifeline support amount.

(a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:

(1) *Basic support amount.* Federal Lifeline support in the amount of $9.25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to a qualifying low-income consumer, except as provided in paragraph (a)(2) of this section, if that carrier certifies to the Administrator that it will pass through the full amount of support to the qualifying low-income consumer and that it has received any non-federal regulatory approvals necessary to implement the rate reduction.

(2) For a Lifeline provider offering either standalone voice service, subject to the minimum service standards set forth in § 54.408, or voice service with broadband below the minimum standards set forth in § 54.408, the support levels will be as follows:

(i) Until December 1, 2019, the support amount will be $9.25 per month.

(ii) From December 1, 2019 until November 30, 2020, the support amount will be $7.25 per month.

(iii) From December 1, 2020 until November 30, 2021, the support amount will be $5.25 per month.

(iv) On December 1, 2021, standalone voice service, or voice service not bundled with broadband which meets the minimum standards set forth in § 54.408, will not be eligible for Lifeline support unless the Commission has previously determined otherwise.

(v) Notwithstanding paragraph (a)(2)(iv) of this section, on December 1, 2021, the support amount for standalone voice service, or voice service not bundled with broadband which meets the minimum standards set forth in § 54.408, provided by a provider that is the only Lifeline provider in a Census block will be the support amount specified in paragraph (a)(2)(iii) of this section.

(3) *Tribal lands support amount.* Additional Federal Lifeline support of up to

$25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400(e), to the extent that the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tribal lands support amount to the qualifying eligible resident of Tribal lands and that it has received any non-Federal regulatory approvals necessary to implement the required rate reduction.

(b) *Application of Lifeline discount amount.* (1) Eligible telecommunications carriers that charge Federal End User Common Line charges or equivalent Federal charges must apply Federal Lifeline support to waive the Federal End User Common Line charges for Lifeline subscribers if the carrier is seeking Lifeline reimbursement for eligible voice telephony service provided to those subscribers. Such carriers must apply any additional Federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-Federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers must apply the Federal Lifeline support amount, plus any additional support amount, to reduce the cost of any generally available residential service plan or package offered by such carriers that provides at least one service commensurate with the requirements outlined in § 54.408, and charge Lifeline subscribers the resulting amount.

(2) [Reserved]

[77 FR 12967, Mar. 2, 2012, as amended at 81 FR 33090, May 24, 2016; 83 FR 2084, Jan. 16, 2018; 86 FR 1021, Jan. 7, 2021; 88 FR 34782, May 31, 2023]

§ 54.404 The National Lifeline Accountability Database.

(a) *State certification.* An eligible telecommunications carrier operating in a state that provides an approved valid certification to the Commission in accordance with this section is not required to comply with the requirements set forth in paragraphs (b) and (c) of this section with respect to the eligible telecommunications carriers' subscribers in that state. A valid certification must include a statement that the state has a comprehensive system in place to prevent duplicative federal Lifeline support that is at least as robust as the system adopted by the Commission and that incorporates information from all eligible telecommunications carriers receiving low-income support in the state and their subscribers. A valid certification must also describe in detail how the state system functions and for each requirement adopted by the Commission to prevent duplicative support, how the state system performs the equivalent functions. The certification must be submitted to the Commission no later than six months from the effective date of this section of the Commission's rules to be valid. Such certification will be considered approved unless the Wireline Competition Bureau rejects the certification within 90 days of filing.

(b) *The National Lifeline Accountability Database.* In order to receive Lifeline support, eligible telecommunications carriers operating in states that have not provided the Commission with approved valid certification pursuant to paragraph (a) of this section must comply with the following requirements:

(1) All eligible telecommunications carriers must query the National Lifeline Accountability Database to determine whether a prospective subscriber who has executed a certification pursuant to § 54.410(d) is currently receiving a Lifeline service from another eligible telecommunications carrier; and whether anyone else living at the prospective subscriber's residential address is currently receiving a Lifeline service.

(2) If the Database indicates that a prospective subscriber, who is not seeking to port his or her telephone number, is currently receiving a Lifeline service, the eligible telecommunications carrier must not provide and shall not seek or receive Lifeline reimbursement for that subscriber.

(3) If the Database indicates that another individual at the prospective subscriber's residential address is currently receiving a Lifeline service, the eligible telecommunications carrier must not seek and will not receive Lifeline reimbursement for providing

service to that prospective subscriber, unless the prospective subscriber has certified, pursuant to § 54.410(d), that to the best of his or her knowledge, no one in his or her household is already receiving a Lifeline service. This certification may be collected by the eligible telecommunications carrier prior to initial enrollment, but the certification shall not be recorded in the Database unless the eligible telecommunications carrier receives a notification from the Database or state administrator that another Lifeline subscriber resides at the same address as the prospective subscriber.

(4) An eligible telecommunications carrier is not required to comply with paragraphs (b)(1) through (3) of this section if it receives notice from a state Lifeline administrator or other state agency that the administrator or other agency has queried the Database about a prospective subscriber and that providing the prospective subscriber with a Lifeline benefit would not result in duplicative support.

(5) Eligible telecommunications carriers may query the Database only for the purposes provided in paragraphs (b)(1) through (b)(3) of this section, and to determine whether information with respect to its subscribers already in the Database is correct and complete.

(6) Eligible telecommunications carriers must transmit to the Database in a format prescribed by the Administrator each new and existing Lifeline subscriber's full name; full residential address; date of birth and the last four digits of the subscriber's Social Security number or Tribal Identification number, if the subscriber is a member of a Tribal nation and does not have a Social Security number; the telephone number associated with the Lifeline service; the date on which the Lifeline service was initiated; the date on which the Lifeline service was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for Lifeline.

(7) In the event that two or more eligible telecommunications carriers transmit the information required by this paragraph to the Database for the same subscriber, only the eligible telecommunications carrier whose information was received and processed by the Database first, as determined by the Administrator, will be entitled to reimbursement from the Fund for that subscriber.

(8) All eligible telecommunications carriers must update an existing Lifeline subscriber's information in the Database within ten business days of receiving any change to that information, except as described in paragraph (b)(10) of this section.

(9) All eligible telecommunications carriers must obtain, from each new and existing subscriber, consent to transmit the subscriber's information. Prior to obtaining consent, the eligible telecommunications carrier must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Lifeline program, and that failure to provide consent will result in subscriber being denied the Lifeline service.

(10) When an eligible telecommunications carrier de-enrolls a subscriber, it must transmit to the Database the date of Lifeline service de-enrollment within one business day of de-enrollment.

(11) All eligible telecommunications carriers must securely retain subscriber documentation that the ETC reviewed to verify subscriber eligibility, for the purposes of production during audits or investigations or to the extent required by NLAD processes, which require, *inter alia*, verification of eligibility, identity, address, and age.

(12) An eligible telecommunications carrier must not enroll or claim for reimbursement a prospective subscriber in Lifeline if the National Lifeline Accountability Database or National Verifier cannot verify the identity of the subscriber or the subscriber's status as alive, unless the subscriber produces documentation to demonstrate his or her identity and status as alive.

(c) *Tribal Link Up and the National Lifeline Accountability Database.* In order to receive universal service support reimbursement for Tribal Link

Up, eligible telecommunications carriers operating in states that have not provided the Commission with a valid certification pursuant to paragraph (a) of this section, must comply with the following requirements:

(1) Such eligible telecommunications carriers must query the Database to determine whether a prospective Link Up recipient who has executed a certification pursuant to § 54.410(d) has previously received a Link Up benefit at the residential address provided by the prospective subscriber.

(2) If the Database indicates that a prospective subscriber has received a Link Up benefit at the residential address provided by the subscriber, the eligible telecommunications provider must not seek Link Up reimbursement for that subscriber.

(3) An eligible telecommunications carrier is not required to comply with paragraphs (c)(1) through (c)(2) of this section, if it receives notice from a state Lifeline administrator or other state agency that the administrator or other agency has queried the Database about a prospective subscriber and that providing the prospective subscriber with a Link Up benefit would not result in duplicative support or support to a subscriber who had already received Link Up support at that residential address.

(4) All eligible telecommunications carriers must transmit to the Database in a format prescribed by the Administrator each new and existing Link Up recipient's full name; residential address; date of birth; and the last four digits of the subscriber's Social Security number, or Tribal identification number if the subscriber is a member of a Tribal nation and does not have a Social Security number; the telephone number associated with the Link Up support; and the date of service activation. Where two or more eligible telecommunications carriers transmit the information required by this paragraph to the Database for the same subscriber, only the eligible telecommunications carrier whose information was received and processed by the Database first, as determined by the Administrator, will be entitled to reimbursement from the Fund for that subscriber.

(5) All eligible telecommunications carriers must obtain, from each new and existing subscriber, consent to transmit the information required in paragraph (c) of this section. Prior to obtaining consent, the eligible telecommunications carrier must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Link Up program, and that failure to provide consent will result in the subscriber being denied the Link Up benefit.

[77 FR 12968, Mar. 2, 2012, as amended at 80 FR 40935, July 14, 2015; 84 FR 71327, Dec. 27, 2019]

§ 54.405 Carrier obligation to offer Lifeline.

All eligible telecommunications carriers must:

(a) Make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers.

(b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

(c) Indicate on all materials describing the service, using easily understood language, that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household. For the purposes of this section, the term ''materials describing the service'' includes all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.

(d) Disclose the name of the eligible telecommunications carrier on all materials describing the service.

(e) *De-enrollment*—(1) *De-enrollment generally*. If an eligible telecommunications carrier has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under § 54.409, the carrier must notify the subscriber of impending termination of his or her Lifeline service. Notification of impending termination

must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements. The carrier must allow a subscriber 30 days following the date of the impending termination letter required to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the carrier consistent with applicable annual re-certification requirements, as described in § 54.410(f). An eligible telecommunications carrier must de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's time to respond. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

(2) *De-enrollment for duplicative support*. Notwithstanding paragraph (e)(1) of this section, upon notification by the Administrator to any eligible telecommunications carrier that a subscriber is receiving Lifeline service from another eligible telecommunications carrier or that more than one member of a subscriber's household is receiving Lifeline service and therefore that the subscriber should be de-enrolled from participation in that carrier's Lifeline program, the eligible telecommunications carrier must de-enroll the subscriber from participation in that carrier's Lifeline program within five business days. An eligible telecommunications carrier shall not be eligible for Lifeline reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

(3) *De-enrollment for non-usage*. Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as ''usage'' is defined in § 54.407(c)(2), for 30 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess and collect a monthly fee from its subscribers, an eligible telecommunications carrier must provide the subscriber 15 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 15-day notice period will result in service termination for non-usage under this paragraph. Eligible telecommunications carriers shall report to the Commission annually the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must be reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to § 54.416.

(4) *De-enrollment for failure to re-certify*. Notwithstanding paragraph (e)(1) of this section, an eligible telecommunications carrier must de-enroll a Lifeline subscriber who does not respond to the carrier's attempts to obtain re-certification of the subscriber's continued eligibility as required by § 54.410(f); or who fails to provide the annual one-per-household re-certifications as required by § 54.410(f). Prior to de-enrolling a subscriber under this paragraph, the eligible telecommunications carrier must notify the subscriber in writing separate from the subscriber's monthly bill, if one is provided, using clear, easily understood language, that failure to respond to the re-certification request will trigger de-enrollment. A subscriber must be given 60 days to respond to recertification efforts. If a subscriber does not respond to the carrier's notice of impending de-enrollment, the carrier must de-enroll the subscriber from Lifeline within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.

(5) *De-enrollment requested by subscriber*. If an eligible telecommunications carrier receives a request from a subscriber to de-enroll, it must de-enroll the subscriber within two business days after the request.

[77 FR 12969, Mar. 2, 2012, as amended at 80 FR 35577, June 22, 2015; 81 FR 33090, May 24, 2016; 81 FR 45974, July 15, 2016; 81 FR 33090, May 24, 2016]

§ 54.406 Activities of representatives of eligible telecommunications carriers.

(a) *Enrollment representative registration.* An eligible telecommunications carrier must require that enrollment representatives register with the Universal Service Administrative Company before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.

(1) As part of the registration process, eligible telecommunications carriers must require that all enrollment representatives must provide the Universal Service Administrative Company with identifying information, which may include first and last name, date of birth, the last four digits of his or her social security number, email address, and residential address. Enrollment representatives will be assigned a unique identifier, which must be used for:

(i) Accessing the National Lifeline Accountability Database;

(ii) Accessing the National Verifier;

(iii) Accessing any Lifeline eligibility database; and

(iv) Completing any Lifeline enrollment or recertification forms.

(2) Eligible telecommunications carriers must ensure that enrollment representatives shall not use another person's unique identifier to enroll Lifeline subscribers, recertify Lifeline subscribers, or access the National Lifeline Accountability Database or National Verifier.

(3) Eligible telecommunications carriers must ensure that enrollment representatives shall regularly recertify their status with the Universal Service Administrative Company to maintain their unique identifier and maintain access to the systems that rely on a valid unique identifier. Eligible telecommunications carriers must also ensure that enrollment representatives shall update their registration information within 30 days of any change in such information.

(4) Enrollment representatives are not required to register with the Universal Service Administrative Company if the enrollment representative operates solely in a state that has been approved by the Commission to administer the Lifeline program without reliance on the Universal Service Administrative Company's systems. The exemption in this paragraph (a)(4) will not apply to any part of a state's administration of the Lifeline program that relies on the Universal Service Administrative Company's systems.

(b) *Prohibition of commissions for enrollment representatives.* An eligible telecommunications carrier shall not offer or provide to enrollment representatives or their direct supervisors any commission compensation that is based on the number of consumers who apply for or are enrolled in the Lifeline program with that eligible telecommunications carrier.

[84 FR 71328, Dec. 27, 2019]

§ 54.407 Reimbursement for offering Lifeline.

(a) Universal Service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible telecommunications carrier serves directly as of the first of the month. Eligible telecommunications carriers operating in a state that has provided the Commission with an approved valid certification pursuant to § 54.404(a) must comply with that state administrator's process for determining the number of subscribers to be claimed for each month, and in those states Universal Service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier based on that number of actual qualifying low-income customers, according to the state administrator or other state agency's process.

(b) For each qualifying low-income consumer receiving Lifeline service, the reimbursement amount shall equal the federal support amount, including the support amounts described in § 54.403(a) and (c). The eligible telecommunications carrier's universal service support reimbursement shall not exceed the carrier's rate for that offering, or similar offerings, subscribed to by consumers who do not qualify for Lifeline.

(c) An eligible telecommunications carrier offering a Lifeline service that does not require the eligible telecommunications carrier to assess and collect a monthly fee from its subscribers:

(1) Shall not receive universal service support for a subscriber to such Lifeline service until the subscriber activates the service by whatever means specified by the carrier, such as completing an outbound call; and

(2) After service activation, an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for in § 54.405(e)(3). Any of these activities, if undertaken by the subscriber, will establish ''usage'' of the Lifeline service:

(i) Completion of an outbound call or usage of data;

(ii) Purchase of minutes or data from the eligible telecommunications carrier to add to the subscriber's service plan;

(iii) Answering an incoming call from a party other than the eligible telecommunications carrier or the eligible telecommunications carrier's agent or representative;

(iv) Responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving Lifeline service; or

(v) Sending a text message.

(d) In order to receive universal service support reimbursement, an officer of each eligible telecommunications carrier must certify, as part of each request for reimbursement, that:

(1) The eligible telecommunications carrier is in compliance with all of the rules in this subpart; and

(2) The eligible telecommunications carrier has obtained valid certification and recertification forms to the extent required under this subpart for each of the subscribers for whom it is seeking reimbursement.

(e) In order to receive universal service support reimbursement, an eligible telecommunications carrier must keep accurate records of the revenues it forgoes in providing Lifeline services. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this subpart.

[77 FR 12970, Mar. 2, 2012, as amended at 77 FR 38534, June 28, 2012; 80 FR 35577, June 22, 2015; 80 FR 40935, July 14, 2015; 81 FR 33091, May 24, 2016; 84 FR 71328, Dec. 27, 2019]

§ 54.408 Minimum service standards.

(a) As used in this subpart, with the following exception of paragraph (a)(2) of this section, a minimum service standard is:

(1) The level of service which an eligible telecommunications carrier must provide to an end user in order to receive the Lifeline support amount.

(2) The minimum service standard for mobile broadband speed, as described in paragraph (b)(2)(i) of this section, is the level of service which an eligible telecommunications carrier must both advertise and provide to an end user.

(b) Minimum service standards for Lifeline supported services will take effect on December 1, 2016. The minimum service standards set forth below are subject to the conditions in § 54.401. The initial minimum service standards, as set forth in paragraphs (b)(1) through (3) of this section, will be subject to the updating mechanisms described in paragraph (c) of this section.

(1) Fixed broadband will have minimum service standards for speed and data usage allowance, subject to the exceptions in paragraph (d) of this section.

(i) The minimum service standard for fixed broadband speed will be 10 Megabits per second downstream/1 Megabit per second upstream.

(ii) The minimum service standard for fixed broadband data usage allowance will be 150 gigabytes per month.

(2) Mobile broadband will have minimum service standards for speed and data usage allowance.

(i) The minimum service standard for mobile broadband speed will be 3G.

(ii) The minimum service standard for mobile broadband data usage allowance will be:

(A) From December 1, 2016 until November 30, 2017, 500 megabytes per month;

(B) From December 1, 2017, until November 30, 2018, 1 gigabyte per month;

(C) From December 1, 2018 until November 30, 2019, 2 gigabytes per month; and

(D) On and after December 1, 2019, the minimum standard will be calculated using the mechanism set forth in paragraphs (c)(2)(ii)(A) through (D) of this section. If the data listed in paragraphs (c)(2)(ii)(A) through (D) do not meet the criteria set forth in paragraph (c)(2)(iii) of this section, then the updating mechanism in paragraph (c)(2)(iii) will be used instead.

(3) The minimum service standard for mobile voice service will be:

(i) From December 1, 2016, until November 30, 2017, 500 minutes;

(ii) From December 1, 2017, until November 30, 2018, 750 minutes; and

(iii) On and after December 1, 2018, the minimum standard will be 1000 minutes.

(c) Minimum service standards will be updated using the following mechanisms:

(1) Fixed broadband will have minimum service standards for speed and data usage allowance. The standards will updated as follows:

(i) The standard for fixed broadband speed will be updated on an annual basis. The standard will be set at the 30th percentile, rounded up to the nearest Megabit-per-second integer, of subscribed fixed broadband downstream and upstream speeds. The 30th percentile will be determined by analyzing FCC Form 477 Data. The new standard will be published in a Public Notice issued by the Wireline Competition Bureau on or before July 31, which will give the new minimum standard for the upcoming year. In the event that the Bureau does not release a Public Notice, or the data are older than 18 months, the minimum standard will be the greater of:

(A) The current minimum standard; or

(B) The Connect America Fund minimum speed standard for rate-of-return fixed broadband providers, as set forth in 47 CFR 54.308(a).

(ii) The standard for fixed broadband data usage allowance will be updated on an annual basis. The new standard will be published in a Public Notice issued by the Wireline Competition Bureau on or before July 31, which will give the new minimum standard for the upcoming year. The updated standard will be the greater of:

(A) An amount the Wireline Competition Bureau deems appropriate, based on what a substantial majority of American consumers already subscribe to, after analyzing Urban Rate Survey data and other relevant data; or

(B) The minimum standard for data usage allowance for rate-of-return fixed broadband providers set in the Connect America Fund.

(2) Mobile broadband will have minimum service standards for speed and capacity. The standards will be updated as follows:

(i) The standard for mobile broadband speed will be updated when, after analyzing relevant data, including the FCC Form 477 data, the Wireline Competition Bureau determines such an adjustment is necessary. If the standard for mobile broadband speed is updated, the new standard will be published in a Public Notice issued by the Wireline Competition Bureau.

(ii) The standard for mobile broadband capacity will be updated on an annual basis. The standard will be determined by:

(A) Dividing the total number of mobile-cellular subscriptions in the United States, as reported in the *Mobile Competition Report* by the total number of American households, as determined by the U.S. Census Bureau, in order to determine the number of mobile-cellular subscriptions per American household. This number will be rounded to the hundredths place and then multiplied by;

(B) The percentage of Americans who own a smartphone, according to the Commission's annual *Mobile Competition Report*. This number will be rounded to the hundredths place and then multiplied by;

(C) The average data used per mobile smartphone subscriber, as reported by the Commission in its annual *Mobile Competition Report*. This number will be rounded to the hundredths place and then multiplied by;

(D) Seventy (70) percent. The result will then be rounded up to the nearest 250 MB interval to provide the new

monthly minimum service standard for the mobile broadband data usage allowance.

(iii) If the Wireline Competition Bureau does not release a Public Notice giving new minimum standards for mobile broadband capacity on or before July 31, or if the necessary data needed to calculate the new minimum standard are older than 18 months, the data usage allowance will be updated by multiplying the current data usage allowance by the percentage of the year-over-year change in average mobile data usage per smartphone user, as reported in the *Mobile Competition Report*. That amount will be rounded up to the nearest 250 MB.

(d) *Exception for certain fixed broadband providers.* Subject to the limitations in paragraphs (d)(1) through (4) of this section, the Lifeline discount may be applied for fixed broadband service that does not meet the minimum standards set forth in paragraph (b)(1) of this section. If the provider, in a given area:

(1) Does not offer any fixed broadband service that meets our minimum service standards set forth in paragraph (b)(1) of this section; but

(2) Offers a fixed broadband service of at least 4 Mbps downstream/1 Mbps upstream in that given area; then,

(3) In that given area, a fixed broadband provider may receive Lifeline funds for the purchase of its highest performing generally available residential offering, lexicographically ranked by:

(i) Download bandwidth;

(ii) Upload bandwidth; and

(iii) Usage allowance.

(4) A fixed broadband provider claiming Lifeline support under this section will certify its compliance with this section's requirements and will be subject to the Commission's audit authority.

(e) Except as provided in paragraph (d) of this section, eligible telecommunications carriers shall not apply the Lifeline discount to offerings that do not meet the minimum service standards.

(f) *Equipment requirement.* (1) Any fixed or mobile broadband Lifeline provider, which provides devices to its consumers, must ensure that all such devices provided to a consumer are Wi-Fi enabled.

(2) A Lifeline provider may not institute an additional or separate tethering charge for any mobile data usage that is below the minimum service standard set forth in paragraph (b)(2) of this section.

(3) Any mobile broadband Lifeline provider which provides devices to its consumers must offer at least one device that is capable of being used as a hotspot. This requirement will change as follows:

(i) From December 1, 2017 to November 30, 2018, a provider that offers devices must ensure that at least 15 percent of such devices are capable of being used as a hotspot.

(ii) From December 1, 2018 to November 30, 2019, a provider that offers devices must ensure that at least 20 percent of such devices are capable of being used as a hotspot.

(iii) From December 1, 2019 to November 30, 2020, a provider that offers devices must ensure that at least 25 percent of such devices are capable of being used as a hotspot.

(iv) From December 1, 2020 to November 30, 2021, a provider that offers devices must ensure that at least 35 percent of such devices are capable of being used as a hotspot.

(v) From December 1, 2021 to November 30, 2022, a provider that offers devices must ensure that at least 45 percent of such devices are capable of being used as a hotspot.

(vi) From December 1, 2022 to November 30, 2023, a provider that offers devices must ensure that at least 55 percent of such devices are capable of being used as a hotspot.

(vii) From December 1, 2023 to November 30, 2024, a provider that offers devices must ensure that at least 65 percent of such devices are capable of being used as a hotspot.

(viii) On December 1, 2024, a provider that offers devices must ensure that at least 75 percent of such devices are capable of being used as a hotspot.

[81 FR 33091, May 24, 2016]

§ 54.409 Consumer qualification for Lifeline.

(a) To constitute a qualifying low-income consumer:

(1) A consumer's household income as defined in § 54.400(f) must be at or below 135% of the Federal Poverty Guidelines for a household of that size; or

(2) The consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; or Veterans and Survivors Pension Benefit.

(b) A consumer who lives on Tribal lands is eligible for Lifeline service as a ''qualifying low-income consumer'' as defined by § 54.400(a) and as an ''eligible resident of Tribal lands'' as defined by § 54.400(e) if that consumer meets the qualifications for Lifeline specified in paragraph (a) of this section or if the consumer, one or more of the consumer's dependents, or the consumer's household participates in one of the following Tribal-specific federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations.

(c) In addition to meeting the qualifications provided in paragraph (a) or (b) of this section, in order to constitute a qualifying low-income consumer, a consumer must not already be receiving a Lifeline service, and there must not be anyone else in the subscriber's household subscribed to a Lifeline service.

[77 FR 12970, Mar. 2, 2012, as amended at 77 FR 38534, June 28, 2012; 81 FR 33093, May 24, 2016]

§ 54.410 Subscriber eligibility determination and certification.

(a) All eligible telecommunications carriers must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services. An eligible telecommunications carrier may not provide a consumer with an activated device that it represents enables use of Lifeline-supported service, nor may it activate service that it represents to be Lifeline service, unless and until it has:

(1) Confirmed that the consumer is a qualifying low-income consumer pursuant to § 54.409, and;

(2) Completed the eligibility determination and certification required by this section and §§ 54.404 through 54.405, and completed any other necessary enrollment steps.

(b) *Initial income-based eligibility determination.* (1) Except where the National Verifier, state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline using the income-based eligibility criteria provided for in § 54.409(a)(1) an eligible telecommunications carrier:

(i) Must not seek reimbursement for providing Lifeline to a subscriber, unless the carrier has received a certification of eligibility from the prospective subscriber that complies with the requirements set forth in paragraph (d) of this section and has confirmed the subscriber's income-based eligibility using the following procedures:

(A) If an eligible telecommunications carrier can determine a prospective subscriber's income-based eligibility by accessing one or more databases containing information regarding the subscriber's income (''income databases''), the eligible telecommunications carrier must access such income databases and determine whether the prospective subscriber qualifies for Lifeline.

(B) If an eligible telecommunications carrier cannot determine a prospective subscriber's income-based eligibility by accessing income databases, the eligible telecommunications carrier must review documentation that establishes that the prospective subscriber meets the income-eligibility criteria set forth in § 54.409(a)(1). Acceptable documentation of income eligibility includes the prior year's state, federal, or Tribal tax return; current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement/pension statement of benefits; an Unemployment/Workers' Compensation statement of benefit; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support

award, or other official document containing income information. If the prospective subscriber presents documentation of income that does not cover a full year, such as current pay stubs, the prospective subscriber must present the same type of documentation covering three consecutive months within the previous twelve months.

(ii) Must securely retain copies of documentation demonstrating a prospective subscriber's income-based eligibility for Lifeline consistent with § 54.417, except to the extent such documentation is retained by the National Verifier.

(2) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for the initial determination of a subscriber's eligibility, an eligible telecommunications carrier must not seek reimbursement for providing Lifeline service to a subscriber, based on that subscriber's income eligibility, unless the carrier has received from the National Verifier, state Lifeline administrator, or other state agency:

(i) Notice that the prospective subscriber meets the income-eligibility criteria set forth in § 54.409(a)(1); and

(ii) If a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, a copy of the subscriber's certification that complies with the requirements set forth in paragraph (d) of this section.

(iii) An eligible telecommunications carrier must securely retain all information and documentation provided by the state Lifeline administrator or other state agency consistent with § 54.417.

(c) *Initial program-based eligibility determination*. (1) Except in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the initial determination of a subscriber's program-based eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based criteria set forth in § 54.409(a)(2) or (b), an eligible telecommunications carrier:

(i) Must not seek reimbursement for providing Lifeline to a subscriber unless the carrier has received a certification of eligibility from the subscriber that complies with the requirements set forth in paragraph (d) of this section and has confirmed the subscriber's program-based eligibility using the following procedures:

(A) If the eligible telecommunications carrier can determine a prospective subscriber's program-based eligibility for Lifeline by accessing one or more databases containing information regarding enrollment in qualifying assistance programs (''eligibility databases''), the eligible telecommunications carrier must access such eligibility databases to determine whether the prospective subscriber qualifies for Lifeline based on participation in a qualifying assistance program; or

(B) If an eligible telecommunications carrier cannot determine a prospective subscriber's program-based eligibility for Lifeline by accessing eligibility databases, the eligible telecommunications carrier must review documentation demonstrating that a prospective subscriber qualifies for Lifeline under the program-based eligibility requirements. Acceptable documentation of program eligibility includes the current or prior year's statement of benefits from a qualifying assistance program, a notice or letter of participation in a qualifying assistance program, program participation documents, or another official document demonstrating that the prospective subscriber, one or more of the prospective subscriber's dependents or the prospective subscriber's household receives benefits from a qualifying assistance program.

(ii) Must securely retain copies of the documentation demonstrating a subscriber's program-based eligibility for Lifeline, consistent with § 54.417, except to the extent such documentation is retained by the National Verifier.

(2) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline service using the program-based eligibility criteria provided in § 54.409(a)(2) or (b), an eligible telecommunications carrier must not seek reimbursement for providing Lifeline to a subscriber unless

the carrier has received from the National Verifier, state Lifeline administrator or other state agency:

(i) Notice that the subscriber meets the program-based eligibility criteria set forth in § 54.409(a)(2) or (b); and

(ii) If a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, a copy of the subscriber's certification that complies with the requirements set forth in paragraph (d) of this section.

(iii) An eligible telecommunications carrier must securely retain all information and documentation provided by the state Lifeline administrator or other state agency consistent with § 54.417.

(d) *Eligibility certification form.* Eligible telecommunications carriers and state Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide prospective subscribers Lifeline certification forms that provide the information in paragraphs (d)(1) through (3) of this section in clear, easily understood language. If a Federal eligibility certification form is available, entities enrolling subscribers must use such form to enroll a qualifying low-income consumer into the Lifeline program.

(1) The form provided by the entity enrolling subscribers must provide the information in paragraphs (d)(1)(i) through (vi) of this section:

(i) Lifeline is a federal benefit and that willfully making false statements to obtain the benefit can result in fines, imprisonment, de-enrollment or being barred from the program;

(ii) Only one Lifeline service is available per household;

(iii) A household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses;

(iv) A household is not permitted to receive Lifeline benefits from multiple providers;

(v) Violation of the one-per-household limitation constitutes a violation of the Commission's rules and will result in the subscriber's de-enrollment from the program; and

(vi) Lifeline is a non-transferable benefit and the subscriber may not transfer his or her benefit to any other person.

(2) The form provided by the entity enrolling subscribers must require each prospective subscriber to provide the information in paragraphs (d)(2)(i) through (viii) of this section:

(i) The subscriber's full name;

(ii) The subscriber's full residential address;

(iii) Whether the subscriber's residential address is permanent or temporary;

(iv) The subscriber's billing address, if different from the subscriber's residential address;

(v) The subscriber's date of birth;

(vi) The last four digits of the subscriber's social security number, or the subscriber's Tribal identification number, if the subscriber is a member of a Tribal nation and does not have a social security number;

(vii) If the subscriber is seeking to qualify for Lifeline under the program-based criteria, as set forth in § 54.409, the name of the qualifying assistance program from which the subscriber, his or her dependents, or his or her household receives benefits; and

(viii) If the subscriber is seeking to qualify for Lifeline under the income-based criterion, as set forth in § 54.409, the number of individuals in his or her household.

(3) The form provided by the entity enrolling subscribers shall require each prospective subscriber to initial his or her acknowledgement of each of the certifications in paragraphs (d)(3)(i) through (viii) of this section individually and under penalty of perjury:

(i) The subscriber meets the income-based or program-based eligibility criteria for receiving Lifeline, provided in § 54.409;

(ii) The subscriber will notify the carrier within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline including, as relevant, if the subscriber no longer meets the income-based or program-based criteria for receiving Lifeline support, the subscriber is receiving more than one Lifeline benefit, or another member of the subscriber's

household is receiving a Lifeline benefit.

(iii) If the subscriber is seeking to qualify for Lifeline as an eligible resident of Tribal lands, he or she lives on Tribal lands, as defined in 54.400(e);

(iv) If the subscriber moves to a new address, he or she will provide that new address to the eligible telecommunications carrier within 30 days;

(v) The subscriber's household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber's household is not already receiving a Lifeline service;

(vi) The information contained in the subscriber's certification form is true and correct to the best of his or her knowledge,

(vii) The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law; and

(viii) The subscriber acknowledges that the subscriber may be required to re-certify his or her continued eligibility for Lifeline at any time, and the subscriber's failure to re-certify as to his or her continued eligibility will result in de-enrollment and the termination of the subscriber's Lifeline benefits pursuant to § 54.405(e)(4).

(e) State Lifeline administrators or other state agencies that are responsible for the initial determination of a subscriber's eligibility for Lifeline must provide each eligible telecommunications carrier with a copy of each of the certification forms collected by the state Lifeline administrator or other state agency for that carrier's subscribers.

(f) *Annual eligibility re-certification process.*

(1) All eligible telecommunications carriers must annually re-certify all subscribers, except for subscribers in states where the National Verifier, state Lifeline administrator, or other state agency is responsible for the annual re-certification of subscribers' Lifeline eligibility.

(2) In order to re-certify a subscriber's eligibility, an eligible telecommunications carrier must confirm a subscriber's current eligibility to receive Lifeline by:

(i) Querying the appropriate eligibility databases, confirming that the subscriber still meets the program-based eligibility requirements for Lifeline, and documenting the results of that review; or

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for Lifeline, and documenting the results of that review.

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more eligibility databases, then the eligible telecommunications carrier must obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility database during enrollment or a prior re-certification and the subscriber is no longer included in any eligibility database, the eligible telecommunications carrier must obtain both an Annual Recertification Form and documentation meeting the requirements of paragraph (b)(1)(i)(B) or (c)(1)(i)(B) from that subscriber to complete the process. Eligible telecommunications carriers must use the Wireline Competition Bureau-approved universal Annual Recertification Form, except where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline recertification forms.

(iv) In states in which the National Verifier has been implemented, the eligible telecommunications carrier cannot re-certify subscribers not found in the National Verifier by obtaining a certification form from the subscriber.

(3) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for re-certification of a subscriber's Lifeline eligibility, the National Verifier, state Lifeline administrator, or state agency must confirm a subscriber's current eligibility to receive a Lifeline service by:

(i) Querying the appropriate eligibility databases, confirming that the subscriber still meets the program-based eligibility requirements for Lifeline, and documenting the results of that review; or

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for Lifeline, and documenting the results of that review.

(iii) If the subscriber's program-based or income-based eligibility for Lifeline cannot be determined by accessing one or more eligibility databases, then the National Verifier, state Lifeline administrator, or state agency must obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility database during enrollment or a prior recertification and the subscriber is no longer included in any eligibility database, the National Verifier, state Lifeline administrator, or state agency must obtain both an approved Annual Recertification Form and documentation meeting the requirements of paragraph (b)(1)(i)(B) or (c)(1)(i)(B) from that subscriber to complete the certification process. Entities responsible for re-certification under this section must use the Wireline Competition Bureau-approved universal Annual Recertification Form, except where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline recertification forms, or where the National Verifier Recertification Form is required.

(4) Where the National Verifier, state Lifeline administrator, or other state agency is responsible for re-certification of subscribers' Lifeline eligibility, the National Verifier, state Lifeline administrator, or other state agency must provide to each eligible telecommunications carrier the results of its annual re-certification efforts with respect to that eligible telecommunications carrier's subscribers.

(5) If an eligible telecommunications carrier is unable to re-certify a subscriber or has been notified by the National Verifier, a state Lifeline administrator, or other state agency that it is unable to re-certify a subscriber, the eligible telecommunications carrier must comply with the de-enrollment requirements provided for in § 54.405(e)(4).

(g) *One-Per-Household Worksheet.* If the prospective subscriber shares an address with one or more existing Lifeline subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule upon initial enrollment. Eligible telecommunications carriers must fulfill the requirement in this paragraph (g) by using the Household Worksheet, as provided by the Wireline Competition Bureau. Where state law, state regulation, a state Lifeline administrator, or a state agency requires eligible telecommunications carriers to use state-specific Lifeline enrollment forms, eligible telecommunications carriers may use those forms in place of the Commission's Household Worksheet. At re-certification, if there are changes to the subscriber's household that would prevent the subscriber from accurately certifying to paragraph (d)(3)(vi) of this section, then the subscriber must complete a new Household Worksheet. Eligible telecommunications carriers must mark subscribers as having completed a Household Worksheet in the National Lifeline Accountability Database if and only if the subscriber shares an address with an existing Lifeline subscriber, as reported by the National Lifeline Accountability Database.

(h) *National Verifier transition.* As the National Verifier is implemented in a state, the obligations in paragraphs (b) through (g) of this section with respect to the National Verifier and eligible telecommunications carriers will also take effect.

[77 FR 12970, Mar. 2, 2012, as amended at 77 FR 38534, June 28, 2012; 78 FR 40970, July 9, 2013; 80 FR 40935, July 14, 2015; 81 FR 33093, May 24, 2016; 83 FR 2085, Jan. 16, 2018; 84 FR 71328, Dec. 27, 2019]

§ 54.411 [Reserved]

§ 54.412 Off reservation Tribal lands designation process.

(a) The Commission's Wireline Competition Bureau and the Office of Native Affairs and Policy may, upon receipt of a request made in accordance

with the requirements of this section, designate as Tribal lands, for the purposes of the Lifeline and Tribal Link Up program, areas or communities that fall outside the boundaries of existing Tribal lands but which maintain the same characteristics as lands identified as Tribal lands defined as in § 54.400(e).

(b) A request for designation must be made to the Commission by a duly authorized official of a federally recognized American Indian Tribe or Alaska Native Village.

(c) A request for designation must clearly describe a defined geographical area for which the requesting party seeks designation as Tribal lands.

(d) A request for designation must demonstrate the Tribal character of the area or community.

(e) A request for designation must provide sufficient evidence of a nexus between the area or community and the Tribe, and describe in detail how program support to the area or community would aid the Tribe in serving the needs and interests of its citizens and further the Commission's goal of increasing telecommunications access on Tribal lands.

(f) Upon designation by the Wireline Competition Bureau and the Office of Native Affairs and Policy, the area or community described in the designation shall be considered Tribal lands for the purposes of this subpart.

[77 FR 12972, Mar. 2, 2012, as amended at 77 FR 38534, June 28, 2012]

§ 54.413 Link Up for Tribal lands.

(a) *Definition.* For purposes of this subpart, the term ''Tribal Link Up'' means an assistance program for eligible residents of Tribal lands seeking telecommunications service from a telecommunications carrier that is receiving high-cost support on Tribal lands, pursuant to subpart D of this part, that provides:

(1) A 100 percent reduction, up to $100, of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence imposed by an eligible telecommunications carrier that is also receiving high-cost support on Tribal lands, pursuant to subpart D of this part. For purposes of this subpart, a ''customary charge for commencing telecommunications service''' is the ordinary charge an eligible telecommunications carrier imposes and collects from all subscribers to initiate service with that eligible telecommunications carrier. A charge imposed only on qualifying low-income consumers to initiate service is not a customary charge for commencing telecommunications service. Activation charges routinely waived, reduced, or eliminated with the purchase of additional products, services, or minutes are not customary charges eligible for universal service support; and

(2) A deferred schedule of payments of the customary charge for commencing telecommunications service for a single telecommunications connection at a subscriber's principal place of residence imposed by an eligible telecommunications carrier that is also receiving high-cost support on Tribal lands, pursuant to subpart D of this part, for which the eligible resident of Tribal lands does not pay interest. The interest charges not assessed to the eligible resident of Tribal lands shall be for a customary charge for connecting telecommunications service of up to $200 and such interest charges shall be deferred for a period not to exceed one year.

(b) An eligible resident of Tribal lands may receive the benefit of the Tribal Link Up program for a second or subsequent time only for otherwise qualifying commencement of telecommunications service at a principal place of residence with an address different from the address for which Tribal Link Up assistance was provided previously.

[88 FR 34782, May 31, 2023]

§ 54.414 Reimbursement for Tribal Link Up.

(a) Eligible telecommunications carriers that are receiving high-cost support, pursuant to subpart D of this part, may receive universal service support reimbursement for the reduction in their customary charge for commencing telecommunications service and for providing a deferred schedule for payment of the customary

charge for commencing telecommunications services for which the subscriber does not pay interest, in conformity with § 54.413.

(b) In order to receive universal support reimbursement for providing Tribal Link Up, eligible telecommunications carriers must follow the procedures set forth in § 54.410 to determine an eligible resident of Tribal lands' initial eligibility for Tribal Link Up. Eligible telecommunications carriers must obtain a certification form from each eligible resident of Tribal lands that complies with § 54.410 prior to enrolling him or her in Tribal Link Up.

(c) In order to receive universal service support reimbursement for providing Tribal Link Up, eligible telecommunications carriers must keep accurate records of the reductions in their customary charge for commencing telecommunications service and for providing a deferred schedule for payment of the charges assessed for commencing service for which the subscriber does not pay interest, in conformity with § 54.413. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this subpart. The reductions in the customary charge for which the eligible telecommunications carrier may receive reimbursement shall include only the difference between the carrier's customary connection or interest charges and the charges actually assessed to the subscriber receiving Lifeline services.

[77 FR 12973, Mar. 2, 2012, as amended at 88 FR 34783, May 31, 2023]

§ 54.416 Annual certifications by eligible telecommunications carriers.

(a) *Eligible telecommunications carrier certifications*. Eligible telecommunications carriers are required to make and submit to the Administrator the following annual certifications, under penalty of perjury, relating to the Lifeline program:

(1) An officer of each eligible telecommunications carrier must certify that the carrier has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services. Each eligible telecommunications carrier must make this certification annually to the Administrator as part of the carrier's submission of annual re-certification data pursuant to this section. In instances where an eligible telecommunications carrier confirms consumer eligibility by relying on income or eligibility databases, as defined in § 54.410(b)(1)(i)(A) or (c)(1)(i)(A), the representative must attest annually as to what specific data sources the eligible telecommunications carrier used to confirm eligibility.

(2) An officer of the eligible telecommunications carrier must certify that the carrier is in compliance with all federal Lifeline certification procedures. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to this section.

(3) An officer of the eligible telecommunications carrier must certify that the carrier is in compliance with the minimum service levels set forth in § 54.408. Eligible telecommunications carriers must make this certification annually to the Administrator as part of the carrier's submission of re-certification data pursuant to this section.

(b) All eligible telecommunications carriers must annually provide the results of their re-certification efforts, performed pursuant to § 54.410(f), to the Commission and the Administrator. Eligible telecommunications carriers designated as such by one or more states pursuant to § 54.201 must also provide, on an annual basis, the results of their re-certification efforts to state commissions for subscribers residing in those states where the state designated the eligible telecommunications carrier. Eligible telecommunications carriers must also provide their annual re-certification results for subscribers residing on Tribal lands to the relevant Tribal governments.

(c) States that mandate Lifeline support may impose additional standards on eligible telecommunications carriers operating in their states to ensure compliance with state Lifeline programs.

[77 FR 12973, Mar. 2, 2012, as amended at 77 FR 38534, June 28, 2012; 81 FR 33094, May 24, 2016]

§ 54.417 Recordkeeping requirements.

(a) Eligible telecommunications carriers must maintain records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Eligible telecommunications carriers must maintain the documentation required in §§ 54.404 (b)(11), 54.410(b), 54.410 (c), 54.410(d), and 54.410(f) for as long as the subscriber receives Lifeline service from that eligible telecommunications carrier, but for no less than the three full preceding calendar years.

(b) Prior to the effective date of the rules, if an eligible telecommunications carrier provides Lifeline discounted wholesale services to a reseller, it must obtain a certification from that reseller that it is complying with all Commission requirements governing the Lifeline and Tribal Link Up program. Beginning on the effective date of the rules, the eligible telecommunications carrier must retain the reseller certification for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request.

(c) Non-eligible telecommunications carrier resellers that purchased Lifeline discounted wholesale services to offer discounted services to low-income consumers prior to the effective date of the rules, must maintain records to document compliance with all Commission requirements governing the Lifeline and Tribal Link Up program for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request.

[80 FR 40935, July 14, 2015]

§ 54.419 Validity of electronic signatures.

(a) For the purposes of this subpart, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(b) For the purposes of this subpart, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

[77 FR 12974, Mar. 2, 2012]

§ 54.420 Low income program audits.

(a) *Independent audit requirements for eligible telecommunications carriers.* Eligible telecommunications carriers identified by USAC must obtain a third-party biennial audit of their compliance with the rules in this subpart. Such engagements shall be agreed upon performance attestations to assess the company's overall compliance with the rules in this subpart and the company's internal controls regarding the regulatory requirements in this subpart.

(1) Eligible telecommunications carriers will be selected for audit based on risk-based criteria developed by USAC and approved by the Office of Managing Director and the Wireline Competition Bureau.

(2) The initial audit must be completed one year after the Commission issues a standardized audit plan outlining the scope of the engagement and the extent of compliance testing to be performed by third-party auditors and shall be conducted every two years thereafter, unless directed otherwise by the Commission. The following minimum requirements shall apply:

(i) The audit must be conducted by a licensed certified public accounting firm that is independent of the carrier.

(ii) The engagement shall be conducted consistent with government accounting standards (GAGAS).

(3) The certified public accounting firm shall submit to the Commission any rule interpretations necessary to complete the biennial audit, and the Administrator shall notify all firms subject to the biennial audit requirement of such requests. The audit issue will be noted, but not held as a negative finding, in future audit reports for all carriers subject to this requirement unless and until guidance has been provided by the Commission.

(4) Within 60 days after completion of the audit work, but prior to finalization of the report, the third party auditor shall submit a draft of the audit report to the Commission and the Administrator, who shall be deemed authorized users of such reports. Finalized audit reports must be provided to the Commission, the Administrator, and relevant states and Tribal governments within 30 days of the issuance of the final audit report. The reports will not be considered or deemed confidential.

(5) *Delegated authority*. The Wireline Competition Bureau and the Office of Managing Director have delegated authority to perform the functions specified in paragraphs (a)(2) and (a)(3) of this section.

(b) *Audit requirements for new eligible telecommunications carriers*. After a company is designated for the first time in any state or territory, the Administrator will audit that new eligible telecommunications carrier to assess its overall compliance with the rules in this subpart and the company's internal controls regarding these regulatory requirements. This audit should be conducted within the carrier's first twelve months of seeking federal low-income Universal Service Fund support, unless otherwise determined by the Office of Managing Director.

[77 FR 12974, Mar. 2, 2012, as amended at 77 FR 38534, June 28, 2012; 81 FR 33094, May 24, 2016; 84 FR 71329, Dec. 27, 2019]

§ 54.422 Annual reporting for eligible telecommunications carriers that receive low-income support.

(a) In order to receive support under this subpart, an eligible telecommunications carrier must annually report:

(1) The company name, names of the company's holding company, operating companies and affiliates, and any branding (a ''dba,'' or ''doing-business-as company'' or brand designation) as well as relevant universal service identifiers for each such entity by Study Area Code. For purposes of this paragraph, ''affiliates'' has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended; and

(2) Information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

(b) In order to receive support under this subpart, a common carrier that is designated as an eligible telecommunications carrier under section 214(e)(6) of the Act and does not receive support under subpart D of this part must annually provide:

(1) Detailed information on any outage in the prior calendar year, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which the eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(A) The date and time of onset of the outage;

(B) A brief description of the outage and its resolution;

(C) The particular services affected;

(D) The geographic areas affected by the outage;

(E) Steps taken to prevent a similar situation in the future; and

(F) The number of customers affected.

(2) The number of complaints per 1,000 connections (fixed or mobile) in the prior calendar year;

(3) Certification of compliance with applicable minimum service standards, as set forth in § 54.408, service quality standards, and consumer protection rules;

(4) Certification that the carrier is able to function in emergency situations as set forth in § 54.202(a)(2).

(c) All reports required by this section must be filed with the Office of the Secretary of the Commission, and with the Administrator. Such reports must also be filed with the relevant state commissions and the relevant authority in a U.S. territory or Tribal governments, as appropriate.

[77 FR 38534, June 28, 2012, as amended at 81 FR 33095, May 24, 2016]

§ 54.423 Budget.

(a) *Amount of the annual budget.* The initial annual budget on federal universal support for the Lifeline program shall be $2.25 billion.

(1) *Inflation increase.* In funding year 2016 and subsequent funding years, the $2.25 billion funding cap on federal universal service support for Lifeline shall be automatically increased annually to take into account increases in the rate of inflation as calculated in paragraph (a)(2) of this section.

(2) *Increase calculation.* To measure increases in the rate of inflation for the purposes of paragraph (a) of this section, the Commission shall use the Consumer Price Index for all items from the Department of Labor, Bureau of Labor Statistics. To compute the annual increase as required by this paragraph (a), the percentage increase in the Consumer Price Index from the previous year will be used. For instance, the annual increase in the Consumer Price Index from 2015 to 2016 would be used for the 2017 funding year. The increase shall be rounded to the nearest 0.1 percent by rounding 0.05 percent and above to the next higher 0.1 percent and otherwise rounding to the next lower 0.1 percent. This percentage increase shall be added to the amount of the annual funding cap from the previous funding year. If the yearly average Consumer Price Index decreases or stays the same, the annual funding cap shall remain the same as the previous year.

(3) The Wireline Competition Bureau shall issue a public notice on or before July 31 containing the results of the calculations described in § 54.403(a)(2) and setting the budget for the upcoming year beginning on January 1.

(b) If spending in the Lifeline program meets or exceeds 90 percent of the Lifeline budget in a calendar year, the Wireline Competition Bureau shall prepare a report evaluating program disbursements and describing the reasons for the program's growth along with any other information relevant to the operation of the Lifeline program. The Bureau shall submit the report to the Commission by July 31st of the following year.

[81 FR 33095, May 24, 2016]

EFFECTIVE DATE NOTE: At 81 FR 33095, May 24, 2016, § 54.423 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart F—Universal Service Support for Schools and Libraries

§ 54.500 Terms and definitions.

Basic maintenance. A service is eligible for support as a ''basic maintenance'' service if, but for the maintenance at issue, the internal connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services. Basic maintenance services do not include services that maintain equipment that is not supported by E-rate or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information.

Billed entity. A ''billed entity'' is the entity that remits payment to service providers for services rendered to eligible schools and libraries.

Consortium. A ''consortium'' is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for E-rate support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible

for support. Eligible schools and libraries may not join consortia with ineligible private sector members unless the pre-discount prices of any services that such consortium receives are generally tariffed rates.

Educational purposes. For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate and proximate to the provision of library services to library patrons, qualify as ''educational purposes.'' Activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to library patrons.

Elementary school. An ''elementary school'' means an elementary school as defined in 20 U.S.C. 7801(18), a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

Internal connections. A service is eligible for support as a component of an institution's ''internal connections'' if such service is necessary to transport or distribute broadband within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch.

Library. A ''library'' includes:

(1) A public library;

(2) A public elementary school or secondary school library;

(3) A Tribal library;

(4) An academic library;

(5) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.

Library consortium. A ''library consortium'' is any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of these rules, references to library will also refer to library consortium.

Lowest corresponding price. ''Lowest corresponding price'' is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services.

Managed internal broadband services. A service is eligible for support as ''managed internal broadband services'' if provided by a third party for the operation, management, and monitoring of the eligible components of a school or library local area network (LAN) and/or wireless LAN.

Master contract. A ''master contract'' is a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider.

Minor contract modification. A ''minor contract modification'' is a change to a universal service contract that is within the scope of the original contract and has no effect or merely a negligible effect on price, quantity, quality, or delivery under the original contract.

National school lunch program. The ''national school lunch program'' is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced price lunches to economically disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

Pre-discount price. The ''pre-discount price'' means, in this subpart, the price the service provider agrees to accept as total payment for its telecommunications or information services. This amount is the sum of the amount the service provider expects to receive from the eligible school or library and the amount it expects to receive as reimbursement from the universal service support mechanisms for the discounts provided under this subpart.

Secondary school. A ''secondary school'' means a secondary school as defined in 20 U.S.C. 7801(38), a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

State telecommunications network. A ''state telecommunications network'' is a state government entity that procures, among other things, telecommunications offerings from multiple service providers and bundles such offerings into packages available to schools, libraries, or rural health care providers that are eligible for universal service support, or a state government entity that provides, using its own facilities, such telecommunications offerings to such schools, libraries, and rural health care providers.

Tribal. An entity is ''Tribal'' for purposes of E-Rate funding if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Voice services. ''Voice services'' include local phone service, long distance service, plain old telephone service (POTS), radio loop, 800 service, satellite telephone, shared telephone service, Centrex, wireless telephone service such as cellular, interconnected voice over Internet protocol (VoIP), and the circuit capacity dedicated to providing voice services.

Wide area network. For purposes of this subpart, a ''wide area network'' is a voice or data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such eligible school or library. Excluded from this definition is a voice or data network that provides connections between or among instructional buildings of a single school campus or between or among non-administrative buildings of a single library branch.

[63 FR 2128, Jan. 13, 1998, as amended at 68 FR 36942, June 20, 2003; 76 FR 56302, Sept. 13, 2011; 79 FR 49197, Aug. 19, 2014; 79 FR 68634, Nov. 18, 2014; 87 FR 8210, Feb. 14, 2022; 88 FR 55409, Aug. 15, 2023]

§ 54.501 Eligible recipients.

(a) *Schools.* (1) Only schools meeting the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.500 of this subpart, and not excluded under paragraphs (a)(2) or (3) of this section shall be eligible for discounts on telecommunications and other supported services under this subpart.

(2) Schools operating as for-profit businesses shall not be eligible for discounts under this subpart.

(3) Schools with endowments exceeding $50,000,000 shall not be eligible for discounts under this subpart.

(b) *Libraries.* (1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (20 U.S.C. 9122) and not excluded under paragraph (b)(2) or (3) of this section shall be eligible for discounts under this subpart.

(2) Except as provided in paragraph (b)(4) of this section, a library's eligibility for universal service funding shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under this subpart.

(3) Libraries operating as for-profit businesses shall not be eligible for discounts under this subpart.

(4) A Tribal college or university library that serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community shall be eligible for discounts under this subpart.

(c) *Consortia.*

(1) For consortia, discounts under this subpart shall apply only to the portion of eligible telecommunications and other supported services used by eligible schools and libraries.

(2) Service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries—on their own or as part of a consortium. Such records shall be available for public inspection.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2129, Jan. 13, 1998; 68 FR 36942, June 20, 2003; 75 FR 75411, Dec. 3, 2010; 76 FR 56302, Sept. 13, 2011; 79 FR 49198, Aug. 19, 2014; 79 FR 68634, Nov. 18, 2014; 87 FR 8210, Feb. 14, 2022; 88 FR 55409, Aug. 15, 2023]

§ 54.502 Eligible services.

(a) *Supported services.* All supported services are listed in the Eligible Services List as updated annually in accordance with paragraph (d) of this section. The services in this subpart will be supported in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. The supported services fall within the following general categories:

(1) *Category one.* Telecommunications services, telecommunications, and Internet access, as defined in § 54.5 and described in the Eligible Services List are category one supported services.

(2) *Category two.* Internal connections, basic maintenance and managed internal broadband services as defined in § 54.500 and described in the Eligible Services List are category two supported services.

(b) *Funding years 2015–2019.* Libraries, schools, or school districts with schools that receive funding for category two services in any of the funding years between 2015 and 2019 shall be eligible for support for category two services pursuant to paragraphs (b)(1) through (6) of this section.

(1) *Five-year budget.* Each eligible school or library shall be eligible for a budgeted amount of support for category two services over a five-year funding cycle beginning the first funding year support is received. Excluding support for internal connections received prior to funding year 2015, each school or library shall be eligible for the total available budget less any support received for category two services in the prior funding years of that school's or library's five-year funding cycle. The budgeted amounts and the funding floor shall be adjusted for inflation annually in accordance with § 54.507(a)(2).

(2) *School budget.* Each eligible school shall be eligible for support for category two services up to a pre-discount price of $150 per student over a five-year funding cycle. Applicants shall provide the student count per school, calculated at the time that the discount is calculated each funding year. New schools may estimate the number of students, but shall repay any support provided in excess of the maximum budget based on student enrollment the following funding year.

(3) *Library budget.* Each eligible library shall be eligible for support for category two services, up to a pre-discount price of $2.30 per square foot over a five-year funding cycle. Libraries shall provide the total area for all floors, in square feet, of each library outlet separately, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) *Funding floor.* Each eligible school and library will be eligible for support for category two services up to at least a pre-discount price of $9,200 over five funding years.

(5) *Requests.* Applicants shall request support for category two services for each school or library based on the number of students per school building or square footage per library building. Category two funding for a school or library may not be used for another

school or library. If an applicant requests less than the maximum budget available for a school or library, the applicant may request the remaining balance in a school's or library's category two budget in subsequent funding years of a five year cycle. The costs for category two services shared by multiple eligible entities shall be divided reasonably between each of the entities for which support is sought in that funding year.

(6) *Non-instructional buildings.* Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services to a non-instructional school building or library administrative building, the applicant shall allocate the cost of providing services to one or more of the eligible school or library buildings that benefit from those services being provided.

(c) *Funding year 2020.* Libraries, schools, or school districts with schools that receive funding for category two services in funding year 2020 shall be eligible for support for category two services pursuant to paragraphs (c)(1) through (6) of this section.

(1) *Six-year funding cycle.* Each eligible school or library shall be eligible for a budgeted amount of support for category two services over a six-year funding cycle. Each school or library shall be eligible for the total available budget less the pre-discount amount of any support received for category two services in the prior funding years of that school's or library's six-year funding cycle.

(2) *School budget.* Each eligible school shall be eligible for support for category two services up to a pre-discount price of $150 plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over six funding years that will be completed at the end of funding year 2020. Applicants shall provide the student count per school, calculated at the time that the discount is calculated each funding year. New schools may estimate the number of students but shall repay any support provided in excess of the maximum budget based on student enrollment the following funding year.

(3) *Library budget.* Each eligible library located within the Institute of Museum and Library Services locale codes of ''11—City, Large,'' defined as a territory inside an urbanized area and inside a principal city with a population of 250,000 or more, ''12—City, Midsize,'' defined as a territory inside an urbanized area and inside a principal city with a population less than 250,000 and greater than or equal to 100,000, or ''21—Suburb, Large,'' defined as a territory outside a principal city and inside an urbanized area with population of 250,000 or more, shall be eligible for support for category two services, up to a pre-discount price of $5.00 per square foot plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over six funding years that will be completed at the end of funding year 2020. All other eligible libraries shall be eligible for support for category two services, up to a pre-discount price of $2.30 per square foot plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over a six-year funding cycle that will be completed at the end of funding year 2020. Libraries shall provide the total area for all floors, in square feet, of each library outlet separately, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) *Funding floor.* Each eligible school and library will be eligible for support for category two services of at least a pre-discount price of $9,200 plus an additional prorated 20% (adjusted for inflation dating back to funding year 2015) over six funding years that will be completed at the end of funding year 2020.

(5) *Requests.* Applicants shall request support for category two services for each school or library based on the number of students per school building

or square footage per library building. Category two funding for a school or library may not be used for another school or library. The costs for category two services shared by multiple eligible entities shall be divided reasonably between each of the entities for which support is sought in that funding year.

(6) *Non-instructional buildings.* Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services to a non-instructional school building or library administrative building, the applicant shall allocate the cost of providing services to one or more of the eligible school or library buildings that benefit from those services being provided.

(d) *Funding year 2021 and beyond.* Schools, school districts, libraries, and library systems shall be eligible for support for category two services pursuant to the five-year budgets described in paragraphs (d)(1) through (6) of this section.

(1) *Fixed five-year funding cycle.* Beginning in funding year 2021, each eligible school, school district, library, or library system shall be eligible for a budgeted amount of pre-discount support for category two services over a five-year funding cycle that will reset in funding year 2026 and subsequently, after every five funding years. Each school, school district, library, or library system shall be eligible for the total available budget less the pre-discount amount of any support received for category two services in the prior funding years of that fixed five-year funding cycle.

(2) *School and school district multipliers.* Each eligible school district and schools operating independently of a school district shall be eligible for support for category two services up to a pre-discount price of $167 per student over a five-year funding cycle. The amount of support will be calculated at the time that the discount is calculated in the first funding year of the five-year cycle in which the applicant requests category two support, unless the school or school district elects to seek additional program support using updated enrollment numbers in subsequent funding years in the five-year cycle. School districts shall provide the total number of students within the school district. Independent charter schools, private schools, and other eligible educational facilities that operate under the control of a central administrative agency shall provide the total number of students under the control of that agency. Schools that are not affiliated financially or operationally with a school district or central administrative agency shall provide the total number of students in the school.

(3) *Library and library system multipliers.* Library systems and libraries operating independently of a system shall be eligible for support for category two services, up to a pre-discount price of $4.50 per square foot over a five-year funding cycle. The amount of support will be calculated at the time that the discount is calculated in the first funding year of the five-year cycle in which the applicant requests category two support, unless the library or library system elects to seek additional program support using updated square footage in subsequent funding years in the five-year cycle. Library systems shall provide the total area for all floors, in square feet, of all of its library outlets, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public. Independent libraries shall provide the total area for all floors, in square feet, of all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) *Funding floor.* Each eligible school and library shall be eligible for support for category two services of at least a pre-discount price of $25,000 over five funding years. Tribal libraries shall be eligible for support for category two

services of at least a pre-discount price of $55,000 over five funding years.

(5) *Calculation increase.* Before funding year 2026 and every subsequent five-year funding cycle, the Wireline Competition Bureau shall announce the multipliers and funding floor as adjusted for inflation at least 60 days before the start of the filing window for the next five-year funding cycle. The Bureau shall use the last four quarters of data on the Gross Domestic Product Chain-type Price Index (GDP–CPI) compared with the equivalent quarters from the beginning of the five-year funding cycle. The increase shall be rounded to the nearest 0.1 percent and shall be used to calculate the category two budget multipliers and funding floor for that five-year funding cycle. The multipliers and funding floor shall be rounded to the nearest cent.

(6) *Non-instructional buildings.* Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services within a non-instructional school building or library administrative building, the applicant shall not be required to deduct the cost of the non-instructional building's use of the category two services or equipment.

(e) *Eligible services list process.* The Administrator shall submit by March 30 of each year a draft list of services eligible for support, based on the Commission's rules for the following funding year. The Wireline Competition Bureau will issue a Public Notice seeking comment on the Administrator's proposed eligible services list. The final list of services eligible for support will be released at least 60 days prior to the opening of the application filing window for the following funding year.

[62 FR 32948, June 17, 1997, as amended at 79 FR 49198, Aug. 19, 2014; 79 FR 68634, Nov. 18, 2014;80 FR 5988, Feb. 4, 2015; 84 FR 70036, Dec. 20, 2019; 88 FR 55409, Aug. 15, 2023]

§ 54.503 Competitive bidding requirements.

(a) All entities participating in the schools and libraries universal service support program must conduct a fair and open competitive bidding process, consistent with all requirements set forth in this subpart.

NOTE TO PARAGRAPH (a): The following is an illustrative list of activities or behaviors that would not result in a fair and open competitive bidding process: the applicant for supported services has a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with inside information; someone other than the applicant or an authorized representative of the applicant prepares, signs, and submits the FCC Form 470 and certification; a service provider representative is listed as the FCC Form 470 contact person and allows that service provider to participate in the competitive bidding process; the service provider prepares the applicant's FCC Form 470 or participates in the bid evaluation or vendor selection process in any way; the applicant turns over to a service provider the responsibility for ensuring a fair and open competitive bidding process; an applicant employee with a role in the service provider selection process also has an ownership interest in the service provider seeking to participate in the competitive bidding process; and the applicant's FCC Form 470 does not describe the supported services with sufficient specificity to enable interested service providers to submit responsive bids.

(b) *Competitive bid requirements.* Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

(c) *Posting of FCC Form 470.* (1) An eligible school, library, or consortium

that includes an eligible school or library seeking bids for eligible services under this subpart shall submit a completed FCC Form 470 to the Administrator to initiate the competitive bidding process. The FCC Form 470 and any request for proposal cited in the FCC Form 470 shall include, at a minimum, the following information:

(i) A list of specified services for which the school, library, or consortium requests bids;

(ii) Sufficient information to enable bidders to reasonably determine the needs of the applicant;

(iii) To the extent an applicant seeks the following services or arrangements, an indication of the applicant's intent to seek:

(A) Construction of network facilities that the applicant will own;

(B) A dark-fiber lease, indefeasible right of use, or other dark-fiber service agreement or the modulating electronics necessary to light dark fiber; or

(C) A multi-year installment payment agreement with the service provider for the non-discounted share of special construction costs;

(iv) To the extent an applicant seeks construction of a network that the applicant will own, the applicant must also solicit bids for both the services provided over third-party networks and construction of applicant-owned network facilities, in the same request for proposals;

(v) To the extent an applicant seeks bids for special construction associated with dark fiber or bids to lease and light dark fiber, the applicant must also solicit bids to provide the needed services over lit fiber; and

(vi) To the extent an applicant seeks bids for equipment and maintenance costs associated with lighting dark fiber, the applicant must include these elements in the same FCC Form 470 as the dark fiber.

(2) The FCC Form 470 shall be signed by a person authorized to request bids for eligible services for the eligible school, library, or consortium, including such entities.

(i) A person authorized to request bids on behalf of the entities listed on an FCC Form 470 shall certify under oath that:

(A) The schools meet the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.500 of these rules, do not operate as for-profit businesses, and do not have endowments exceeding $50 million.

(B) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(C) Support under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively.

(ii) A person authorized to both request bids and order services on behalf of the entities listed on an FCC Form 470 shall, in addition to making the certifications listed in paragraph (c)(2)(i) of this section, certify under oath that:

(A) The services the school, library, or consortium purchases at discounts will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.513.

(B) All bids submitted for eligible products and services will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective service offering consistent with § 54.511.

(3) The Administrator shall post each FCC Form 470 that it receives from an eligible school, library, or consortium that includes an eligible school or library on its Web site designated for this purpose.

(4) After posting on the Administrator's Web site an eligible school, library, or consortium FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's

Web site before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

(d) *Gift restrictions.* (1) Subject to paragraphs (d)(3) and (4) of this section, an eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth $20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed $50 from any one service provider per funding year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (d)(2)(ii) of this section.

(2) For purposes of this paragraph:

(i) The terms ''school, library, or consortium'' include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the Schools and Libraries Program of the Universal Service Fund (E-rate Program), including individuals who prepare, approve, sign or submit E-rate applications, or other forms related to the E-rate Program, or who prepare bids, communicate or work with E-rate service providers, E-rate consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the E-rate Program; and

(ii) The term ''service provider'' includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions:

(i) Are motivated solely by a personal relationship,

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium, and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to E-rate procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other E-rate program rules, including those in paragraph (c)(2)(i)(C) of this section, requiring schools and libraries to pay their own non-discount share for the services they are purchasing.

(e) *Exemption to competitive bidding requirements.* (1) An applicant that seeks support for commercially available high-speed internet access services for a pre-discount price of $3,600 or less per school or library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section.

(i) internet access, as defined in § 54.5, is eligible for this exemption only if the purchased service offers at least 100 Mbps downstream and 10 Mbps upstream.

(ii) The Chief, Wireline Competition Bureau, is delegated authority to lower

the annual cost of high-speed internet access services or raise the speed threshold of broadband services eligible for this competitive bidding exemption, based on a determination of what rates and speeds are commercially available prior to the start of the funding year.

(2) A library applicant that seeks support for category two services for a total pre-discount price of $3,600 or less per library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section. Applicants must select a cost-effective service offering, based on the price of the equipment or services.

[75 FR 75412, Dec. 3, 2010, as amended at 76 FR 56302, Sept. 13, 2011; 79 FR 49199, Aug. 19, 2014; 80 FR 5989, Feb. 4, 2015; 88 FR 55410, Aug, 15, 2023]

EDITORIAL NOTE: At 83 FR , May 1,2018, § 54.503 was amended by revising paragraph (a)(6) however the agency provided two different paragraph (a)(6)'s, the amendment could not be incorporated due to inaccurate amendatory instruction.

EFFECTIVE DATE NOTE: At 88 FR 55410, Aug. 15, 2023, § 54.503 was amended by revising paragraph (c))(2)(i)(B),however this amendment is delayed indefinitely.For the convenience of the user, the revised text is set forth as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(c) * * *
(2) * * *
(i) * * *
(B) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal colleges or universities, have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

§ 54.504 Requests for services.

(a) *Filing of the FCC Form 471.* An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart shall, upon entering into a signed contract or other legally binding agreement for eligible services, submit a completed FCC Form 471 to the Administrator.

(1) The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium and shall include that person's certification under oath that:

(i) The schools meet the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.500 of this subpart, do not operate as for-profit businesses, and do not have endowments exceeding $50 million.

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(iii) The entities listed on the FCC Form 471 application have secured access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections, necessary to make effective use of the services purchased. The entities listed on the FCC Form 471 will pay the discounted charges for eligible services from funds to which access has been secured in the current funding year or, for entities that will make installment payments, they will ensure that they are able to make all required installment payments. The billed entity will pay the non-discount portion of the cost of the goods and services to the service provider(s).

(iv) The entities listed on the FCC Form 471 application have complied with all applicable state and local laws regarding procurement of services for which support is being sought.

(v) The services the school, library, or consortium purchases at discounts will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.513.

(vi) The entities listed in the application have complied with all program rules and acknowledge that failure to

do so may result in denial of discount funding and/or recovery of funding.

(vii) The applicant understands that the discount level used for shared services is conditional, for future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service, receive an appropriate share of benefits from those services.

(viii) The applicant recognizes that it may be audited pursuant to its application, that it will retain for ten years any and all worksheets and other records relied upon to fill out its application, and that, if audited, it will make such records available to the Administrator.

(ix) Except as exempted by § 54.503(e), all bids submitted to a school, library, or consortium seeking eligible services were carefully considered and the most cost-effective bid was selected in accordance with § 54.503 of this subpart, with price being the primary factor considered, and it is the most cost-effective means of meeting educational needs and technology goals.

(2) All pricing and technology infrastructure information submitted as part of an FCC Form 471 shall be treated as public and non-confidential by the Administrator unless the applicant specifies a statute, rule, or other restriction, such as a court order or an existing contract limitation barring public release of the information.

(i) Contracts and other agreements executed after adoption of this rule may not prohibit disclosure of pricing or technology infrastructure information.

(ii) The exemption for existing contract limitations shall not apply to voluntary extensions or renewals of existing contracts.

(b) *Mixed eligibility requests.* If 30 percent or more of a request for discounts made in an FCC Form 471 is for ineligible services, the request shall be denied in its entirety.

(c) *Rate disputes.* Schools, libraries, and consortia including those entities, and service providers may have recourse to the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates, if they reasonably believe that the lowest corresponding price is unfairly high or low.

(1) Schools, libraries, and consortia including those entities may request lower rates if the rate offered by the carrier does not represent the lowest corresponding price.

(2) Service providers may request higher rates if they can show that the lowest corresponding price is not compensatory, because the relevant school, library, or consortium including those entities is not similarly situated to and subscribing to a similar set of services to the customer paying the lowest corresponding price.

(d) *Service substitution.* (1) The Administrator shall grant a request by an applicant to substitute a service or product for one identified on its FCC Form 471 where:

(i) The service or product has the same functionality;

(ii) The substitution does not violate any contract provisions or state or local procurement laws;

(iii) The substitution does not result in an increase in the percentage of ineligible services or functions; and

(iv) The applicant certifies that the requested change is within the scope of the controlling FCC Form 470, including any associated Requests for Proposal, for the original services.

(2) In the event that a service substitution results in a change in the pre-discount price for the supported service, support shall be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.

(3) For purposes of this rule, the two categories of eligible services are not deemed to have the same functionality as one another.

(e) *Mixed eligibility services.* A request for discounts for a product or service that includes both eligible and ineligible components must allocate the cost of the contract to eligible and ineligible components.

(1) *Ineligible components.* If a product or service contains ineligible components, costs must be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The delineation must have a tangible basis, and the

price for the eligible portion must be the most cost-effective means of receiving the eligible service.

(2) *Ancillary ineligible components.* If a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of receiving the eligible component functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service. An ineligible component is ''ancillary'' if a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.

(3) The Administrator shall utilize the cost allocation requirements of this paragraph in evaluating mixed eligibility requests under paragraph (e)(1) of this section.

(f) *Filing of FCC Form 473.* All service providers eligible to provide telecommunications and other supported services under this subpart shall submit annually a completed FCC Form 473 to the Administrator. The FCC Form 473 shall be signed by an authorized person and shall include that person's certification under oath that:

(1) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to those prices, the intention to submit an offer, or the methods or factors used to calculate the prices offered;

(2) The prices in any offer that this service provider makes pursuant to the schools and libraries universal service support program will not be knowingly disclosed by this service provider, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt will be made by this service provider to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(4) The service provider listed on the FCC Form 473 certifies that the invoices that are submitted by this Service Provider to the Billed Entity for reimbursement pursuant to Billed Entity Applicant Reimbursement Forms (FCC Form 472) are accurate and represent payments from the Billed Entity to the Service Provider for equipment and services provided pursuant to E-rate program rules.

(5) The service provider listed on the FCC Form 473 certifies that the bills or invoices issued by this service provider to the billed entity are for equipment and services eligible for universal service support by the Administrator, and exclude any charges previously invoiced to the Administrator by the service provider.

[79 FR 49199, Aug. 19, 2014, as amended at 79 FR 68634, Nov. 18, 2014; 80 FR 5989, Feb. 4, 2015]

EFFECTIVE DATE NOTE: At 88 FR 55410, Apr. 15, 2023, § 54.504 was amended by revising paragraph (a)(1)(ii), however, this amendment is delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

§ 54.504 Requests for services.

(a) * * *

(1) * * *

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal college or universities, their budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

§ 54.505 Discounts.

(a) *Discount mechanism.* Discounts for eligible schools and libraries shall be set as a percentage discount from the pre-discount price.

(b) *Discount percentages.* Except as provided in paragraph (f), the discounts available to eligible schools and libraries shall range from 20 percent to 90 percent of the pre-discount price for all

eligible services provided by eligible providers, as defined in this subpart. The discounts available to a particular school, library, or consortium of only such entities shall be determined by indicators of poverty and high cost.

(1) For schools and school districts, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. School districts shall divide the total number of students eligible for the National School Lunch Program within the school district by the total number of students within the school district to arrive at a percentage of students eligible. This percentage rate shall then be applied to the discount matrix to set a discount rate for the supported services purchased by all schools within the school district. Independent charter schools, private schools, and other eligible educational facilities should calculate a single discount percentage rate based on the total number of students under the control of the central administrative agency.

(2) For libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located and should use that school district's level of poverty to determine their discount rate when applying as a library system or as an individual library outlet within that system. When a library system has branches or outlets in more than one public school district, that library system and all library outlets within that system should use the address of the central outlet or main administrative office to determine which school district the library system is in, and should use that school district's level of poverty to determine its discount rate when applying as a library system or as one or more library outlets. If the library is not in a school district, then its level of poverty shall be based on an average of the percentage of students eligible for the national school lunch program in each of the school districts that children living in the library's location attend.

(3) The Administrator shall classify schools and libraries as ''urban'' or ''rural'' according to the following designations.

(i) The Administrator shall designate a school or library as ''urban'' if the school or library is located in an urbanized area or urban cluster area with a population equal to or greater than 25,000, as determined by the most recent rural-urban classification by the Bureau of the Census. The Administrator shall designate all other schools and libraries as ''rural.''

(4) School districts, library systems, or other billed entities shall calculate discounts on supported services described in § 54.502(a) that are shared by two or more of their schools, libraries, or consortia members by calculating an average discount based on the applicable district-wide discounts of all member schools and libraries. School districts, library systems, or other billed entities shall ensure that, for each year in which an eligible school or library is included for purposes of calculating the aggregate discount rate, that eligible school or library shall receive a proportionate share of the shared services for which support is sought. For schools, the discount shall be a simple average of the applicable district-wide percentage for all schools sharing a portion of the shared services. For libraries, the average discount shall be a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.

(c) *Matrices*. Except as provided in paragraphs (d), (f), and (g) of this section, the Administrator shall use the following matrices to set discount rates to be applied to eligible category one and category two services purchased by eligible schools, school districts, libraries, or consortia based on the institution's level of poverty and location in an ''urban'' or ''rural'' area.

% of students eligible for national school lunch program	Category one schools and libraries discount matrix		Category two schools and libraries discount matrix	
	Discount level		Discount level	
	Urban discount	Rural discount	Urban discount	Rural discount
<1	20	25	20	25
1–19	40	50	40	50
20–34	50	60	50	60
35–49	60	70	60	70
50–74	80	80	80	80
75–100	90	90	85	85

(d) *Voice Services*. Discounts for category one voice services shall be reduced by 20 percentage points off applicant discount percentage rates for each funding year starting in funding year 2015, and reduced by an additional 20 percentage points off applicant discount percentage rates each subsequent funding year.

(e) *Interstate and intrastate services*. Federal universal service support for schools and libraries shall be provided for both interstate and intrastate services.

(1) Federal universal service support under this subpart for eligible schools and libraries in a state is contingent upon the establishment of intrastate discounts no less than the discounts applicable for interstate services.

(2) A state may, however, secure a temporary waiver of this latter requirement based on unusually compelling conditions.

(f) *Additional discounts for State matching funds for special construction*. Federal universal service discounts shall be based on the price of a service prior to the application of any state-provided support for schools or libraries. When a governmental entity described below provides funding for special construction charges for networks that meet the long-term connectivity targets for the schools and libraries universal service support program, the Administrator shall match the governmental entity's contribution as provided for below:

(1) *All E-rate applicants*. When a State government provides funding for special construction charges for a broadband connection to a school or library the Administrator shall match the State's contribution on a one-dollar-to-one-dollar basis up to an additional 10 percent discount, provided however that the total support from federal universal service and the State may not exceed 100 percent.

(2) *Tribal schools*. When a State government, Tribal government, or federal agency provides funding for special construction charges for a broadband connection to a school operated by the Bureau of Indian Education or by a Tribal government, the Administrator shall match the governmental entity's contribution on a one-dollar-to-one-dollar basis up to an additional 10 percent discount, provided however that the total support from federal universal service and the governmental entity may not exceed 100 percent.

(3) *Tribal libraries*. When a State government, Tribal government, or federal agency provides funding for special construction charges for a broadband connection to a library operated by Tribal governments, the Administrator shall match the governmental entity's contribution on a one-dollar-to-one-dollar basis up to an additional 10 percent discount, provided however that the total support from federal universal service and the governmental entity may not exceed 100 percent.

(g) *Tribal Library Category Two Discount Level*. For the costs of category two services, Tribal libraries at the highest discount level shall receive a 90 percent discount.

[62 FR 32948, June 17, 1997, as amended at 62 FR 41304, Aug. 1, 1997; 63 FR 2130, Jan. 13, 1998; 63 FR 70572, Dec. 21, 1998; 75 FR 75414, Dec. 3, 2010; 79 FR 49201, Aug. 19, 2014; 79 FR 68634, Nov. 18, 2014; 80 FR 5989, Feb. 4, 2015; 88 FR 55410, Aug. 15, 2023]

§ 54.506 [Reserved]

§ 54.507 Cap.

(a) *Amount of the annual cap.* The aggregate annual cap on federal universal service support for schools and libraries shall be $3.9 billion per funding year, of which $1 billion per funding year will be available for category two services, as described in § 54.502(a)(2), unless demand for category one services is higher than available funding.

(1) *Inflation increase.* In funding year 2016 and subsequent funding years, the $3.9 billion funding cap on federal universal service support for schools and libraries shall be automatically increased annually to take into account increases in the rate of inflation as calculated in paragraph (a)(2) of this section.

(2) *Increase calculation.* To measure increases in the rate of inflation for the purposes of this paragraph (a), the Commission shall use the Gross Domestic Product Chain-type Price Index (GDP–CPI). To compute the annual increase as required by this paragraph (a), the percentage increase in the GDP–CPI from the previous year will be used. For instance, the annual increase in the GDP–CPI from 2008 to 2009 would be used for the 2010 funding year. The increase shall be rounded to the nearest 0.1 percent by rounding 0.05 percent and above to the next higher 0.1 percent and otherwise rounding to the next lower 0.1 percent. This percentage increase shall be added to the amount of the annual funding cap from the previous funding year. If the yearly average GDP–CPI decreases or stays the same, the annual funding cap shall remain the same as the previous year.

(3) *Public notice.* When the calculation of the yearly average GDP–CPI is determined, the Wireline Competition Bureau shall publish a public notice in the FEDERAL REGISTER within 60 days announcing any increase of the annual funding cap including any increase to the $1 billion funding level available for category two services based on the rate of inflation.

(4) *Filing window requests.* At the close of the filing window, if requests for category one services are greater than the available funding, the Administrator shall shift category two funds to provide support for category one services. If available funds are sufficient to meet demand for category one services, the Administrator, at the direction of the Wireline Competition Bureau, shall direct the remaining additional funds to provide support for category two requests.

(5) *Amount of unused funds.* All funds collected that are unused shall be carried forward into subsequent funding years for use in the schools and libraries support mechanism in accordance with the public interest and notwithstanding the annual cap. The Chief, Wireline Competition Bureau, is delegated authority to determine the proportion of unused funds, if any, needed to meet category one demand, and to direct the Administrator to use any remaining funds to provide support for category two requests. The Administrator shall report to the Commission, on a quarterly basis, funding that is unused from prior years of the schools and libraries support mechanism.

(6) *Application of unused funds.* On an annual basis, in the second quarter of each calendar year, all funds that are collected and that are unused from prior years shall be available for use in the next full funding year of the schools and libraries mechanism in accordance with the public interest and notwithstanding the annual cap as described in this paragraph (a).

(b) *Funding year.* A funding year for purposes of the schools and libraries cap shall be the period July 1 through June 30.

(c) *Requests.* The Administrator shall implement an initial filing period that treats all schools and libraries filing an application within that period as if their applications were simultaneously received. The initial filing period shall begin and conclude on dates to be determined by the Administrator with the approval of the Chief of the Wireline Competition Bureau. The Administrator shall maintain on the Administrator's Web site a running tally of the funds already committed for the existing funding year. The Administrator may implement such additional filing periods as it deems necessary.

(d) *Annual filing requirement.* (1) Schools and libraries, and consortia of such eligible entities shall file new

funding requests for each funding year no sooner than the July 1 prior to the start of that funding year. Schools, libraries, and eligible consortia must use recurring services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought.

(2) Installation of category one non-recurring services may begin on January 1 prior to the July 1 start of the funding year, provided the following conditions are met:

(i) Construction begins after selection of the service provider pursuant to a posted FCC Form 470,

(ii) A category one recurring service must depend on the installation of the infrastructure, and

(iii) The actual service start date for that recurring service is on or after the start of the funding year (July 1).

(3) Installation of category two non-recurring services may begin on April 1 prior to the July 1 start of the funding year.

(4) The deadline for implementation of all non-recurring services will be September 30 following the close of the funding year. An applicant may request and receive from the Administrator an extension of the implementation deadline for non-recurring services if it satisfies one of the following criteria:

(i) The applicant's funding commitment decision letter is issued by the Administrator on or after March 1 of the funding year for which discounts are authorized;

(ii) The applicant receives a service provider change authorization or service substitution authorization from the Administrator on or after March 1 of the funding year for which discounts are authorized;

(iii) The applicant's service provider is unable to complete implementation for reasons beyond the service provider's control; or

(iv) The applicant's service provider is unwilling to complete installation because funding disbursements are delayed while the Administrator investigates the application for program compliance.

(e) *Long term contracts.* If schools and libraries enter into long term contracts for eligible services, the Administrator shall only commit funds to cover the pro rata portion of such a long term contract scheduled to be delivered during the funding year for which universal service support is sought.

(f) *Rules of distribution.* When the filing period described in paragraph (c) of this section closes, the Administrator shall calculate the total demand for both category one and category two support submitted by applicants during the filing period. If total demand for the funding year exceeds the total support available for category one or both categories, the Administrator shall take the following steps:

(1) *Category one.* The Administrator shall first calculate the demand for category one services for all discount levels. The Administrator shall allocate the category one funds to these requests for support, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix in § 54.505(c). Schools and libraries eligible for a 90 percent discount shall receive first priority for the category one funds. The Administrator shall next allocate funds toward the requests submitted by schools and libraries eligible for an 80 percent discount, then for a 70 percent discount, and shall continue committing funds for category one services in the same manner to the applicants at each descending discount level until there are no funds remaining.

(2) *Category two.* The Administrator shall next calculate the demand for category two services for all discount categories as determined by the schools and libraries discount matrix in § 54.505(c). If that demand exceeds the category two budget for that funding year, the Administrator shall allocate the category two funds beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix in § 54.505(c). The Administrator shall allocate funds toward the category two requests submitted by schools and libraries eligible for an 85 percent discount first, then for a 80 percent discount, and shall continue committing funds in the same manner to the applicants at each descending

discount level until there are no category two funds remaining.

(3) To the extent that there are single discount percentage levels associated with ''shared services'' under § 54.505(b)(4), the Administrator shall allocate funds to the applicants at each descending discount level (e.g., 90 percent, 89 percent, then 88 percent) until there are no funds remaining.

(4) For both paragraphs (f)(1) and (2) of this section, if the remaining funds are not sufficient to support all of the funding requests within a particular discount level, the Administrator shall allocate funds at that discount level using the percentage of students eligible for the National School Lunch Program. Thus, if there is not enough support to fund all requests at the 40 percent discount level, the Administrator shall allocate funds beginning with those applicants with the highest percentage of NSLP eligibility for that discount level by funding those applicants with 19 percent NSLP eligibility, then 18 percent NSLP eligibility, and shall continue committing funds in the same manner to applicants at each descending percentage of NSLP until there are no funds remaining.

[79 FR 49201, Aug. 19, 2014, as amended at 80 FR 5990, Feb. 4, 2015]

§§ 54.508–54.509 [Reserved]

§ 54.511 Ordering services.

(a) *Selecting a provider of eligible services.* Except as exempted in § 54.503(e), in selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers, but price should be the primary factor considered.

(b) *Lowest corresponding price.* Providers of eligible services shall not submit bids for or charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined.

[79 FR 59203, Aug. 19, 2014]

§ 54.513 Resale and transfer of services.

(a) *Prohibition on resale.* Eligible supported services provided at a discount under this subpart shall not be sold, resold, or transferred in consideration of money or any other thing of value, except as provided in paragraph (b) of this section.

(b) *Disposal of obsolete equipment components of eligible services.* Eligible equipment components of eligible services purchased at a discount under this subpart shall be considered obsolete if the equipment components have has been installed for at least five years. Obsolete equipment components of eligible services may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded.

(c) *Permissible fees.* This prohibition on resale shall not bar schools, school districts, libraries, and library consortia from charging either computer lab fees or fees for classes in how to navigate over the Internet. There is no prohibition on the resale of services that are not purchased pursuant to the discounts provided in this subpart.

(d) Eligible services and equipment components of eligible services purchased at a discount under this subpart shall not be transferred, with or without consideration of money or any other thing of value, for a period of three years after purchase, except that eligible services and equipment components of eligible services may be transferred to another eligible school or library in the event that the particular location where the service originally was received is permanently or temporarily closed, or is part of the same eligible school district or library system as the location receiving the eligible services or equipment components of eligible services. If an eligible service

or equipment component of a service is transferred pursuant to this paragraph, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years.

[62 FR 32948, June 17, 1997, as amended at 69 FR 6191, Feb. 10, 2004; 75 FR 75415, Dec. 3, 2010; 84 FR 70037, Dec. 20, 2019]

§ 54.514 Payment for discounted services.

(a) *Invoice filing deadline.* Invoices must be submitted to the Administrator:

(1) 120 days after the last day to receive service;

(2) 120 days after the date of the FCC Form 486 Notification Letter; or

(3) 120 days after the date of the Revised Funding Commitment Decision Letter approving a post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request, whichever is latest.

(b) *Invoice deadline extension.* In advance of the deadline calculated pursuant to paragraph (a) of this section, service providers or billed entities may request a one-time extension of the invoicing deadline. The Administrator shall grant a 120 day extension of the invoice filing deadline, if it is timely requested.

(c) *Choice of payment method.* Service providers providing discounted services under this subpart in any funding year shall, prior to the submission of the FCC Form 471, permit the billed entity to choose the method of payment for the discounted services from those methods approved by the Administrator, including by making a full, undiscounted payment and receiving subsequent reimbursement of the discount amount from the Administrator.

[79 FR 49203, Aug. 19, 2014, as amended at 86 FR 9027, Feb. 11, 2021]

§ 54.515 Distributing support.

(a) A telecommunications carrier providing services eligible for support under this subpart to eligible schools and libraries may, at the election of the carrier, treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation for the year in which the costs for providing eligible services were incurred or receive a direct reimbursement from the Administrator for that amount. Carriers shall elect in January of each year the method by which they will be reimbursed and shall remain subject to that method for the duration of the calendar year. Any support amount that is owed a carrier that fails to remit its monthly universal service contribution obligation, however, shall first be applied as an offset to that carrier's contribution obligation. Such a carrier shall remain subject to the offsetting method for the remainder of the calendar year in which it failed to remit their monthly universal service obligation. A carrier that continues to be in arrears on its universal service contribution obligations at the end of a calendar year shall remain subject to the offsetting method for the next calendar year.

(b) If a telecommunications carrier elects to treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation and the total amount of support owed to the carrier exceeds its universal service obligation, calculated on an annual basis, the carrier shall receive a direct reimbursement in the amount of the difference. Any such reimbursement due a carrier shall be submitted to that carrier no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the carrier's universal service obligation was applied.

[63 FR 67009, Dec. 4, 1998]

§ 54.516 Auditing and inspections.

(a) *Recordkeeping requirements*—(1) *Schools, libraries, and consortia.* Schools, libraries, and any consortium that includes schools or libraries shall retain all documents related to the application for, receipt, and delivery of supported services for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall

be retained as well. Schools, libraries, and consortia shall maintain asset and inventory records of equipment purchased as components of supported category two services sufficient to verify the actual location of such equipment for a period of 10 years after purchase.

(2) *Service providers*. Service providers shall retain documents related to the delivery of supported services for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well.

(b) *Production of records*. Schools, libraries, consortia, and service providers shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the FCC, or any local, state or federal agency with jurisdiction over the entity.

(c) *Audits*. Schools, libraries, consortia, and service providers shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the schools and libraries universal service support mechanism, including those requirements pertaining to what services and products are purchased, what services and products are delivered, and how services and products are being used. Schools, libraries, and consortia receiving discounted services must provide consent before a service provider releases confidential information to the auditor, reviewer, or other representative.

(d) *Inspections*. Schools, libraries, consortia and service providers shall permit any representative (including any auditor) appointed by a state education department, the Administrator, the Commission or any local, state or federal agency with jurisdiction over the entity to enter their premises to conduct E-rate compliance inspections.

[79 FR 49203, Aug. 19, 2014]

§§ 54.517–54.518 [Reserved]

§ 54.519 State telecommunications networks.

(a) *Telecommunications services*. State telecommunications networks may secure discounts under the universal service support mechanisms on supported telecommunications services (as described in § 54.502(a)) on behalf of eligible schools and libraries (as described in § 54.501) or consortia that include an eligible school or library. Such state telecommunications networks shall pass on such discounts to eligible schools and libraries and shall:

(1) Maintain records listing each eligible school and library and showing the basis for each eligibility determination;

(2) Maintain records demonstrating the discount amount to which each eligible school and library is entitled and the basis for such determination;

(3) Take reasonable steps to ensure that each eligible school or library receives a proportionate share of the shared services;

(4) Request that service providers apply the appropriate discount amounts on the portion of the supported services used by each school or library;

(5) Direct eligible schools and libraries to pay the discounted price; and

(6) Comply with the competitive bid requirements set forth in § 54.503.

(b) *Internet access and installation and maintenance of internal connections*. State telecommunications networks either may secure discounts on Internet access and installation and maintenance of internal connections in the manner described in paragraph (a) of this section with regard to telecommunications, or shall be eligible, consistent with § 54.502(a), to receive universal service support for providing such services to eligible schools, libraries, and consortia including those entities.

[63 FR 2131, Jan. 13, 1998; 63 FR 33586, June 19, 1998, as amended at75 FR 75415, Dec. 3, 2010]

§ 54.520 Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

(a) *Definitions.*

(1) *School.* For the purposes of the certification requirements of this rule, school means school, school board, school district, local education agency or other authority responsible for administration of a school.

(2) *Library.* For the purposes of the certification requirements of this rule, library means library, library board or authority responsible for administration of a library.

(3) *Billed entity.* Billed entity is defined in § 54.500. In the case of a consortium, the billed entity is the lead member of the consortium.

(4) *Statutory definitions.*

(i) The term ''minor'' means any individual who has not attained the age of 17 years.

(ii) The term ''obscene'' has the meaning given such term in 18 U.S.C. 1460.

(iii) The term ''child pornography'' has the meaning given such term in 18 U.S.C. 2256.

(iv) The term ''harmful to minors'' means any picture, image, graphic image file, or other visual depiction that—

(A) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(B) Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(C) Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(v) The terms ''sexual act'' and ''sexual contact'' have the meanings given such terms in 18 U.S.C. 2246.

(vi) The term ''technology protection measure'' means a specific technology that blocks or filters Internet access to the material covered by a certification under paragraph (c) of this section.

(b) *Who is required to make certifications?* (1) A school or library that receives discounts for Internet access and internal connections services under the federal universal service support mechanism for schools and libraries, must make such certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(2) Schools and libraries that only receive discounts for telecommunications services under the federal universal service support mechanism for schools and libraries are not subject to the requirements 47 U.S.C. 254(h) and (l), but must indicate, pursuant to the certification requirements in paragraph (c) of this section, that they only receive discounts for telecommunications services.

(c) *Certifications required under 47 U.S.C. 254(h) and (l)*—(1) *Schools.* The billed entity for a school that receives discounts for Internet access or internal connections must certify on FCC Form 486 that an Internet safety policy is being enforced. If the school is an eligible member of a consortium but is not the billed entity for the consortium, the school must certify instead on FCC Form 479 (''Certification to Consortium Leader of Compliance with the Children's Internet Protection Act'') that an Internet safety policy is being enforced.

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The school must enforce the operation of the technology protection measure during use of its computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (a)(1) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose. This Internet safety policy must also include monitoring the online activities of minors. Beginning July 1, 2012, schools' Internet safety policies must provide for educating

minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response.

(ii) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(l) must address all of the following issues:

(A) Access by minors to inappropriate matter on the Internet and World Wide Web,

(B) The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications,

(C) Unauthorized access, including so-called ''hacking,'' and other unlawful activities by minors online;

(D) Unauthorized disclosure, use, and dissemination of personal information regarding minors; and

(E) Measures designed to restrict minors' access to materials harmful to minors.

(iii) A school must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(1) of this section on FCC Form 486:

(A) The recipient(s) of service represented in the Funding Request Number(s) on this Form 486 has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) receiving discount services only for telecommunications services.

(2) *Libraries*. The billed entity for a library that receives discounts for Internet access and internal connections must certify, on FCC Form 486, that an Internet safety policy is being enforced. If the library is an eligible member of a consortium but is not the billed entity for the consortium, the library must instead certify on FCC Form 479 (''Certification to Consortium Leader of Compliance with the Children's Internet Protection Act'') that an Internet safety policy is being enforced.

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The library must enforce the operation of the technology protection measure during use of its computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (a)(2) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

(ii) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(l) must address all of the following issues:

(A) Access by minors to inappropriate matter on the Internet and World Wide Web;

(B) The safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

(C) Unauthorized access, including so-called ''hacking,'' and other unlawful activities by minors online;

(D) Unauthorized disclosure, use, and dissemination of personal information regarding minors; and

(E) Measures designed to restrict minors' access to materials harmful to minors.

(iii) A library must satisfy its obligations to make certifications by making one of the following certifications required by paragraph (c)(2) of this section on FCC Form 486:

(A) The recipient(s) of service represented in the Funding Request Number(s) on this Form 486 has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service represented in the Funding Request Number(s) on this Form 486 is (are) receiving discount services only for telecommunications services.

(3) *Certifications required from consortia members and billed entities for consortia.* (i) The billed entity of a consortium, as defined in paragraph (a)(3) of this section, other than one requesting only discounts on telecommunications services for consortium members, must collect from the authority for each of its school and library members, one of the following signed certifications on FCC Form 479 (''Certification to Consortium Leader of Compliance with the Children's Internet Protection Act''), which must be submitted to the billed entity consistent with paragraph (c)(1) or paragraph (c)(2) of this section:

(A) The recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments has (have) complied with the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l).

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments, and for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

(C) The Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), does not apply because the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments is (are) receiving discount services only for telecommunications services; and

(ii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, must make one of the following two certifications on FCC Form 486: ''I certify as the Billed Entity for the consortium that I have collected duly completed and signed Forms 479 from all eligible members of the consortium.''; or I certify ''as the Billed Entity for the consortium that the only services that I have been approved for discounts under the universal service support on behalf of eligible members of the consortium are telecommunications services, and therefore the requirements of the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), do not apply.''; and

(iii) The billed entity for a consortium, as defined in paragraph (a)(3) of this section, who filed an FCC Form 471 as a ''consortium application'' and who is also a recipient of services as a member of that consortium must select one of the certifications under paragraph (c)(3)(i) of this section on FCC Form 486.

(4) *Local determination of content.* A determination regarding matter inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may establish criteria for making such determination; review the determination

made by the certifying school, school board, school district, local educational agency, library, or other authority; or consider the criteria employed by the certifying school, school board, school district, local educational agency, library, or other authority in the administration of the schools and libraries universal service support mechanism.

(5) *Availability for review.* Each Internet safety policy adopted pursuant to 47 U.S.C. 254(l) shall be made available to the Commission, upon request from the Commission, by the school, school board, school district, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

(d) *Failure to provide certifications*—(1) *Schools and libraries.* A school or library that knowingly fails to submit certifications as required by this section, shall not be eligible for discount services under the federal universal service support mechanism for schools and libraries until such certifications are submitted.

(2) *Consortia.* A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire consortium ineligible for discounts under the federal universal service support mechanism for school and libraries.

(3) *Reestablishing eligibility.* At any time, a school or library deemed ineligible for discount services under the federal universal service support mechanism for schools and libraries because of failure to submit certifications required by this section, may reestablish eligibility for discounts by providing the required certifications to the Administrator and the Commission.

(e) *Failure to comply with the certifications*—(1) *Schools and libraries.* A school or library that knowingly fails to ensure the use of computers in accordance with the certifications required by this section, must reimburse any funds and discounts received under the federal universal service support mechanism for schools and libraries for the period in which there was noncompliance.

(2) *Consortia.* In the case of consortium applications, the eligibility for discounts of consortium members who ensure the use of computers in accordance with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to ensure the use of computers in accordance with such requirements.

(3) *Reestablishing compliance.* At any time, a school or library deemed ineligible for discounts under the federal universal service support mechanism for schools and libraries for failure to ensure the use of computers in accordance with the certification requirements of this section and that has been directed to reimburse the program for discounts received during the period of noncompliance, may reestablish compliance by ensuring the use of its computers in accordance with the certification requirements under this section. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school or library shall be eligible for discounts under the universal service mechanism.

(f) *Waivers based on state or local procurement rules and regulations and competitive bidding requirements.* Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section, cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements, prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section, for schools, before the start of the third program year after April 20, 2001 in which the school is applying for funds under this title, and, for libraries, before the start of Funding Year 2005 or the third program year after April 20, 2001, whichever is later.

(g) *Funding year certification deadlines.* For Funding Year 2003 and for

subsequent funding years, billed entities shall provide one of the certifications required under paragraph (c)(1), (c)(2) or (c)(3) of this section on an FCC Form 486 in accordance with the existing program guidelines established by the Administrator.

(h) *Public notice; hearing or meeting.* A school or library shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

[66 FR 19396, Apr. 16, 2001; 66 FR 22133, May 3, 2001, as amended at 67 FR 50603, Aug. 5, 2002; 68 FR 47255, Aug. 8, 2003; 76 FR 56303, Sept. 13, 2011]

§ 54.522 [Reserved]

§ 54.523 Payment for the non-discount portion of supported services.

An eligible school, library, or consortium must pay the non-discount portion of services or products purchased with universal service discounts. An eligible school, library, or consortium may not receive rebates for services or products purchased with universal service discounts. For the purpose of this rule, the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of the non-discount portion of the supported services.

[69 FR 6192, Feb. 10, 2004]

Subpart G—Universal Service for Rural Health Care Program

SOURCE: 84 FR 54979, Oct. 11, 2019, unless otherwise noted.

§ 54.600 Terms and definitions.

As used in this subpart, the following terms shall be defined as follows:

(a) *Funding year.* A ''funding year'' for purposes of the funding cap shall be the period between July 1 of the current calendar year through June 30 of the next calendar year.

(b) *Health care provider.* A ''health care provider'' is any:

(1) Post-secondary educational institution offering health care instruction, including a teaching hospital or medical school;

(2) Community health center or health center providing health care to migrants;

(3) Local health department or agency;

(4) Community mental health center;

(5) Not-for-profit hospital;

(6) Rural health clinic;

(7) Skilled nursing facility (as defined in section 395i–3(a) of Title 42); or a

(8) Consortium of health care providers consisting of one or more entities described in paragraphs (b)(1) through (7) in this section.

(c) *Off-site administrative office.* An ''off-site administrative office'' is a facility that does not provide hands-on delivery of patient care but performs administrative support functions that are critical to the provision of clinical care by eligible health care providers.

(d) *Off-site data center.* An ''off-site data center'' is a facility that serves as a centralized repository for the storage, management, and dissemination of an eligible health care provider's computer systems, associated components, and data, including (but not limited to) electronic health records.

(e) *Rural area.* A ''rural area'' is an area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000. For purposes of this rule, ''Core Based Statistical Area,'' ''Urban Area,'' and ''Place'' are as identified by the Census Bureau.

(f) *Rural health care provider.* A ''rural health care provider'' is an eligible health care provider site located in a rural area.

(g) *Urbanized area.* An ''urbanized area'' is an area with 50,000 or more people as designated by the Census Bureau based on the most recent decennial Census.

§ 54.601 Health care provider eligibility.

(a) *Eligible health care providers.* (1) Only an entity that is either a public or non-profit health care provider, as defined in this subpart, shall be eligible to receive support under this subpart.

(2) Each separate site or location of a health care provider shall be considered an individual health care provider for purposes of calculating and limiting support under this subpart.

(b) *Determination of health care provider eligibility for the Healthcare Connect Fund Program.* Health care providers in the Healthcare Connect Fund Program may certify to the eligibility of particular sites at any time prior to, or concurrently with, filing a request for services to initiate competitive bidding for the site. Applicants who utilize a competitive bidding exemption must provide eligibility information for the site to the Administrator prior to, or concurrently with, filing a request for funding for the site. Health care providers must also notify the Administrator within 30 days of a change in the health care provider's name, site location, contact information, or eligible entity type.

§ 54.602 Health care support mechanism.

(a) *Telecommunications Program.* Eligible rural health care providers may request support for the difference, if any, between the urban and rural rates for telecommunications services, subject to the provisions and limitations set forth in §§ 54.600 through 54.602 and 54.603 through 54.606. This support is referred to as the ''Telecommunications Program.''

(b) *Healthcare Connect Fund Program.* Eligible health care providers may request support for eligible services, equipment, and infrastructure, subject to the provisions and limitations set forth in §§ 54.600 through 54.602 and 54.607 through 54.618. This support is referred to as the ''Healthcare Connect Fund Program.''

(c) *Allocation of discounts.* An eligible health care provider that engages in both eligible and ineligible activities or that collocates with an ineligible entity shall allocate eligible and ineligible activities in order to receive prorated support for the eligible activities only. Health care providers shall choose a method of cost allocation that is based on objective criteria and reasonably reflects the eligible usage of the facilities.

(d) *Health care purposes.* Services for which eligible health care providers receive support from the Telecommunications Program or the Healthcare Connect Fund Program must be reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the state in which such health care services or instruction are provided.

TELECOMMUNICATIONS PROGRAM

§ 54.603 Consortia, telecommunications services, and existing contracts.

(a) *Consortia.* (1) Under the Telecommunications Program, an eligible health care provider may join a consortium with other eligible health care providers; with schools, libraries, and library consortia eligible under subpart F of this part; and with public sector (governmental) entities to order telecommunications services. With one exception, eligible health care providers participating in consortia with ineligible private sector members shall not be eligible for supported services under this subpart. A consortium may include ineligible private sector entities if such consortium is only receiving services at tariffed rates or at market rates from those providers who do not file tariffs.

(2) For consortia, universal service support under the Telecommunications Program shall apply only to the portion of eligible services used by an eligible health care provider.

(b) *Telecommunications services.* Any telecommunications service that is the subject of a properly completed bona fide request by a rural health care provider shall be eligible for universal service support. Upon submitting a bona fide request to a telecommunications carrier, each eligible rural health care provider is entitled to receive the most cost-effective, commercially-available telecommunications service, and a telecommunications

service carrier that is eligible for support under the Telecommunications Program shall provide such service at the urban rate, as defined in § 54.604.

(c) *Existing contracts.* A signed contract for services eligible for Telecommunications Program support pursuant to this subpart between an eligible health care provider, as defined under § 54.600, and a service provider shall be exempt from the competitive bid requirements as set forth in § 54.622(i).

§ 54.604 Determining the urban rate.

(a) *Urban rate.* An applicant shall use the applicable urban rate currently available in the Administrator's database when requesting funding. The ''urban rate'' shall be the median of all available rates identified by the Administrator for functionally similar services in all urbanized areas of the state where the health care provider is located to the extent that urbanized area falls within the state.

(b) *Database.* The Administrator shall create and maintain on its website a database that lists, by state, the eligible Telecommunications Program services and the related urban rate.

EFFECTIVE DATE NOTE: At 88 FR 17395, Mar. 23, 2023, § 54.604 was revised, however this amendment has been delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

§ 54.604 Determining the urban rate.

(a) Effective funding year 2024, if a rural health care provider requests support for an eligible service to be funded from the Telecommunications Program that is to be provided over a distance that is less than or equal to the ''standard urban distance,'' as defined in paragraph (c) of this section, for the state in which it is located, the ''urban rate'' for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state, calculated as if it were provided between two points within the city.

(b) If a rural health care provider requests an eligible service to be provided over a distance that is greater than the ''standard urban distance,'' as defined in paragraph (c) of this section, for the state in which it is located, the urban rate for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a functionally similar service provided over the standard urban distance in any city with a population of 50,000 or more in that state, calculated as if the service were provided between two points within the city.

(c) The ''standard urban distance'' for a state is the average of the longest diameters of all cities with a population of 50,000 or more within the state.

(d) The Administrator shall calculate the ''standard urban distance'' and shall post the ''standard urban distance'' and the maximum supported distance for each state on its website.

§ 54.605 Determining the rural rate.

(a) *Rural rate.* An applicant shall use the lower of the applicable ''rural rate'' currently available in the Administrator's database or the rural rate included in the service agreement that the health care provider enters into with the service provider when requesting funding.

(1) For purposes of paragraph (a) of this section, The rural rate will be determined using the following tiers in which a health care provider is located:

(i) *Extremely Rural.* Areas entirely outside of a Core Based Statistical Area.

(ii) *Rural.* Areas within a Core Based Statistical Area that does not have an Urban Area with a population of 25,000 or greater.

(iii) *Less rural.* Areas in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but are within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000.

(iv) *Frontier.* For health care providers located in Alaska only, areas outside of a Core Based Statistical Area that are inaccessible by road as determined by the Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs. The ''rural rate'' shall be the median of all available rates for the same or functionally similar service offered within the rural tier, applicable to the health care provider's location within the state. The Administrator shall not include any rates reduced by universal service support mechanisms. The ''rural rate'' shall be used as described in this subpart to determine the credit

or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.

(b) *Database.* The Administrator shall create and maintain on its website a database that lists, by state, the eligible Telecommunications Program services and the related rural rate for each such service and for each rural tier.

(c) *Request for waiver.* A petition for a waiver of the ''rural rate,'' as described in paragraph (a) in this section, may be granted if the service provider demonstrates that application of the rural rate published by the Administrator would result in a projected rate of return on the net investment in the assets used to provide the rural health care service that is less than the Commission-prescribed rate of return for incumbent rate of return local exchange carriers (LECs). All waiver requests must articulate specific facts that demonstrate that ''good cause'' exists to grant the requested waiver and that granting the requested waiver would be in the public interest. To satisfy this standard, the waiver request must be substantiated through documentary evidence as stated in the following. A waiver request will not be entertained if it does not also set forth a rural rate that the service provider demonstrates will permit it to obtain no more than the current Commission prescribed rate of return authorized for incumbent rate of return local exchange carriers.

(1) For purposes of paragraph (c), petitions seeking a waiver must include all financial data and other information to verify the service provider's assertions, including, at a minimum, the following information:

(i) Company-wide and rural health care service gross investment, accumulated depreciation, deferred state and federal income taxes, and net investment; capital costs by category expressed as annual figures (*e.g.*, depreciation expense, state and federal income tax expense, return on net investment); operating expenses by category (*e.g.*, maintenance expense, administrative and other overhead expenses, and tax expense other than income tax expense); the applicable state and federal income tax rates; fixed charges (*e.g.*, interest expense); and any income tax adjustments;

(ii) An explanation and a set of detailed spreadsheets showing the direct assignment of costs to the rural health care service and how company-wide common costs are allocated among the company's services, including the rural health care service, and the result of these direct assignments and allocations as necessary to develop a rate for the rural health care service;

(iii) The company-wide and rural health care service costs for the most recent calendar year for which full-time actual, historical cost data are available;

(iv) Projections of the company-wide and rural health care service costs for the funding year in question and an explanation of those projections;

(v) Actual monthly demand data for the rural health care service for the most recent three calendar years (if applicable);

(vi) Projections of the monthly demand for the rural health care service for the funding year in question, and the data and details on the methodology used to make those projections;

(vii) The annual revenue requirement (capital costs and operating expenses expressed as an annual number plus a return on net investment) and the rate for the funded service (annual revenue requirement divided by annual demand divided by twelve equals the monthly rate for the service), assuming one rate element for the service), based on the projected rural health care service costs and demands;

(viii) Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years, specifically, the cash flow statement, income statement, and balance sheets. Such statements shall include information regarding costs and revenues associated with, or used as a starting point to develop, the rural health care service rate; and

(ix) Density characteristics of the rural area or other relevant geographical areas including square miles, road miles, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting

fuel, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the high cost of servicing the health care providers.

EFFECTIVE DATE NOTE: At 88 FR 17395, Mar. 23, 2023, § 54.605 was revised, however this amendment has been delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

§ 54.605 Determining the rural rate.

(a) Effective funding year 2024, the rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located. The rates included in this average shall be for services provided over the same distance as the eligible service. The rates averaged to calculate the rural rate must not include any rates reduced by universal service support mechanisms. The ''rural rate'' shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.

(b) If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers. If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission's approval, for intrastate rates, or for the Commission's approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.

(1) The carrier must provide, to the state commission, for intrastate rates, or to the Commission, for interstate rates, a justification of the proposed rural rate, including an itemization of the costs of providing the requested service.

(2) The carrier must provide such information periodically thereafter as required, by the state commission for intrastate rates or the Commission for interstate rates. In doing so, the carrier much take into account anticipated and actual demand for telecommunications services by all customers who will use the facilities over which services are being provided to eligible health care providers.

§ 54.606 Calculating support.

(a) The amount of universal service support provided for an eligible service to be funded from the Telecommunications program shall be the difference, if any, between the urban rate and the rural rate charged for the services, as defined in this section. In addition, all reasonable charges that are incurred by taking such services, such as state and federal taxes, shall be eligible for universal service support. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms.

(b) The universal service support mechanisms shall provide support for intrastate telecommunications services, as set forth in § 54.101(a), provided to rural health care providers as well as interstate telecommunications services.

(c) *Mobile rural health care providers*—(1) *Calculation of support.* The support amount allowed under the Telecommunications Program for satellite services provided to mobile rural health care providers is calculated by comparing the rate for the satellite service to the rate for an urban wireline service with a similar bandwidth. Support for satellite services shall not be capped at an amount of a functionally similar wireline alternative. Where the mobile rural health care provider provides service in more than one state, the calculation shall be based on the urban areas in each state, proportional to the number of locations served in each state.

(2) *Documentation of support.* (i) Mobile rural health care providers shall provide to the Administrator documentation of the price of bandwidth equivalent wireline services in the urban area in the state or states where the service is provided. Mobile rural health care providers shall provide to the Administrator the number of sites the mobile health care provider will serve during the funding year.

(ii) Where a mobile rural health care provider serves less than eight different sites per year, the mobile rural health care provider shall provide to the Administrator documentation of the price of bandwidth equivalent wireline services. In such case, the Administrator shall determine on a case-by-case basis whether the telecommunications service selected by the mobile rural health care provider is the most cost-effective option. Where a mobile rural health care provider seeks a more expensive satellite-based service when a less expensive wireline alternative is most cost-effective, the mobile rural health care provider shall be responsible for the additional cost.

HEALTHCARE CONNECT FUND PROGRAM

§ 54.607 Eligible recipients.

(a) *Rural health care provider site—individual and consortium.* Under the Healthcare Connect Fund Program, an eligible rural health care provider may receive universal service support by applying individually or through a consortium. For purposes of the Healthcare Connect Fund Program, a ''consortium'' is a group of two or more health care provider sites that request support through a single application. Consortia may include health care providers who are not eligible for support under the Healthcare Connect Fund Program, but such health care providers cannot receive support for their expenses and must participate pursuant to the cost allocation guidelines in § 54.617(d).

(b) *Limitation on participation of non-rural health care provider sites in a consortium.* An eligible non-rural health care provider site may receive universal service support only as part of a consortium that includes more than 50 percent eligible rural health care provider sites. The majority-rural consortia percentage requirement will increase by 5 percent for the following funding year (up to a maximum of 75 percent) if the Commission must prioritize funding for a given year because Rural Health Care Program demand exceeds the funding cap.

(c) *Limitation on large non-rural hospitals.* Each eligible non-rural public or non-profit hospital site with 400 or more licensed patient beds may receive no more than $30,000 per year in Healthcare Connect Fund Program support for eligible recurring charges and no more than $70,000 in Healthcare Connect Fund Program support every five years for eligible nonrecurring charges, exclusive in both cases of costs shared by the network.

§ 54.608 Eligible service providers.

For purposes of the Healthcare Connect Fund Program, eligible service providers shall include any provider of equipment, facilities, or services that is eligible for support under the Healthcare Connect Fund Program.

§ 54.609 Designation of Consortium Leader.

(a) *Identifying a Consortium Leader.* Each consortium seeking support under the Healthcare Connect Fund Program must identify an entity or organization that will lead the consortium (the ''Consortium Leader'').

(b) *Consortium Leader eligibility.* The Consortium Leader may be the consortium itself (if it is a distinct legal entity); an eligible health care provider participating in the consortium; or a state organization, public sector (governmental) entity (including a Tribal government entity), or non-profit entity that is ineligible for Healthcare Connect Fund Program support. Ineligible state organizations, public sector entities, or non-profit entities may serve as Consortium Leaders or provide consulting assistance to consortia only if they do not participate as potential service providers during the competitive bidding process. An ineligible entity that serves as the Consortium Leader must pass on the full value of any discounts, funding, or other program benefits secured to the consortium members that are eligible health care providers.

(c) *Consortium Leader responsibilities.* The Consortium Leader's responsibilities include the following:

(1) *Legal and financial responsibility for supported activities.* The Consortium Leader is the legally and financially responsible entity for the activities supported by the Healthcare Connect Fund Program. By default, the Consortium Leader is the responsible entity if

audits or other investigations by Administrator or the Commission reveal violations of the Act or Commission rules, with individual consortium members being jointly and severally liable if the Consortium Leader dissolves, files for bankruptcy, or otherwise fails to meet its obligations. Except for the responsibilities specifically described in paragraphs (c)(2) through (6) in this section, consortia may allocate legal and financial responsibility as they see fit, provided that this allocation is memorialized in a formal written agreement between the affected parties (*i.e.*, the Consortium Leader, and the consortium as a whole and/or its individual members), and the written agreement is submitted to the Administrator for approval with, or prior to, the request for services. Any such agreement must clearly identify the party(ies) responsible for repayment if the Administrator, at a later date, seeks to recover disbursements of support to the consortium due to violations of program rules.

(2) *Point of contact for the FCC and Administrator*. The Consortium Leader is responsible for designating an individual who will be the ''Project Coordinator'' and serve as the point of contact with the Commission and the Administrator for all matters related to the consortium. The Consortium Leader is responsible for responding to Commission and Administrator inquiries on behalf of the consortium members throughout the application, funding, invoicing, and post-invoicing period.

(3) *Typical applicant functions, including forms and certifications*. The Consortium Leader is responsible for submitting program forms and required documentation and ensuring that all information and certifications submitted are true and correct. The Consortium Leader must also collect and retain a Letter of Agency (LOA) from each member, pursuant to § 54.610.

(4) *Competitive bidding and cost allocation*. The Consortium Leader is responsible for ensuring that the competitive bidding process is fair and open and otherwise complies with Commission requirements. If costs are shared by both eligible and ineligible entities, the Consortium Leader must ensure that costs are allocated in a manner that ensures that only eligible entities receive the benefit of program discounts.

(5) *Invoicing*. The Consortium Leader is responsible for notifying the Administrator when supported services have commenced and for submitting invoices to the Administrator.

(6) *Recordkeeping, site visits, and audits*. The Consortium Leader is also responsible for compliance with the Commission's recordkeeping requirements and for coordinating site visits and audits for all consortium members.

§ 54.610 Letters of agency (LOA).

(a) *Authorizations*. Under the Healthcare Connect Fund Program, the Consortium Leader must obtain the following authorizations:

(1) Prior to the submission of the request for services, the Consortium Leader must obtain authorization, the necessary certifications, and any supporting documentation from each consortium member to permit the Consortium Leader to submit the request for services and prepare and post the request for proposal on behalf of the member.

(2) Prior to the submission of the funding request, the Consortium Leader must secure authorization, the necessary certifications, and any supporting documentation from each consortium member to permit the Consortium Leader to submit the funding request and manage invoicing and payments on behalf of the member.

(b) *Optional two-step process*. The Consortium Leader may secure both required authorizations from each consortium member in either a single LOA or in two separate LOAs.

(c) *Required information in a LOA*. (1) An LOA must include, at a minimum, the name of the entity filing the application (*i.e.*, lead applicant or Consortium Leader); the name of the entity authorizing the filing of the application (*i.e.*, the participating health care provider/consortium member); the physical location of the health care provider/consortium member site(s); the relationship of each site seeking support to the lead entity filing the application; the specific timeframe the LOA covers; the signature, title and contact information (including phone

number, mailing address, and email address) of an official who is authorized to act on behalf of the health care provider/consortium member; the signature date; and the type of services covered by the LOA.

(2) For health care providers located on Tribal lands, if the health care facility is a contract facility that is run solely by the tribe, the appropriate Tribal leader, such as the Tribal chairperson, president, or governor, shall also sign the LOA, unless the health care responsibilities have been duly delegated to another Tribal government representative.

§ 54.611 Health care provider contribution.

(a) *Health care provider contribution.* All health care providers receiving support under the Healthcare Connect Fund Program shall receive a 65 percent discount on the cost of eligible expenses and shall be required to contribute 35 percent of the total cost of all eligible expenses.

(b) *Limits on eligible sources of health care provider contribution.* Only funds from eligible sources may be applied toward the health care provider's required contribution.

(1) Eligible sources include the applicant or eligible health care provider participants; state grants, appropriations, or other sources of state funding; federal grants, loans, appropriations except for other federal universal service funding, or other sources of federal funding; Tribal government funding; and other grants, including private grants.

(2) Ineligible sources include (but are not limited to) in-kind or implied contributions from health care providers; direct payments from service providers, including contractors and consultants to such entities; and for-profit entities.

(c) *Disclosure of health care provider contribution source.* Prior to receiving support, applicants are required to identify with specificity their sources of funding for their contribution of eligible expenses.

(d) *Future revenues from excess capacity as source of health care provider contribution.* A consortium applicant that receives support for participant-owned network facilities under § 54.614 may use future revenues from excess capacity as a source for the required health care provider contribution, subject to the following limitations:

(1) The consortium's selection criteria and evaluation for ''cost-effectiveness,'' pursuant to § 54.622(g)(1), cannot provide a preference to bidders that offer to construct excess capacity;

(2) The applicant must pay the full amount of the additional costs for excess capacity facilities that will not be part of the supported health care network;

(3) The additional cost of constructing excess capacity facilities may not count toward a health care provider's required contribution;

(4) The inclusion of excess capacity facilities cannot increase the funded cost of the dedicated health care network in any way;

(5) An eligible health care provider (typically the consortium, although it may be an individual health care provider participating in the consortium) must retain ownership of the excess capacity facilities. It may make the facilities available to third parties only under an indefeasible right of use (IRU) or lease arrangement. The lease or IRU between the participant and the third party must be an arm's length transaction. To ensure that this is an arm's length transaction, neither the service provider that installs the excess capacity facilities nor its affiliate is eligible to enter into an IRU or lease with the participant;

(6) Any amount prepaid for use of the excess capacity facilities (IRU or lease) must be placed in an escrow account. The participant can then use the escrow account as an eligible source of funds for the participant's 35 percent contribution to the project; and

(7) All revenues from use of the excess capacity facilities by the third party must be used for the health care provider contribution or for the sustainability of the health care network supported by the Healthcare Connect Fund Program. Network costs that may be funded with any additional revenues that remain will include: Administration costs, equipment, software, legal fees, or other costs not covered by the Healthcare Connect Fund Program,

as long as they are relevant to sustaining the network.

§ 54.612 Eligible services.

(a) *Eligible services.* Subject to the provisions of §§ 54.600 through 54.602 and 54.607 through 54.633, eligible health care providers may request support under the Healthcare Connect Fund Program for any advanced telecommunications or information service that enables health care providers to post their own data, interact with stored data, generate new data, or communicate, by providing connectivity over private dedicated networks or the public internet for the provision of health information technology.

(b) *Eligibility of dark fiber.* A consortium of eligible health care providers may receive support for ''dark'' fiber where the customer, not the service provider, provides the modulating electronics, subject to the following limitations:

(1) Support for recurring charges associated with dark fiber is only available once the dark fiber is ''lit'' and actually being used by the health care provider. Support for non-recurring charges for dark fiber is only available for fiber lit within the same funding year, but applicants may receive up to a one-year extension to light fiber, consistent with § 54.626(b), if they provide documentation to the Administrator that construction was unavoidably delayed due to weather or other reasons.

(2) Requests for proposals that solicit dark fiber solutions must also solicit proposals to provide the needed services over lit fiber over a time period comparable to the duration of the dark fiber lease or indefeasible right of use.

(3) If an applicant intends to request support for equipment and maintenance costs associated with lighting and operating dark fiber, it must include such elements in the same request for proposal as the dark fiber so that the Administrator can review all costs associated with the fiber when determining whether the applicant chose the most cost-effective bid.

(c) *Dark and lit fiber maintenance costs.* (1) Both individual and consortium applicants may receive support for recurring maintenance costs associated with leases of dark or lit fiber.

(2) Consortium applicants may receive support for upfront payments for maintenance costs associated with leases of dark or lit fiber, subject to the limitations in § 54.616.

(d) *Reasonable and customary installation charges.* Eligible health care providers may obtain support for reasonable and customary installation charges for eligible services, up to an undiscounted cost of $5,000 per eligible site.

(e) *Upfront charges for service provider deployment of new or upgraded facilities.* (1) Participants may obtain support for upfront charges for service provider deployment of new or upgraded facilities to serve eligible sites.

(2) Support is available to extend service provider deployment of facilities up to the ''demarcation point,'' which is the boundary between facilities owned or controlled by the service provider, and facilities owned or controlled by the customer.

§ 54.613 Eligible equipment.

(a) Both individual and consortium applicants may receive support for network equipment necessary to make functional an eligible service supported under the Healthcare Connect Fund Program.

(b) Consortium applicants may also receive support for network equipment necessary to manage, control, or maintain an eligible service or a dedicated health care broadband network. Support for network equipment is not available for networks that are not dedicated to health care.

(c) Network equipment eligible for support includes the following:

(1) Equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment. This includes equipment required to light dark fiber, or equipment necessary to connect dedicated health care broadband networks or individual health care providers to middle mile or backbone networks;

(2) Computers, including servers, and related hardware (*e.g.*, printers, scanners, laptops) that are used exclusively for network management;

(3) Software used for network management, maintenance, or other network operations, and development of software that supports network management, maintenance, and other network operations;

(4) Costs of engineering, furnishing (*i.e.*, as delivered from the manufacturer), and installing network equipment; and

(5) Equipment that is a necessary part of health care provider-owned network facilities.

(d) Additional limitations: Support for network equipment is limited to equipment:

(1) Purchased or leased by a Consortium Leader or eligible health care provider; and

(2) Used for health care purposes.

§ 54.614 Eligible participant-constructed and owned network facilities for consortium applicants.

(a) Subject to the funding limitations of this subsection and the following restrictions, consortium applicants may receive support for network facilities that will be constructed and owned by the consortium (if the consortium is an eligible health care provider) or eligible health care providers within the consortium. Subject to the funding limitations under §§ 54.616 and 54.619 and the following restrictions, consortium applicants may receive support for network facilities that will be constructed and owned by the consortium (if the consortium is an eligible health care provider) or eligible health care providers within the consortium.

(1) Consortia seeking support to construct and own network facilities are required to solicit bids for both:

(i) Services provided over third-party networks; and

(ii) Construction of participant-owned network facilities, in the same request for proposals. Requests for proposals must provide sufficient detail so that cost-effectiveness can be evaluated over the useful life of the proposed network facility to be constructed.

(2) Support for participant-constructed and owned network facilities is only available where the consortium demonstrates that constructing its own network facilities is the most cost-effective option after competitive bidding, pursuant to § 54.622(g)(1).

(b) [Reserved]

§ 54.615 Off-site data centers and off-site administrative offices.

(a) The connections and network equipment associated with off-site data centers and off-site administrative offices used by eligible health care providers for their health care purposes are eligible for support under the Healthcare Connect Fund Program, subject to the conditions and restrictions set forth in paragraph (b) in this section.

(b) *Conditions and restrictions*. The following conditions and restrictions apply to support provided under this section.

(1) Connections eligible for support are only those that are between:

(i) Eligible health care provider sites and off-site data centers or off-site administrative offices;

(ii) Two off-site data centers;

(iii) Two off-site administrative offices;

(iv) An off-site data center and the public internet or another network;

(v) An off-site administrative office and the public internet or another network; or

(vi) An off-site administrative office and an off-site data center.

(2) The supported connections and network equipment must be used solely for health care purposes.

(3) The supported connections and network equipment must be purchased by an eligible health care provider or a public or non-profit health care system that owns and operates eligible health care provider sites.

(4) If traffic associated with one or more ineligible health care provider sites is carried by the supported connection and/or network equipment, the ineligible health care provider sites must allocate the cost of that connection and/or equipment between eligible and ineligible sites, consistent with the ''fair share'' principles set forth in § 54.617(d)(1).

§ 54.616 Upfront payments.

(a) Upfront payments include all non-recurring costs for services, equipment, or facilities, other than reasonable and

customary installation charges of up to $5,000.

(b) The following limitations apply to all upfront payments:

(1) Upfront payments associated with services providing a bandwidth of less than 1.5 Mbps (symmetrical) are not eligible for support; and

(2) Only consortium applicants are eligible for support for upfront payments.

(c) The following limitations apply if a consortium makes a request for support for upfront payments that exceeds, on average, $50,000 per eligible site in the consortium:

(1) The support for the upfront payments must be prorated over at least three years; and

(2) The upfront payments must be part of a multi-year contract.

§ 54.617 Ineligible expenses.

(a) *Equipment or services not directly associated with eligible services.* Expenses associated with equipment or services that are not necessary to make an eligible service functional, or to manage, control, or maintain an eligible service or a dedicated health care broadband network are ineligible for support. For purposes of paragraph (a) of this section, examples of ineligible expenses include:

(1) Costs associated with general computing, software, applications, and internet content development are not supported, including the following:

(i) Computers, including servers, and related hardware (*e.g.*, printers, scanners, laptops), unless used exclusively for network management, maintenance, or other network operations;

(ii) End user wireless devices, such as smartphones and tablets;

(iii) Software, unless used for network management, maintenance, or other network operations;

(iv) Software development (excluding development of software that supports network management, maintenance, and other network operations);

(v) Helpdesk equipment and related software, or services, unless used exclusively in support of eligible services or equipment;

(vi) Web server hosting;

(vii) website portal development;

(viii) Video/audio/web conferencing equipment or services; and

(ix) Continuous power source.

(2) Costs associated with medical equipment (hardware and software), and other general health care provider expenses are not supported, including the following:

(i) Clinical or medical equipment;

(ii) Telemedicine equipment, applications, and software;

(iii) Training for use of telemedicine equipment;

(iv) Electronic medical records systems; and

(v) Electronic records management and expenses.

(b) *Inside wiring/internal connections.* Expenses associated with inside wiring or internal connections are ineligible for support under the Healthcare Connect Fund Program.

(c) *Administrative expenses.* Administrative expenses are not eligible for support under the Healthcare Connect Fund Program. For purposes of paragraph (c) of this section, ineligible administrative expenses include, but are not limited to, the following expenses:

(1) Personnel costs (including salaries and fringe benefits), except for personnel expenses in a consortium application that directly relate to designing, engineering, installing, constructing, and managing a dedicated broadband network. Ineligible costs of this category include, for example, personnel to perform program management and coordination, program administration, and marketing;

(2) Travel costs, except for travel costs that are reasonable and necessary for network design or deployment and that are specifically identified and justified as part of a competitive bid for a construction project;

(3) Legal costs;

(4) Training, except for basic training or instruction directly related to and required for broadband network installation and associated network operations;

(5) Program administration or technical coordination (*e.g.*, preparing application materials, obtaining letters of agency, preparing requests for proposals, negotiating with service providers, reviewing bids, and working with the Administrator) that involves

anything other than the design, engineering, operations, installation, or construction of the network;

(6) Administration and marketing costs (*e.g.*, administrative costs; supplies and materials, except as part of network installation/construction; marketing studies, marketing activities, or outreach to potential network members; and evaluation and feedback studies);

(7) Billing expenses (*e.g.*, expenses that service providers may charge for allocating costs to each health care provider in a network);

(8) Helpdesk expenses (*e.g.*, equipment and related software, or services); and

(9) Technical support services that provide more than basic maintenance.

(d) *Cost allocation for ineligible sites, services, or equipment.* (1) *Ineligible sites.* Eligible health care provider sites may share expenses with ineligible sites, as long as the ineligible sites pay their fair share of the expenses. An applicant may seek support for only the portion of a shared eligible expense attributable to eligible health care provider sites. To receive support, the applicant must ensure that ineligible sites pay their fair share of the expense. The fair share is determined as follows:

(i) If the service provider charges a separate and independent price for each site, an ineligible site must pay the full undiscounted price.

(ii) If there is no separate and independent price for each site, the applicant must prorate the undiscounted price for the ''shared'' service, equipment, or facility between eligible and ineligible sites on a proportional fully-distributed basis. Applicants must make this cost allocation using a method that is based on objective criteria and reasonably reflects the eligible usage of the shared service, equipment, or facility. The applicant bears the burden of demonstrating the reasonableness of the allocation method chosen.

(2) Ineligible components of a single service or piece of equipment. Applicants seeking support for a service or piece of equipment that includes an ineligible component must explicitly request in their requests for proposals that service providers include pricing for a comparable service or piece of equipment that is comprised of only eligible components. If the selected service provider also submits a price for the eligible component on a stand-alone basis, the support amount is calculated based on the stand-alone price of the eligible component. If the service provider does not offer the eligible component on a stand-alone basis, the full price of the entire service or piece of equipment must be taken into account, without regard to the value of the ineligible components, when determining the most cost-effective bid.

(3) *Written description.* Applicants must submit a written description of their allocation method(s) to the Administrator with their funding requests.

(4) *Written agreement.* If ineligible entities participate in a network, the allocation method must be memorialized in writing, such as a formal agreement among network members, a master services contract, or for smaller consortia, a letter signed and dated by all (or each) ineligible entity and the Consortium Leader.

§ 54.618 Data collection and reporting.

(a) Each applicant must file an annual report with the Administrator on or before September 30 for the preceding funding year, with the information and in the form specified by the Wireline Competition Bureau.

(b) Each applicant must file an annual report for each funding year in which it receives support from the Healthcare Connect Fund Program.

(c) For consortia that receive large upfront payments, the reporting requirement extends for the life of the supported facility.

GENERAL PROVISIONS

§ 54.619 Cap.

(a) *Amount of the annual cap.* The aggregate annual cap on Federal universal service support for health care providers shall be $571 million per funding year. When total demand during a filing window period exceeds the total remaining support available for the funding year, an internal cap of $150 million per funding year for upfront

payments and multi-year commitments under the Healthcare Connect Fund Program shall apply.

(1) *Inflation increase.* In funding year 2018 and subsequent funding years, the $571 million cap on federal universal support in the Rural Health Care Program shall be increased annually to take into account increases in the rate of inflation as calculated in paragraph (a)(2) in this section. In funding year 2020 and subsequent funding years, the $150 million cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program shall also be increased annually to take into account increases in the rate of inflation as calculated in paragraph (a)(2) in this section.

(2) *Increase calculation.* To measure increases in the rate of inflation for the purposes of paragraph (a)(1) in this section, the Commission shall use the Gross Domestic Product Chain-type Price Index (GDP–CPI). To compute the annual increase as required by paragraph (a)(1) in this section, the percentage increase in the GDP–CPI from the previous year will be used. For instance, the annual increase in the GDP–CPI from 2017 to 2018 would be used for the 2018 funding year. The increase shall be rounded to the nearest 0.1 percent by rounding 0.05 percent and above to the next higher 0.1 percent. This percentage increase shall be added to the amount of the annual Rural Health Care Program funding cap and the internal cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program from the previous funding year. If the yearly average GDP–CPI decreases or stays the same, the annual Rural Health Care Program funding cap and the internal cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program shall remain the same as the previous year.

(3) *Public notice.* After calculating the annual Rural Health Care Program funding cap and the internal cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program based on the GDP–CPI, the Wireline Competition Bureau shall publish a public notice in the FEDERAL REGISTER within 60 days announcing any increase of the annual funding cap based on the rate of inflation.

(4) *Amount of unused funds.* All unused collected funds shall be carried forward into subsequent funding years for use in the Rural Health Care Program in accordance with the public interest and notwithstanding the annual cap. The Administrator, on a quarterly basis, shall report to the Commission on unused Rural Health Care Program funding from prior years.

(5) *Application of unused funds.* On an annual basis, in the second quarter of each calendar year, all unused collected funds from prior years shall be available for use in the next full funding year of the Rural Health Care Program notwithstanding the annual cap as described in paragraph (a) in this section. The Wireline Competition Bureau, in consultation with the Office of the Managing Director, shall determine the proportion of unused funding for use in the Rural Health Care Program in accordance with the public interest to either satisfy demand notwithstanding the annual cap, reduce collections for the Rural Health Care Program, or to hold in reserve to address contingencies for subsequent funding years. The Wireline Competition Bureau shall direct the Administrator to carry out the necessary actions for the use of available funds consistent with the direction specified in this section.

(b) [Reserved]

[84 FR 54979, Oct. 11, 2019, as amended at 88 FR 17396, Mar. 23, 2023]

§ 54.620 Annual filing requirements and commitments.

(a) *Annual filing requirement.* Health care providers seeking support under the RHC Program shall file new funding requests for each funding year consistent with the filing periods established under this subpart, except for health care providers who have received a multi-year funding commitment in this section.

(b) *Long-term contracts.* If health care providers enter into long-term contracts for eligible services, the Administrator shall only commit funds to cover the portion of such a long-term contract scheduled to be delivered during the funding year for which universal service support is sought, except

for multi-year funding commitments as described in this section.

(c) *Multi-year commitments under the Healthcare Connect Fund Program.* Participants in the Healthcare Connect Fund Program are permitted to enter into multi-year contracts for eligible expenses and may receive funding commitments from the Administrator for a period that covers up to three years of funding. If a long-term contract covers a period of more than three years, the applicant may also have the contract designated as ''evergreen'' under § 54.622(i)(3), which will allow the applicant to re-apply for funding under the contract after three years without having to undergo additional competitive bidding.

§ 54.621 Filing window for requests and prioritization of support.

(a) *Filing window for requests.* (1) The Administrator shall open an initial application filing window with an end date no later than 90 days prior to the start of the funding year (*i.e.*, no later than April 1). Prior to announcing the initial opening and closing dates, the Administrator shall seek the approval of the proposed dates from the Chief of the Wireline Competition Bureau.

(2) The Administrator, after consultation with the Wireline Competition Bureau, may implement such additional filing periods as it deems necessary. To the extent that the Administrator opens an additional filing period, it shall provide notice and include in that notice or soon thereafter the amount of remaining available funding.

(3) The Administrator shall treat all health care providers filing an application within a filing window period as if their applications were simultaneously received. All funding requests submitted outside of a filing window will not be accepted unless and until the Administrator opens another filing window.

(b) *Prioritization of support.* The Administrator shall act in accordance with this section when a filing window period for the Telecommunications Program and the Healthcare Connect Fund Program, as described in paragraph (a) of this section, is in effect. When a filing period described in paragraph (a) of this section closes, the Administrator shall calculate the total demand for Telecommunications Program and Healthcare Connect Fund Program support submitted by all applicants during the filing window period.

(1) *Circumstances in which prioritization applies.* If the total demand during the filing window period exceeds the total remaining support available for the funding year, prioritization will apply in the following circumstances:

(i) *Internal cap.* If the internal cap is exceeded, the Administrator shall determine whether demand for upfront payments and the first year of multi-year commitments exceeds the internal cap. If such demand exceeds the internal cap, the Administrator shall not fund the second and third year of multi-year commitment requests and then apply the prioritization schedule in paragraph (b)(2) of this section to all eligible requests for upfront payments and the first-year of multi-year commitments to limit the demand for upfront payments and the first year of multi-year commitments within the internal cap. If demand for upfront payments and the first year of multi-year commitments does not exceed the internal cap, the Administrator shall apply the prioritization schedule in paragraph (b)(2) of this section to the second and third year of all eligible requests for multi-year commitments until the internal cap is reached, to ensure that the internal cap is not exceeded.

(ii) *Overall cap.* If the internal cap is not exceeded or if, after demand for upfront payments and multi-year commitments is limited within the internal cap in paragraph (b)(1)(i) of this section, the total remaining demand still exceeds the total remaining support available for the funding year, the Administrator shall apply the prioritization schedule in paragraph (b)(2) of this section to all remaining eligible funding requests.

(2) *Application of prioritization schedule.* When prioritization is necessary under paragraph (b)(1) of this section, the Administrator shall fully fund all applicable eligible requests falling under the first prioritization category

of table 1 to this paragraph (b)(2) before funding requests in the next lower prioritization category. The Administrator shall continue to process all applicable requests by prioritization category until there are no applicable funds remaining. If there is insufficient funding to fully fund all requests in a particular prioritization category, then the Administrator will pro-rate the applicable remaining funding among all applicable eligible requests in that prioritization category only pursuant to the proration process described in paragraph (b)(3) of this section.

TABLE 1 TO PARAGRAPH (b)(2)—PRIORITIZATION SCHEDULE

Health care provider site is located in:	In a medically underserved area/ population (MUA/P)	Not in MUA/P
Extremely Rural Tier (areas entirely outside of a Core Based Statistical Area)	*Priority 1*	*Priority 4.*
Rural Tier (areas within a Core Based Statistical Area that does not have an urban area or urban cluster with a population equal to or greater than 25,000).	*Priority 2*	*Priority 5.*
Less Rural Tier (areas within a Core Based Statistical Area with an urban area or urban cluster with a population equal to or greater than 25,000, but where the census tract does not contain any part of an urban area or urban cluster with population equal to or greater than 25,000).	*Priority 3*	*Priority 6.*
Non-Rural Tier (all other non-rural areas)	*Priority 7*	*Priority 8.*

(3) *Pro-rata reductions*. When proration is necessary under paragraph (b)(2) of this section, the Administrator shall take the following steps:

(i) The Administrator shall divide the total applicable remaining funds available for the funding year by the applicable demand within the specific prioritization category to produce a pro-rata factor; and

(ii) The Administrator shall multiply the pro-rata factor by the dollar amount of each applicable funding request in the prioritization category to obtain prorated support for each funding request.

(4) *Evergreen designations*. The Administrator shall designate the underlying contracts associated with any multi-year commitment requests that are not fully funded as a result of the prioritization process in this section as ''evergreen'' provided that those contracts meet the requirements under § 54.622(i)(3)(ii).

[84 FR 54979, Oct. 11, 2019, as amended at 88 FR 17396, Mar. 23, 2023]

§ 54.622 Competitive bidding requirements and exemptions.

(a) *Competitive bidding requirement*. All applicants are required to engage in a competitive bidding process for supported services, facilities, or equipment, as applicable, consistent with the requirements set forth in this section and any additional applicable state, Tribal, local, or other procurement requirements, unless they qualify for an exemption listed in paragraph (i) in this section. In addition, applicants may engage in competitive bidding even if they qualify for an exemption. Applicants who utilize a competitive bidding exemption may proceed directly to filing a funding request as described in § 54.623.

(b) *Fair and open process*. (1) Applicants participating in the Telecommunications Program or Healthcare Connect Fund Program must conduct a fair and open competitive bidding process. The following actions are necessary to satisfy the ''fair and open'' competitive standard in the Telecommunications Program and the Healthcare Connect Fund Program:

(i) All potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.

(ii) Service providers who intend to bid on supported services many not simultaneously help the applicant complete its request for proposal (RFP) or Request for Services form.

(iii) Service providers who have submitted a bid to provide supported services, equipment, or facilities to a health care provider may not simultaneously help the health care provider

evaluate submitted bids or choose a winning bid.

(iv) Applicants must respond to all service providers that have submitted questions or proposals during the competitive bidding process.

(v) All applicants and service providers must comply with any applicable state, Tribal, or local procurement laws, in addition to the Commission's competitive bidding requirements. The competitive bidding requirements in this section are not intended to preempt such state, Tribal, or local requirements.

(c) *Selecting a cost-effective service.* In selecting a provider of eligible services, the applicant shall carefully consider all bids submitted and must select the most cost-effective means of meeting its specific health care needs. ''Cost-effective'' is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services. In the Healthcare Connect Fund Program, when choosing the most ''cost-effective'' bid, price must be a primary factor, but need not be the only primary factor. A non-price factor may receive an equal weight to price, but may not receive a greater weight than price.

(d) *Bid evaluation criteria.* Applicants must develop weighted evaluation criteria (*e.g.*, a scoring matrix) that demonstrates how the applicant will choose the most cost-effective bid before submitting its request for services. The applicant must specify on its bid evaluation worksheet and/or scoring matrix the requested services for which it seeks bids, the information provided to bidders to allow bidders to reasonably determine the needs of the applicant, its minimum requirements for the developed weighted evaluation criteria, and each service provider's proposed service levels for the criteria. The applicant must also specify the disqualification factors, if any, that it will use to remove bids or bidders from further consideration. After reviewing the bid submissions and identifying the bids that satisfy the applicant's specific needs, the applicant must then select the service provider that offers the most cost-effective service.

(e) *Request for Services.* Applicants must submit the following documents to the Administrator in order to initiate competitive bidding:

(1) *Request for Services, including certifications.* The applicant must submit a Request for Services and make the following certifications as part of its Request for Services:

(i) The health care provider seeking supported services is a public or nonprofit entity that falls within one of the categories set forth in the definition of health care provider, listed in § 54.600;

(ii) The health care provider seeking supported services is physically located in a rural area as defined in § 54.600, or is a member of a Healthcare Connect Fund Program consortium which satisfies the rural health care provider composition requirements set forth in § 54.607(b);

(iii) The person signing the application is authorized to submit the application on behalf of the health care provider or consortium applicant;

(iv) The person signing the application has examined the Request for Services and all attachments, and to the best of his or her knowledge, information, and belief, all statements contained in the request are true;

(v) The applicant has complied with any applicable state, Tribal, or local procurement rules;

(vi) All requested Rural Health Care Program support will be used solely for purposes reasonably related to the provision of health care service or instruction that the health care provider is legally authorized to provide under the law of the state in which the services are provided;

(vii) The supported services will not be sold, resold, or transferred in consideration for money or any other thing of value;

(viii) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules; and

(ix) The applicant has reviewed all applicable requirements for the Telecommunications Program or the Healthcare Connect Fund Program, as

applicable, and will comply with those requirements.

(2) *Aggregated purchase details.* If the service or services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the service or services being purchased by the health care provider, must be submitted.

(3) *Bid evaluation criteria.* Requirements for bid evaluation criteria are described in paragraph (d) in this section and must be included with the applicant's Request for Services.

(4) *Declaration of Assistance.* All applicants must submit a ''Declaration of Assistance'' with their Request for Services. In the Declaration of Assistance, the applicant must identify each and every consultant, service provider, and other outside expert, whether paid or unpaid, who aided in the preparation of its applications. The applicant must also describe the nature of the relationship it has with each consultant, service provider, or other outside expert providing such assistance.

(5) *Request for proposal (if applicable).* (i) Any applicant may use an RFP. Applicants who use an RFP must submit the RFP and any additional relevant bidding information to the Administrator with its Request for Services.

(ii) An applicant must submit an RFP:

(A) If it is required to issue an RFP under applicable State, Tribal, or local procurement rules or regulations;

(B) If the applicant is a consortium seeking more than $100,000 in program support during the funding year, including applications that seek more than $100,000 in program support for a multi-year commitment; or

(C) If the applicant is a consortium seeking support for participant-constructed and owned network facilities.

(iii) RFP requirements.

(A) An RFP must provide sufficient information to enable an effective competitive bidding process, including describing the health care provider's service needs and defining the scope of the project and network costs (if applicable).

(B) An RFP must specify the time period during which bids will be accepted.

(C) An RFP must include the bid evaluation criteria described in paragraph (d) in this section, and solicit sufficient information so that the criteria can be applied effectively.

(D) Consortium applicants seeking support for long-term capital investments whose useful life extends beyond the time period of the funding commitment (*e.g.*, facilities constructed and owned by the applicant, fiber indefeasible rights of use) must seek bids in the same RFP from service providers who propose to meet those needs via services provided over service provider-owned facilities, for a time period comparable to the life of the proposed capital investment.

(E) Applicants may prepare RFPs in any manner that complies with the rules in this subpart and any applicable state, Tribal, or local procurement rules or regulations.

(6) *Additional requirements for Healthcare Connect Fund Program consortium applicants.*

(i) *Network plan.* Consortium applicants must submit a narrative describing specific elements of their network plan with their Request for Services. Consortia applicants are required to use program support for the purposes described in their narrative. The required elements of the narrative include:

(A) Goals and objectives of the network;

(B) Strategy for aggregating the specific needs of health care providers (including providers that serve rural areas) within a state or region;

(C) Strategy for leveraging existing technology to adopt the most efficient and cost-effective means of connecting those providers;

(D) How the supported network will be used to improve or provide health care delivery;

(E) Any previous experience in developing and managing health information technology (including telemedicine) programs; and

(F) A project management plan outlining the project's leadership and management structure, and a work plan, schedule, and budget.

(ii) *Letters of agency (LOA).* Consortium applicants must submit LOAs pursuant to § 54.610.

(f) *Public posting by the Administrator.* The Administrator shall post on its website the following competitive bidding documents, as applicable:

(1) Request for Services;

(2) Bid evaluation criteria;

(3) RFP; and

(4) Network plans for Healthcare Connect Fund Program applicants.

(g) *28-day waiting period.* After posting the documents described in paragraph (f) in this section, as applicable, on its website, the Administrator shall send confirmation of the posting to the applicant. The applicant shall wait at least 28 days from the date on which its competitive bidding documents are posted on the Administrator's website before selecting and committing to a service provider. The confirmation from the Administrator shall include the date after which the applicant may sign a contract with its chosen service provider(s).

(1) *Selection of the most ''cost-effective'' bid and contract negotiation.* Each applicant is required to certify to the Administrator that the selected bid is, to the best of the applicant's knowledge, the most cost-effective option available. Applicants are required to submit the documentation, identified in § 54.623, to support their certifications.

(2) Applicants who plan to request evergreen status under this section must enter into a contract that identifies both parties, is signed and dated by the health care provider or Consortium Leader after the 28-day waiting period expires, and specifies the type, term, and cost of service(s).

(h) *Gift restrictions.* (1) Subject to paragraphs (h)(3) and (4) in this section, an eligible health care provider or consortium that includes eligible health care providers, may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Rural Health Care Program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided in this section. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth $20 or less, including meals, may be offered or provided, and accepted by any individual or entity subject to this rule, if the value of these items received by any individual does not exceed $50 from any one service provider per funding year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (h)(2)(ii) in this section.

(2) For purposes of this paragraph:

(i) The terms ''health care provider'' or ''consortium'' shall include all individuals who are on the governing boards of such entities and all employees, officers, representatives, agents, consultants, or independent contractors of such entities involved on behalf of such health care provider or consortium with the Rural Health Care Program, including individuals who prepare, approve, sign, or submit Rural Health Care Program applications, or other forms related to the Rural Health Care Program, or who prepare bids, communicate, or work with Rural Health Care Program service providers, consultants, or with the Administrator, as well as any staff of such entities responsible for monitoring compliance with the Rural Health Care Program; and

(ii) The term ''service provider'' includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, consultants, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible health care provider or consortium that includes eligible health care providers, provided that such transactions:

(i) Are motivated solely by a personal relationship;

(ii) Are not rooted in any service provider business activities or any other

business relationship with any such eligible health care provider; and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible health care provider or consortium that includes eligible health care providers in the support of its programs as long as such contributions are not directly or indirectly related to the Rural Health Care Program procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other Rural Health Care Program rules, including those in § 54.611(a), requiring health care providers under the Healthcare Connect Fund Program to contribute 35 percent of the total cost of all eligible expenses.

(i) *Exemptions to the competitive bidding requirements*—(1) *Government Master Service Agreement (MSA).* Eligible health care providers that seek support for services and equipment purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others, if such MSAs were awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements, are exempt from the competitive bidding requirements under this section.

(2) *Master Service Agreements approved under the Rural Health Care Pilot Program or Healthcare Connect Fund Program.* An eligible health care provider site may opt into an existing MSA approved under the Rural Health Care Pilot Program or Healthcare Connect Fund Program and seek support for services and equipment purchased from the MSA without triggering the competitive bidding requirements under this section, if the MSA was developed and negotiated in response to an RFP that specifically solicited proposals that included a mechanism for adding additional sites to the MSA.

(3) *Evergreen contracts.* (i) The Administrator may designate a multi-year contract as ''evergreen,'' which means that the service(s) covered by the contract need not be re-bid during the contract term.

(ii) A contract entered into by a health care provider or consortium as a result of competitive bidding may be designated as evergreen if it meets all of the following requirements:

(A) Is signed by the individual health care provider or consortium lead entity;

(B) Specifies the service type, bandwidth, and quantity;

(C) Specifies the term of the contract;

(D) Specifies the cost of services to be provided; and

(E) Includes the physical location or other identifying information of the health care provider sites purchasing from the contract.

(iii) Participants may exercise voluntary options to extend an evergreen contract without undergoing additional competitive bidding if:

(A) The voluntary extension(s) is memorialized in the evergreen contract;

(B) The decision to extend the contract occurs before the participant files its funding request for the funding year when the contract would otherwise expire; and

(C) The voluntary extension(s) do not exceed five years in the aggregate.

(4) *Schools and libraries program master contracts.* Subject to the provisions in § 54.500, § 54.501(c)(1), and § 54.503, an eligible health care provider in a consortium with participants in the schools and libraries universal service support program and a party to the consortium's existing contract is exempt from the competitive bidding requirements if the contract was approved in the schools and libraries universal service support program as a master contract. The health care provider must comply with all Rural Health Care Program rules and procedures except for those applicable to competitive bidding.

(5) *Annual undiscounted cost of $10,000 or less.* An applicant under the Healthcare Connect Fund Program that seeks support for $10,000 or less of total undiscounted eligible expenses for a single year is exempt from the competitive bidding requirements under this section, if the term of the contract is one year or less. This exemption does not apply to applicants

under the Telecommunications Program.

[84 FR 54979, Oct. 11, 2019, as amended at 88 FR 17396, Mar. 23, 2023]

§ 54.623 Funding requests.

(a) Once a service provider is selected, applicants must submit a Request for Funding (and supporting documentation) to provide information about the services, equipment, or facilities selected; rates, service provider(s); and date(s) of service provider selection, as applicable.

(1) *Certifications.* The applicant must provide the following certifications as part of its Request for Funding:

(i) The person signing the application is authorized to submit the application on behalf of the health care provider or consortium.

(ii) The applicant has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained in this section are true.

(iii) The health care provider or consortium has considered all bids received and selected the most cost-effective method of providing the requested services.

(iv) All Rural Health Care Program support will be used only for eligible health care purposes.

(v) The health care provider or consortium is not requesting support for the same service from both the Telecommunications Program and the Healthcare Connect Fund Program.

(vi) The health care provider or consortium and/or its consultant, if applicable, has not solicited or accepted a gift or any other thing of value from a service provider participating in or seeking to participate in the Rural Health Care Program.

(vii) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules and understands that any letter from the Administrator that erroneously commits funds for the benefit of the applicant may be subject to rescission.

(viii) The applicant has reviewed all applicable rules and requirements for the Rural Health Care Program and will comply with those rules and requirements.

(ix) The applicant will retain all documentation associated with the applications, including all bids, contracts, scoring matrices, and other information associated with the competitive bidding process, and all billing records for services received, for a period of at least five years.

(x) The consultants or third parties hired by the applicant do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services, and that they have otherwise complied with the Rural Health Care Program rules, including the Commission's rules requiring a fair and open competitive bidding process.

(xi) *Additional certification for the Telecom Program.* Telecom Program applicants must certify that the rural rate on their Request for Funding does not exceed the appropriate rural rate determined by the Administrator.

(2) *Contracts or other documentation.* All applicants must submit a contract or other documentation, as applicable, that clearly identifies the service provider(s) selected and the health care provider(s) who will receive the services; costs for which support is being requested; and the term of the service agreement(s) if applicable (*i.e.*, if services are not being provided on a month-to-month basis). For services provided under contract, the applicant must submit a copy of the contract signed and dated (after the Allowable Contract Selection Date) by the individual health care provider or Consortium Leader. If the services are not being provided under contract, the applicant must submit a bill, service offer, letter, or similar document from the service provider that provides the required information.

(3) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have selected the most cost-effective option, including a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and the following documents (as applicable): Completed bid evaluation worksheets or matrices; explanation for any disqualified bids; a list of people who evaluated bids (along with their title/

role/relationship to the applicant organization); memos, board minutes, or similar documents related to the service provider selection/award; copies of notices to winners; and any correspondence with service providers prior to and during the bidding, evaluation, and award phase of the process. Applicants who claim a competitive bidding exemption must submit relevant documentation to allow the Administrator to verify that the applicant is eligible for the claimed exemption.

(4) *Cost allocation for ineligible entities or components.* Where applicable, applicants must submit a description of how costs will be allocated for ineligible entities or components, as well as any agreements that memorialize such arrangements with ineligible entities.

(5) *Additional documentation for Healthcare Connect Fund Program consortium applicants.* A consortium applicant must also submit the following:

(i) Any revisions to the network plan submitted with the Request for Services pursuant to § 54.622, as necessary. If not previously submitted, the consortium should provide a narrative description of how the network will be managed, including all administrative aspects of the network, including, but not limited to, invoicing, contractual matters, and network operations. If the consortium is required to provide a sustainability plan as set forth in the following, the revised budget should include the budgetary factors discussed in the sustainability plan requirements.

(ii) A list of each participating health care provider and all of their relevant information, including eligible (and ineligible, if applicable) cost information.

(iii) Evidence of a viable source for the undiscounted portion of supported costs.

(iv) Sustainability plans for applicants requesting support for long-term capital expenses: Consortia that seek funding to construct and own their own facilities or obtain indefeasible right of use or capital lease interests are required to submit a sustainability plan with their funding requests demonstrating how they intend to maintain and operate the facilities that are supported over the relevant time period. Applicants may include by reference other portions of their applications (*e.g.*, project management plan, budget). The sustainability plan must, at a minimum, address the following points:

(A) *Projected sustainability period.* Indicate the sustainability period, which at a minimum is equal to the useful life of the funded facility. The consortium's budget must show projected income and expenses (*i.e.*, for maintenance) for the project at the aggregate level, for the sustainability period.

(B) *Principal factors.* Discuss each of the principal factors that were considered by the participant to demonstrate sustainability. This discussion must include all factors that show that the proposed network will be sustainable for the entire sustainability period. Any factor that will have a monetary impact on the network must be reflected in the applicant's budget.

(C) *Terms of membership in the network.* Describe generally any agreements made (or to be entered into) by network members (*e.g.*, participation agreements, memoranda of understanding, usage agreements, or other similar agreements). The sustainability plan must also describe, as applicable:

(*1*) Financial and time commitments made by proposed members of the network;

(*2*) If the project includes excess bandwidth for growth of the network, describe how such excess bandwidth will be financed; and

(*3*) If the network will include ineligible health care providers and other network members, describe how fees for joining and using the network will be assessed.

(D) *Ownership structure.* Explain who will own each material element of the network (*e.g.*, fiber constructed, network equipment, end user equipment). For purposes of this subsection, ''ownership'' includes an indefeasible right of use interest. Applicants must clearly identify the legal entity that will own each material element. Applicants must also describe any arrangements made to ensure continued use of such elements by the network members for

the duration of the sustainability period.

(E) *Sources of future support*. Describe other sources of future funding, including fees to be paid by eligible health care providers and/or non-eligible entities.

(F) *Management*. Describe the management structure of the network for the duration of the sustainability period. The applicant's budget must describe how management costs will be funded.

(v) *Material change to sustainability plan*. A consortium that is required to file a sustainability plan must maintain its accuracy. If there is a material change to a required sustainability plan that would impact projected income or expenses by more than 20 percent or $100,000 from the previous submission, or if the applicant submits a funding request based on a new Request for Funding (*i.e.*, a new competitively bid contract), the consortium is required to re-file its sustainability plan. In the event of a material change, the applicant must provide the Administrator with the revised sustainability plan no later than the end of the relevant quarter, clearly showing (*i.e.*, by redlining or highlighting) what has changed.

§ 54.624 Site and service substitutions.

(a) Health care providers or Consortium Leaders may request a site or service substitution if:

(1) The substitution is provided for in the contract, within the change clause, or constitutes a minor modification;

(2) The site is an eligible health care provider and the service is an eligible service under the Telecommunications Program or the Healthcare Connect Fund Program;

(3) The substitution does not violate any contract provision or state, Tribal, or local procurement laws; and

(4) The requested change is within the scope of the controlling Request for Services, including any applicable RFP used in the competitive bidding process.

(b) Filing deadline. An applicant must file their request for a site or service change to the Administrator no later than the service delivery deadline as defined in § 54.626.

EFFECTIVE DATE NOTE: At 84 FR 54979, Oct. 11, 2019, § 54.624 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 54.625 Service Provider Identification Number (SPIN) changes.

(a) *Corrective SPIN change*. A ''corrective SPIN change'' is any amendment to the SPIN associated with a Funding Request Number that does not involve a change to the service provider associated with that Funding Request Number. An applicant under the Telecommunications Program or the Healthcare Connect Fund Program may file a request for a corrective SPIN change with the Administrator to:

(1) Correct ministerial errors;

(2) Update the service provider's SPIN that resulted from a merger or acquisition of companies; or

(3) Effectuate a change to the SPIN that does not involve a change to the service provider of a funding request and was not initiated by the applicant.

(b) *Operational SPIN Change*. An ''operational SPIN change'' is any change to the service provider associated with a Funding Request Number. An applicant under the Telecommunications Program or the Healthcare Connect Fund Program may file a request for an operational SPIN change with the Administrator if:

(1) The applicant has a legitimate reason to change providers (*e.g.*, breach of contract or the service provider is unable to perform); and

(2) The applicant's newly selected service provider received the next highest point value in the original bid evaluation, assuming there were multiple bidders.

(c) *Filing deadline*. An applicant must file their request for a corrective or operational SPIN change with the Administrator no later than the service delivery deadline as defined by § 54.626.

§ 54.626 Service delivery deadline and extension requests.

(a) *Service delivery deadline*. Except as provided in the following, applicants

must use all recurring and non-recurring services for which Telecommunications Program and Healthcare Connect Fund Program funding has been approved by June 30 of the funding year for which the program support was sought. The Administrator will deem ineligible for Telecommunications Program and Healthcare Connect Fund Program support all charges incurred for services delivered before or after the close of the funding year.

(b) *Deadline extension for non-recurring services.* An applicant may request and receive from the Administrator a one-year extension of the implementation deadline for non-recurring services if it satisfies one of the following criteria:

(1) Applicants whose funding commitment letters are issued by the Administrator on or after March 1 of the funding year for which discounts are authorized;

(2) Applicants that receive service provider change authorizations or site and service authorizations from the Administrator on or after March 1 of the funding year for which discounts are authorized;

NOTE 1 TO PARAGRAPHS (B)(1) AND (B)(2): The Administrator shall automatically extend the service delivery deadline for applicants who satisfy paragraphs (b)(1) or (2) in this section. When calculating the extended deadline, March 1 is the key date for determining whether to extend the service delivery deadline. If one of the conditions listed in paragraph (b) in this section is satisfied before March 1 (of any year), the deadline will not be extended and the applicant will have until June 30 of that calendar year to complete implementation. If one of the conditions under paragraph (b)(1) through (2) in this section is satisfied on or after March 1 the calendar year, the applicant will have until June 30 of the following calendar year to complete implementation.

(3) Applicants whose service providers are unable to complete implementation for reasons beyond the service provider's control; or

NOTE 1 TO PARAGRAPH (B)(3): An applicant seeking a one-year extension must affirmatively request an extension on or before the June 30 deadline for paragraph (b)(3) in this section. The Administrator will address any situations arising under paragraph (b)(3) in this section on a case-by-case basis. Applicants must submit documentation to the Administrator requesting relief pursuant to paragraph (b)(3) in this section on or before June 30 of the relevant funding year. That documentation must include, at a minimum, an explanation regarding the circumstances that make it impossible for installation to be completed by June 30 and a certification by the applicant that, to the best of their knowledge, the request is truthful.

(4) Applicants whose service providers are unwilling to complete delivery and installation because the applicant's funding request is under review by the Administrator for program compliance.

NOTE 1 TO PARAGRAPH (B)(4): An applicant seeking a one-year extension must affirmatively request an extension on or before the June 30 deadline for paragraph (b)(4) in this section. Applicants seeking an extension under paragraph (b)(4) in this section must certify to the Administrator that their service provider was unwilling to deliver or install the non-recurring services before the end of the funding year. Applicants must make this certification on or before June 30 of the relevant funding year. The revised implementation date will be calculated based on the date the Administrator issues a funding commitment.

§ 54.627 Invoicing process and certifications.

(a) *Invoice filing deadline.* Invoices must be submitted to the Administrator within 120 days after the later of:

(1) The service delivery deadline, as defined in § 54.626; or

(2) The date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request. Before the Administrator may process and pay an invoice, it must receive a completed invoice from the service provider.

(b) *Invoice deadline extension.* Service providers or billed entities may request a one-time extension of the invoicing deadline by no later than the deadline calculated pursuant to paragraph (a) in this section. The Administrator shall grant a 120-day extension of the invoice filing deadline, if it is timely requested.

(c) *Telecommunications Program.*

(1) *Certifications.* Before the Administrator may process and pay an invoice, both the health care provider and the

service provider must make the following certifications.

(i) The health care provider must certify that:

(A) The service has been or is being provided to the health care provider;

(B) The universal service credit will be applied to the telecommunications service billing account of the health care provider or the billed entity as directed by the health care provider;

(C) It is authorized to submit this request on behalf of the health care provider;

(D) It has examined the invoice and supporting documentation and that to the best of its knowledge, information and belief, all statements of fact contained in the invoice and supporting documentation are true;

(E) It or the consortium it represents satisfies all of the requirements and will abide by all of the relevant requirements, including all applicable Commission rules, with respect to universal service benefits provided under 47 U.S.C. 254; and

(F) It understands that any letter from the Administrator that erroneously states that funds will be made available for the benefit of the applicant may be subject to rescission.

(ii) The service provider must certify that:

(A) The information contained in the invoice is correct and the health care providers and the Billed Account Numbers have been credited with the amounts shown under ''Support Amount to be Paid by USAC;''

(B) It has abided by all of the relevant requirements, including all applicable Commission rules;

(C) It has received and reviewed the HSS, invoice form and accompanying documentation, and that the rates charged for the telecommunications services, to the best of its knowledge, information and belief, are accurate and comply with the Commission's rules;

(D) It is authorized to submit the invoice;

(E) The health care provider paid the appropriate urban rate for the telecommunications services;

(F) The rural rate on the invoice does not exceed the appropriate rural rate determined by the Administrator;

(G) It has charged the health care provider for only eligible services prior to submitting the invoice for payment and accompanying documentation;

(H) It has not offered or provided a gift or any other thing of value to the applicant (or to the applicant's personnel, including its consultant) for which it will provide services; and

(I) The consultants or third parties it has hired do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services, and that they have otherwise complied with Rural Health Care Program rules, including the Commission's rules requiring fair and open competitive bidding.

(J) As a condition of receiving support, it will provide to the health care providers, on a timely basis, all documents regarding supported equipment or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries.

(2) [Reserved]

(d) *Healthcare Connect Fund Program.* (1) *Certifications.* Before the Administrator may process and pay an invoice, the Consortium Leader (or health care provider, if participating individually) and the service provider must make the following certifications:

(i) The Consortium Leader or health care provider must certify that:

(A) It is authorized to submit this request on behalf of the health care provider or consortium;

(B) It has examined the invoice form and attachments and, to the best of its knowledge, information, and belief, all information contained on the invoice form and attachments are true and correct;

(C) The health care provider or consortium members have received the related services, network equipment, and/or facilities itemized on the invoice form; and

(D) The required 35 percent minimum contribution for each item on the invoice form was funded by eligible sources as defined in the Commission's rules and that the required contribution was remitted to the service provider.

(ii) The service provider must certify that:

(A) It has been authorized to submit this request on behalf of the service provider;

(B) It has applied the amount submitted, approved, and paid by the Administrator to the billing account of the health care provider(s) and Funding Request Number (FRN)/FRN ID listed on the invoice;

(C) It has examined the invoice form and attachments and that, to the best of its knowledge, information, and belief, the date, quantities, and costs provided in the invoice form and attachments are true and correct;

(D) It has abided by all program requirements, including all applicable Commission rules and orders;

(E) It has charged the health care provider for only eligible services prior to submitting the invoice form and accompanying documentation;

(F) It has not offered or provided a gift or any other thing of value to the applicant (or to the applicant's personnel, including its consultant) for which it will provide services;

(G) The consultants or third parties it has hired do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services, and that they have otherwise complied with Rural Health Care Program rules, including the Commission's rules requiring fair and open competitive bidding; and

(H) As a condition of receiving support, it will provide to the health care providers, on a timely basis, all documents regarding supported equipment, facilities, or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries.

[84 FR 54979, Oct. 11, 2019, as amended at 88 FR 17397, Mar. 23, 2023]

EFFECTIVE DATE NOTE: At 87 FR 17397, Mar. 23, 20233, § 54.627 was amended by revising newly redesignated paragraph (c)(1)(i)(D), this amendment has been delayed indefinitely. For the convenience of the user, the revised text is set forth as follows:

§ 54.627 Invoicing process and certifications.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(D) It has examined the invoice form and supporting documentation and that to the best of its knowledge, information and belief, all statements of fact contained in the invoice form and supporting documentation are true;

§ 54.628 Duplicate support.

(a) Eligible health care providers that seek support under the Healthcare Connect Fund Program for telecommunications services may not also request support from the Telecommunications Program for the same services.

(b) Eligible health care providers that seek support under the Telecommunications Program or the Healthcare Connect Fund Program may not also request support from any other universal service program for the same expenses.

§ 54.629 Prohibition on resale.

(a) *Prohibition on resale.* Services purchased pursuant to universal support mechanisms under this subpart shall not be sold, resold, or transferred in consideration for money or any other thing of value.

(b) *Permissible fees.* The prohibition on resale set forth in paragraph (a) in this section shall not prohibit a health care provider from charging normal fees for health care services, including instruction related to services purchased with support provided under this subpart.

§ 54.630 Election to offset support against annual universal service fund contribution.

(a) A service provider that contributes to the universal service support mechanisms under this subpart and subpart H of this part to eligible health care providers may, at the election of the contributor:

(1) Treat the amount eligible for support under this subpart as an offset against the contributor's universal service support obligation for the year in which the costs for providing eligible services were incurred; or

(2) Receive direct reimbursement from the Administrator for that amount.

(b) Service providers that are contributors shall elect in January of each year the method by which they will be reimbursed and shall remain subject to that method for the duration of the calendar year. Any support amount that is owed a service provider that fails to remit its monthly universal service contribution obligation shall first be applied as an offset to that contributor's contribution obligation. Such a service provider shall remain subject to the offsetting method for the remainder of the calendar year in which it failed to remit its monthly universal service obligation. A service provider that continues to be in arrears on its universal service contribution obligations at the end of a calendar year shall remain subject to the offsetting method for the next calendar year.

(c) If a service provider providing services eligible for support under this subpart elects to treat that support amount as an offset against its universal service contribution obligation and the total amount of support owed exceeds its universal service obligation, calculated on an annual basis, the service provider shall receive a direct reimbursement in the amount of the difference. Any such reimbursement due a service provider shall be provided by the Administrator no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the contributor's universal service obligation was applied.

§ 54.631 Audits and recordkeeping.

(a) *Random audits.* All participants under the Telecommunications Program and Healthcare Connect Fund Program shall be subject to random compliance audits to ensure compliance with program rules and orders.

(b) *Recordkeeping.* Participants, including Consortium Leaders and health care providers, shall maintain records to document compliance with program rules and orders for at least five years after the last day of service delivered in a particular funding year sufficient to establish compliance with all rules in this subpart.

(1) *Telecommunications Program.* (i) Participants must maintain, among other things, records of allocations for consortia and entities that engage in eligible and ineligible activities, if applicable.

(ii) Mobile rural health care providers shall maintain annual logs for a period of five years. Mobile rural health care providers shall maintain annual logs indicating: The date and locations of each clinical stop; and the number of patients served at each clinical stop. Mobile rural health care providers shall make their logs available to the Administrator and the Commission upon request.

(iii) Service providers shall retain documents related to the delivery of discounted services for at least five years after the last day of the delivery of discounted services. Any other document that demonstrates compliance with the statutory or regulatory requirements for the rural health care mechanism shall be retained as well.

(2) *Healthcare Connect Fund Program.* (i) Participants who receive support for long-term capital investments in facilities whose useful life extends beyond the period of the funding commitment shall maintain records for at least five years after the end of the useful life of the facility. Participants shall maintain asset and inventory records of supported network equipment to verify the actual location of such equipment for a period of five years after purchase.

(ii) Service providers shall retain records related to the delivery of supported services, facilities, or equipment to document compliance with the Commission rules or orders pertaining to the Healthcare Connect Fund Program for at least five years after the last day of the delivery of supported services, equipment, or facilities in a particular funding year.

(c) *Production of records.* Both participants and service providers under the Telecommunications Program and Healthcare Connect Fund Program shall produce such records at the request of the Commission, any auditor appointed by the Administrator or Commission, or any other state or federal agency with jurisdiction.

(d) *Obligation of service providers.* Service providers in the Telecommunications Program and Healthcare Connect Fund Program must certify, as a condition of receiving support, that they will provide to health care providers, on a timely basis, all information and documents regarding supported equipment, facilities, or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries. The Administrator may withhold disbursements for the service provider if the service provider, after written notice from the Administrator, fails to comply with this requirement.

§ 54.632 Signature requirements for certifications.

(a) For individual health care provider applicants, required certifications must be provided and signed by an officer or director of the health care provider, or other authorized employee of the health care provider.

(b) For consortium applicants, an officer, director, or other authorized employee of the Consortium Leader must sign the required certifications.

(c) Pursuant to § 54.633, electronic signatures are permitted for all required certifications.

§ 54.633 Validity of electronic signatures and records.

(a) For the purposes of this subpart, an electronic signature (defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record) has the same legal effect as a written signature.

(b) For the purposes of this subpart, an electronic record (defined by the Electronic Signatures in Global and National Commerce Act, as a contract or other record created, generated, sent, communicated, received, or stored by electronic means) constitutes a record.

Subpart H—Administration

§ 54.701 Administrator of universal service support mechanisms.

(a) The Universal Service Administrative Company is appointed the permanent Administrator of the federal universal service support mechanisms, subject to a review after one year by the Federal Communications Commission to determine that the Administrator is administering the universal service support mechanisms in an efficient, effective, and competitively neutral manner.

(b)(1) The Administrator shall establish a twenty (20) member Board of Directors, as set forth in § 54.703. The Administrator's Board of Directors shall establish three Committees of the Board of Directors, as set forth in § 54.705:

(i) The Schools and Libraries Committee, which shall oversee the schools and libraries support mechanism;

(ii) The Rural Health Care Committee, which shall oversee the rural health care support mechanism; and

(iii) The High Cost and Low Income Committee, which shall oversee the high cost and low income support mechanism.

(2) The Board of Directors shall not modify substantially the power or authority of the Committees of the Board without prior approval from the Federal Communications Commission.

(c)(1) The Administrator shall establish three divisions:

(i) The Schools and Libraries Division, which shall perform duties and functions in connection with the schools and libraries support mechanism under the direction of the Schools and Libraries Committee of the Board, as set forth in § 54.705(a);

(ii) The Rural Health Care Division, which shall perform duties and functions in connection with the rural health care support mechanism under the direction of the Rural Health Care Committee of the Board, as set forth in § 54.705(b); and

(iii) The High Cost and Low Income Division, which shall perform duties and functions in connection with the high cost and low income support mechanism, the interstate access universal service support mechanism for

price cap carriers described in subpart J of this part, and the interstate common line support mechanism for rate-of-return carriers described in subpart K of this part, under the direction of the High Cost and Low Income Committee of the Board, as set forth in § 54.705(c).

(2) As directed by the Committees of the Board set forth in § 54.705, these divisions shall perform the duties and functions unique to their respective support mechanisms.

(d) The Administrator shall be managed by a Chief Executive Officer, as set forth in § 54.704. The Chief Executive Officer shall serve on the Committees of the Board established in § 54.705.

[63 FR 70572, Dec. 21, 1998, as amended at 65 FR 38689, June 21, 2000; 65 FR 57739, Sept. 26, 2000; 66 FR 59727, Nov. 30, 2001; 68 FR 36943, June 20, 2003; 88 FR 55410, Aug. 15, 2023]

§ 54.702 Administrator's functions and responsibilities.

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, and the low income support mechanism.

(b) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.

(c) The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

(d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms.

(e) The Administrator shall maintain books of account separate from those of the National Exchange Carrier Association, of which the Administrator is an independent subsidiary. The Administrator's books of account shall be maintained in accordance with generally accepted accounting principles. The Administrator may borrow start up funds from the National Exchange Carrier Association. Such funds may not be drawn from the Telecommunications Relay Services (TRS) fund or TRS administrative expense accounts.

(f) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools, libraries and rural health care providers.

(g) The Administrator shall file with the Commission and Congress an annual report by March 31 of each year. The report shall detail the Administrator's operations, activities, and accomplishments for the prior year, including information about participation in each of the universal service support mechanisms and administrative action intended to prevent waste, fraud, and abuse. The report also shall include an assessment of subcontractors' performance, and an itemization of monthly administrative costs that shall include all expenses, receipts, and payments associated with the administration of the universal service support programs. The Administrator shall consult each year with Commission staff to determine the scope and content of the annual report.

(h) The Administrator shall report quarterly to the Commission on the disbursement of universal service support program funds. The Administrator shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, and high-cost and insular areas.

(i) Information based on the Administrator's reports will be made public by the Commission at least once a year as part of a Monitoring Report.

(j) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the universal service support programs.

(k) Pursuant to § 64.903 of this chapter, the Administrator shall file with the Commission a cost allocation manual (CAM) that describes the accounts and procedures the Administrator will

use to allocate the shared costs of administering the universal service support mechanisms and its other operations.

(l) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the support mechanisms, if its participation in administering the universal service support mechanisms ends.

(m) If its participation in administering the universal service support mechanisms ends, the Administrator shall be subject to close-out audits at the end of its term.

(n) The Administrator shall account for the financial transactions of the Universal Service Fund in accordance with generally accepted accounting principles for federal agencies and maintain the accounts of the Universal Service Fund in accordance with the United States Government Standard General Ledger. When the Administrator, or any independent auditor hired by the Administrator, conducts audits of the beneficiaries of the Universal Service Fund, contributors to the Universal Service Fund, or any other providers of services under the universal service support mechanisms, such audits shall be conducted in accordance with generally accepted government auditing standards. In administering the Universal Service Fund, the Administrator shall also comply with all relevant and applicable federal financial management and reporting statutes.

(o) The Administrator shall provide performance measurements pertaining to the universal service support mechanisms as requested by the Commission by order or otherwise.

[63 FR 70573, Dec. 21, 1998, as amended at 65 FR 38690, June 21, 2000; 65 FR 57739, Sept. 26, 2000; 66 FR 59727, Nov. 30, 2001; 67 FR 11259, Mar. 13, 2002; 69 FR 5719, Feb. 6, 2004; 72 FR 54218, Sept. 24, 2007; 76 FR 73876, Nov. 29, 2011]

§ 54.703 The Administrator's Board of Directors.

(a) The Administrator shall have a Board of Directors separate from the Board of Directors of the National Exchange Carrier Association. The National Exchange Carrier Association's Board of Directors shall be prohibited from participating in the functions of the Administrator.

(b) *Board composition.* The independent subsidiary's Board of Directors shall consist of twenty (20) directors:

(1) Three directors shall represent incumbent local exchange carriers, with one director representing the Bell Operating Companies and GTE, one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues in excess of $40 million, and one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues of $40 million or less;

(2) Two directors shall represent interexchange carriers, with one director representing interexchange carriers with more than $3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of $3 billion or less;

(3) One director shall represent commercial mobile radio service (CMRS) providers;

(4) One director shall represent competitive local exchange carriers;

(5) One director shall represent cable operators;

(6) One director shall represent information service providers;

(7) Three directors shall represent schools that are eligible to receive discounts pursuant to § 54.501;

(8) One director shall represent libraries that are eligible to receive discounts pursuant to § 54.501;

(9) Two directors shall represent rural health care providers that are eligible to receive supported services pursuant to § 54.601;

(10) One director shall represent low-income consumers;

(11) One director shall represent state telecommunications regulators;

(12) One director shall represent state consumer advocates;

(13) One director shall represent Tribal communities; and

(14) The Chief Executive Officer of the Administrator.

(c) *Selection process for board of directors.* (1) Sixty (60) days prior to the expiration of a director's term, the industry or non-industry group that is represented by such director on the Administrator's Board of Directors, as specified in paragraph (b) of this section, shall nominate by consensus a new director. The industry or non-industry group shall submit the name of its nominee for a seat on the Administrator's Board of Directors, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission. Only members of the industry or non-industry group that a Board member will represent may submit a nomination for that position.

(2) The name of an industry or non-industry group's nominee shall be filed with the Office of the Secretary of the Federal Communications Commission in accordance with part 1 of this chapter. The document nominating a candidate shall be captioned ''In the matter of: Nomination for Universal Service Administrator's Board of Directors'' and shall reference FCC Docket Nos. 97–21 and 96–45. Each nomination shall specify the position on the Board of Directors for which such nomination is submitted. Two copies of the document nominating a candidate shall be submitted to the Wireline Competition Bureau's Telecommunications Access Policy Division.

(3) The Chairman of the Federal Communications Commission shall review the nominations submitted by industry and non-industry groups and select each director of the Administrator's Board of Directors, as each director's term expires pursuant to paragraph (d) of this section. If an industry or non-industry group does not reach consensus on a nominee or fails to submit a nomination for a position on the Administrator's Board of Directors, the Chairman of the Federal Communications Commission shall select an individual to represent such group on the Administrator's Board of Directors.

(d) *Board member terms.* The directors of the Administrator's Board shall be appointed for three-year terms, except that the Chief Executive Officer shall be a permanent member of the Board. Board member terms shall run from January 1 of the first year of the term to December 31 of the third year of the term, except that, for purposes of the term beginning on January 1, 1999, the terms of the six directors shall expire on December 31, 2000, the terms of another six directors on December 31, 2001, and the terms of the remaining six directors on December 31, 2002. Directors may be reappointed for subsequent terms pursuant to the initial nomination and appointment process described in paragraph (c) of this section. If a Board member vacates his or her seat prior to the completion of his or her term, the Administrator will notify the Wireline Competition Bureau of such vacancy, and a successor will be chosen pursuant to the nomination and appointment process described in paragraph (c) of this section.

(e) All meetings of the Administrator's Board of Directors shall be open to the public and held in Washington, D.C.

(f) Each member of the Administrator's Board of Directors shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on the Administrator's Board of Directors.

[63 FR 70573, Dec. 21, 1998, as amended at 67 FR 13226, Mar. 21, 2002; 88 FR 55410, Aug. 15, 2023]

§ 54.704 The Administrator's Chief Executive Officer.

(a) *Chief Executive Officer's functions.* (1) The Chief Executive Officer shall have management responsibility for the administration of the federal universal service support mechanisms.

(2) The Chief Executive Officer shall have management responsibility for all employees of the Universal Service Administrative Company. The Chief Executive Officer may delegate such responsibility to heads of the divisions established in § 54.701(g).

(3) The Chief Executive Officer shall serve on the Administrator's Board of Directors as set forth in § 54.703(b) and on the Committees of the Board established under § 54.705.

(b) *Selection process for the Chief Executive Officer.* (1) The members of the Board of Directors of the Administrator shall nominate by consensus a

Chief Executive Officer. The Board of Directors shall submit the name of its nominee for Chief Executive Officer, along with relevant professional and biographical information about the nominee, to the Chairperson of the Federal Communications Commission.

(2) The Chairperson of the Federal Communications Commission shall review the nomination submitted by the Administrator's Board of Directors. Subject to the Chairperson's approval, the nominee shall be appointed as the Administrator's Chief Executive Officer.

(3) If the Board of Directors does not reach consensus on a nominee or fails to submit a nomination for the Chief Executive Officer, the Chairperson of the Federal Communications Commission shall select a Chief Executive Officer.

[63 FR 70574, Dec. 21, 1998, as amended at 88 FR 21442, Apr. 10, 2023]

§ 54.705 Committees of the Administrator's Board of Directors.

(a) *Schools and Libraries Committee*—(1) *Committee functions.* The Schools and Libraries Committee shall oversee the administration of the schools and libraries support mechanism by the Schools and Libraries Division. The Schools and Libraries Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the schools and libraries support mechanism;

(ii) Development of applications and associated instructions as needed for the schools and libraries support mechanism;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of outreach and education functions;

(v) Review of bills for services that are submitted by schools and libraries;

(vi)–(viii) [Reserved]

(ix) The classification of schools and libraries as urban or rural and the use of the discount matrix established in § 54.505(c) of this chapter to set the discount rate to be applied to services purchased by eligible schools and libraries;

(x) Performance of audits of beneficiaries under the schools and libraries support mechanism; and

(xi) Development and implementation of other functions unique to the schools and libraries support mechanism.

(2) *Committee composition.* The Schools and Libraries Committee shall consist of the following members of the Administrator's Board of Directors:

(i) Three school representatives;

(ii) One library representative;

(iii) One service provider representative;

(iv) One Tribal community representative;

(v) One at-large representative elected by the Administrator's Board of Directors; and

(vi) The Administrator's Chief Executive Officer.

(b) *Rural Health Care Committee*—(1) *Committee functions.* The Rural Health Care Committee shall oversee the administration of the rural health care support mechanism by the Rural Health Care Division. The Rural Health Care Committee shall have authority to make decisions concerning:

(i) How the Administrator projects demand for the rural health care support mechanism;

(ii) Development of applications and associated instructions as needed for the rural health care support mechanism;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Calculation of support levels under § 54.609;

(v) Performance of outreach and education functions;

(vi) Review of bills for services that are submitted by rural health care providers;

(vii) Monitoring demand for the purpose of determining when the $400 million cap has been reached;

(viii) Performance of audits of beneficiaries under the rural health care support mechanism; and

(ix) Development and implementation of other functions unique to the rural health care support mechanism.

(2) *Committee composition*. The Rural Health Care Committee shall consist of the following members of the Administrator's Board of Directors:

(i) Two rural health care representatives;

(ii) One service provider representative;

(iii) Two at-large representatives elected by the Administrator's Board of Directors;

(iv) One State telecommunications regulator, one state consumer advocate; and

(v) The Administrator's Chief Executive Officer.

(c) *High Cost and Low Income Committee*—(1) *Committee functions*. The High Cost and Low Income Committee shall oversee the administration of the high cost and low income support mechanisms, the interstate access universal service support mechanism for price cap carriers described in subpart J of this part, and the interstate common line support mechanism for rate-of-return carriers described in subpart K of this part by the High Cost and Low Income Division. The High Cost and Low Income Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the high cost, low income, interstate access universal service, and interstate common line support mechanisms;

(ii) Development of applications and associated instructions as needed for the high cost, low income, interstate access universal service, and interstate common line support mechanisms;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of audits of beneficiaries under the high cost, low income, interstate access universal service and interstate common line support mechanisms; and

(v) Development and implementation of other functions unique to the high cost, low income, interstate access universal service and interstate common line support mechanisms.

(d) *Binding Authority of Committees of the Board*. (1) Any action taken by the Committees of the Board established in paragraphs (a) through (c) of this section shall be binding on the Board of Directors of the Administrator, unless such action is presented for review to the Board by the Administrator's Chief Executive Officer and the Board disapproves of such action by a two-thirds vote of a quorum of directors, as defined in the Administrator's by-laws.

(2) The budgets prepared by each Committee shall be subject to Board review as part of the Administrator's combined budget. The Board shall not modify the budgets prepared by the Committees of the Board unless such modification is approved by a two-thirds vote of a quorum of the Board, as defined in the Administrator's by-laws.

[63 FR 70574, Dec. 21, 1998, as amended at 65 FR 38690, June 21, 2000; 65 FR 57739, Sept. 26, 2000; 66 FR 59728, Nov. 30, 2001; 79 FR 49204, Aug. 19, 2014; 88 FR 55410, Aug. 15, 2023]

§ 54.706 Contributions.

(a) Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support mechanisms. Certain other providers of interstate telecommunications, such as payphone providers that are aggregators, providers of interstate telecommunications for a fee on a non-common carrier basis, and interconnected VoIP providers, also must contribute to the universal service support mechanisms. Interstate telecommunications include, but are not limited to:

(1) Cellular telephone and paging services;

(2) Mobile radio services;

(3) Operator services;

(4) Personal communications services (PCS);

(5) Access to interexchange service;

(6) Special access service;

(7) WATS;

(8) Toll-free service;

(9) 900 service;
(10) Message telephone service (MTS);
(11) Private line service;
(12) Telex;
(13) [Reserved]
(14) Video services;
(15) Satellite service;
(16) Resale of interstate services;
(17) Payphone services; and
(18) Interconnected VoIP services.
(19) Prepaid calling card providers.

(b) Except as provided in paragraph (c) of this section, every entity required to contribute to the federal universal service support mechanisms under paragraph (a) of this section shall contribute on the basis of its projected collected interstate and international end-user telecommunications revenues, net of projected contributions.

(c) Any entity required to contribute to the federal universal service support mechanisms whose projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenues shall contribute based only on such entity's projected collected interstate end-user telecommunications revenues, net of projected contributions. For purposes of this paragraph, an ''entity'' shall refer to the entity that is subject to the universal service reporting requirements in § 54.711 and shall include all of that entity's affiliated providers of interstate and international telecommunications and telecommunications services.

(d) Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications. Prepaid calling card providers are not required to contribute on the basis of revenues derived from prepaid calling cards sold by, to, or pursuant to contract with the Department of Defense (DoD) or a DoD entity.

(e) Any entity required to contribute to the federal universal service support mechanisms shall retain, for at least five years from the date of the contribution, all records that may be required to demonstrate to auditors that the contributions made were in compliance with the Commission's universal service rules. These records shall include without limitation the following: Financial statements and supporting documentation; accounting records; historical customer records; general ledgers; and any other relevant documentation. This document retention requirement also applies to any contractor or consultant working on behalf of the contributor.

[63 FR 70575, Dec. 21, 1998, as amended at 64 FR 60358, Nov. 5, 1999; 67 FR 11260, Mar. 13, 2002; 67 FR 79532, Dec. 30, 2002; 71 FR 38796, July 10, 2006; 71 FR 43673, Aug. 2, 2006; 72 FR 54218, Sept. 24, 2007; 82 FR 48777, Oct. 20, 2017]

§ 54.707 Audit controls.

(a) The Administrator shall have the authority to audit contributors and carriers reporting data to the Administrator. The Administrator shall establish procedures to verify discounts, offsets and support amounts provided by the universal service support programs, and may suspend or delay discounts, offsets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, offsets, or support amounts provided upon reasonable request, or if directed by the Commission to do so. The Administrator shall not provide reimbursements, offsets or support amounts pursuant to subparts D, K, L and M of this part to a carrier until the carrier has provided to the Administrator a true and correct copy of the decision of a state commission designating that carrier as an eligible telecommunications carrier in accordance with § 54.202.

(b) The Administrator has the right to obtain all cost and revenue submissions and related information, at any time and in unaltered format, that carriers submit to NECA that are used to calculate support payments pursuant to subparts D, K, and M of this part.

(c) The Administrator (and NECA, to the extent the Administrator does not

directly receive information from carriers) shall provide to the Commission upon request all underlying data collected from eligible telecommunications carriers to calculate payments pursuant to subparts D, K, L and M of this part.

[81 FR 24342, Apr. 25, 2016]

§ 54.708 De minimis exemption.

If a contributor's contribution to universal service in any given year is less than $10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so to by our rules governing Telecommunications Relay Service (47 CFR 64.601 *et seq.* of this chapter), numbering administration (47 CFR 52.1 *et seq.* of this chapter), or shared costs of local number portability (47 CFR 52.21 *et seq.* of this chapter). The foregoing notwithstanding, all interconnected VoIP providers, including those whose contributions would be *de minimis*, must file the Telecommunications Reporting Worksheet. If a contributor improperly claims exemption from the contribution requirement, it will subject to the criminal provisions of sections 220(d) and (e) of the Act regarding willful false submissions and will be required to pay the amounts withheld plus interest.

[64 FR 41331, July 30, 1999, as amended at 71 FR 38797, July 10, 2006]

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Prior to April 1, 2003, contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and on a contribution factor determined quarterly by the Commission. Contributions to the mechanisms beginning April 1, 2003 shall be based on contributors' projected collected end-user telecommunications revenues, and on a contribution factor determined quarterly by the Commission.

(1) For funding the federal universal service support mechanisms prior to April 1, 2003, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of prior period actual contributions. Beginning April 1, 2003, the subject revenues will be contributors' projected collected interstate and international revenues derived from domestic end users for telecommunications or telecommunications services, net of projected contributions.

(2) Prior to April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total end-user interstate and international telecommunications revenues, net of prior period actual contributions. Beginning April 1, 2003, the quarterly universal service contribution factor shall be determined by the Commission based on the ratio of total projected quarterly expenses of the universal service support mechanisms to the total projected collected end-user interstate and international telecommunications revenues, net of projected contributions. The Commission shall approve the Administrator's quarterly projected costs of the universal service support mechanisms, taking into account demand for support and administrative expenses. The total subject revenues shall be compiled by the Administrator based on information contained in the Telecommunications Reporting Worksheets described in § 54.711(a).

(3) Total projected expenses for the federal universal service support mechanisms for each quarter must be approved by the Commission before they are used to calculate the quarterly contribution factor and individual contributions. For each quarter, the Administrator must submit its projections of demand for the federal universal service support mechanisms for high-cost areas, low-income consumers, schools and libraries, and rural health care providers, respectively, and the basis for those projections, to the Commission and the Office of the Managing Director at least sixty (60) calendar days prior to the start of that quarter. For each quarter, the Administrator must submit its projections of administrative expenses for the high-

cost mechanism, the low-income mechanism, the schools and libraries mechanism and the rural health care mechanism and the basis for those projections to the Commission and the Office of the Managing Director at least sixty (60) calendar days prior to the start of that quarter. Based on data submitted to the Administrator on the Telecommunications Reporting Worksheets, the Administrator must submit the total contribution base to the Office of the Managing Director at least thirty (30) days before the start of each quarter. The projections of demand and administrative expenses and the contribution factor shall be announced by the Commission in a public notice and shall be made available on the Commission's website. The Commission reserves the right to set projections of demand and administrative expenses at amounts that the Commission determines will serve the public interest at any time within the fourteen-day period following release of the Commission's public notice. If the Commission take no action within fourteen (14) days of the date of release of the public notice announcing the projections of demand and administrative expenses, the projections of demand and administrative expenses, and the contribution factor shall be deemed approved by the Commission. Except as provided in § 54.706(c), the Administrator shall apply the quarterly contribution factor, once approved by the Commission, to contributor's interstate and international end-user telecommunications revenues to calculate the amount of individual contributions.

(b) If the contributions received by the Administrator in a quarter exceed the amount of universal service support program contributions and administrative costs for that quarter, the excess payments will be carried forward to the following quarter. The contribution factors for the following quarter will take into consideration the projected costs of the support mechanisms for that quarter and the excess contributions carried over from the previous quarter. The Commission may instruct the Administrator to treat excess contributions in a manner other than as prescribed in this paragraph (b). Such instructions may be made in the form of a Commission Order or a public notice released by the Wireline Competition Bureau. Any such public notice will become effective fourteen days after release of the public notice, absent further Commission action.

(c) If the contributions received by the Administrator in a quarter are inadequate to meet the amount of universal service support program payments and administrative costs for that quarter, the Administrator shall request authority from the Commission to borrow funds commercially, with such debt secured by future contributions. Subsequent contribution factors will take into consideration the projected costs of the support mechanisms and the additional costs associated with borrowing funds.

(d) If a contributor fails to file a Telecommunications Reporting Worksheet by the date on which it is due, the Administrator shall bill that contributor based on whatever relevant data the Administrator has available, including, but not limited to, the number of lines presubscribed to the contributor and data from previous years, taking into consideration any estimated changes in such data.

[62 FR 41305, Aug. 1, 1997, as amended at 62 FR 65038, Dec. 10, 1997; 63 FR 2132, Jan. 13, 1998; 63 FR 43098, Aug. 12, 1998; 63 FR 70576, Dec. 21, 1998; 64 FR 41331, July 30, 1999; 64 FR 60358, Nov. 5, 1999; 66 FR 16151, Mar. 23, 2001; 67 FR 11260, Mar. 13, 2002; 67 FR 13227, Mar. 21, 2002; 67 FR 79533, Dec. 30, 2002; 68 FR 38642, June 30, 2003; 71 FR 38267, July 6, 2006; 76 FR 73876, Nov. 29, 2011]

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet which shall be published in the FEDERAL REGISTER. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a quarterly and annual basis. The Commission shall announce by Public Notice published in the FEDERAL REGISTER and on its website the manner of payment and dates by which payments must be made. An executive officer of the contributor must certify to the truth and accuracy of historical data included in the Telecommunications

Reporting Worksheet, and that any projections in the Telecommunications Reporting Worksheet represent a good-faith estimate based on the contributor's policies and procedures. The Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet. Contributors shall maintain records and documentation to justify information reported in the Telecommunications Reporting Worksheet, including the methodology used to determine projections, for three years and shall provide such records and documentation to the Commission or the Administrator upon request. Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

(b) The Commission shall have access to all data reported to the Administrator. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information. The Administrator shall keep confidential all data obtained from contributors, shall not use such data except for purposes of administering the universal service support programs, and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to any restrictions imposed by the Chief of the Wireline Competition Bureau, the Universal Service Administrator may share data obtained from contributors with the administrators of the North American Numbering Plan administration cost recovery (See 47 CFR 52.16 of this chapter), the local number portability cost recovery (See 47 CFR 52.32 of this chapter), and the TRS Fund (See 47 CFR 64.604(c)(4)(iii)(H) of this chapter). The Administrator shall keep confidential all data obtained from other administrators and shall not use such data except for purposes of administering the universal service support mechanisms.

(c) The Bureau may waive, reduce, modify, or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the universal service support mechanisms.

[64 FR 41332, July 30, 1999, as amended at 66 FR 16151, Mar. 23, 2001; 67 FR 13227, Mar. 21, 2002; 67 FR 79533, Dec. 30, 2002]

§ 54.712 Contributor recovery of universal service costs from end users.

(a) Federal universal service contribution costs may be recovered through interstate telecommunications-related charges to end users. If a contributor chooses to recover its federal universal service contribution costs through a line item on a customer's bill the amount of the federal universal service line-item charge may not exceed the interstate telecommunications portion of that customer's bill times the relevant contribution factor.

(b) [Reserved]

[67 FR 79533, Dec. 30, 2002, as amended at 68 FR 15672, Apr. 1, 2003; 71 FR 38797, July 10, 2006]

§ 54.713 Contributors' failure to report or to contribute.

(a) A contributor that fails to file a Telecommunications Reporting Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed. The Administrator may bill a contributor a separate assessment for reasonable costs incurred because of that contributor's filing of an untruthful or inaccurate Telecommunications Reporting Worksheet, failure to file the Telecommunications Reporting Worksheet, or late payment of contributions. Failure to file the Telecommunications Reporting Worksheet or to submit required quarterly contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response. Once a contributor complies with the Telecommunications

Reporting Worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interest, or costs.

(b) If a universal service fund contributor fails to make full payment on or before the date due of the monthly amount established by the contributor's applicable Form 499–A or Form 499–Q, or the monthly invoice provided by the Administrator, the payment is delinquent. All such delinquent amounts shall incur from the date of delinquency, and until all charges and costs are paid in full, interest at the rate equal to the U.S. prime rate (in effect on the date of the delinquency) plus 3.5 percent, as well as administrative charges of collection and/or penalties and charges permitted by the applicable law (e.g., 31 U.S.C. 3717 and implementing regulations).

(c) If a universal service fund contributor is more than 30 days delinquent in filing a Telecommunications Reporting Worksheet Form 499–A or 499–Q, the Administrator shall assess an administrative remedial collection charge equal to the greater of $100 or an amount computed using the rate of the U.S. prime rate (in effect on the date the applicable Worksheet is due) plus 3.5 percent, of the amount due per the Administrator's calculations. In addition, the contributor is responsible for administrative charges of collection and/or penalties and charges permitted by the applicable law (e.g., 31 U.S.C. 3717 and implementing regulations). The Commission may also pursue enforcement action against delinquent contributors and late filers, and assess costs for collection activities in addition to those imposed by the Administrator.

(d) In the event a contributor fails both to file the Worksheet and to pay its contribution, interest will accrue on the greater of the amounts due, beginning with the earlier of the date of the failure to file or pay.

(e) If a universal service fund contributor pays the Administrator a sum that is less than the amount due for the contributor's universal service contribution, the Administrator shall adhere to the ''American Rule'' whereby payment is applied first to outstanding penalty and administrative cost charges, next to accrued interest, and third to outstanding principal. In applying the payment to outstanding principal, the Administrator shall apply such payment to the contributor's oldest past due amounts first.

[72 FR 54219, Sept. 24, 2007]

§ 54.715 Administrative expenses of the Administrator.

(a) The annual administrative expenses of the Administrator should be commensurate with the administrative expenses of programs of similar size, with the exception of the salary levels for officers and employees of the Administrator described in paragraph (b) of this section. The annual administrative expenses may include, but are not limited to, salaries of officers and operations personnel, the costs of borrowing funds, equipment costs, operating expenses, directors' expenses, and costs associated with auditing contributors of support recipients.

(b) All officers and employees of the Administrator may be compensated at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, in an amount not to exceed the rate of basic pay in effect for Level I of the Executive Schedule under 5 U.S.C. 5312.

NOTE TO PARAGRAPH (b): The compensation to be included when calculating whether an employee's rate of pay exceeds Level I of the Executive Schedule does not include life insurance benefits, retirement benefits (including payments to 401(k) plans), health insurance benefits, or other similar benefits, provided that any such benefits are reasonably comparable to benefits that are provided to employees of the federal government.

(c) The Administrator shall submit to the Commission projected quarterly budgets at least sixty (60) days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the Administrator disburses funds under the federal universal service support mechanisms. The administrative expenses incurred by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, and the low income support mechanism shall be deducted from

the annual funding of each respective support mechanism. The expenses deducted from the annual funding for each support mechanism also shall include the Administrator's joint and common costs allocated to each support mechanism pursuant to the cost allocation manual filed by the Administrator under § 64.903 of this chapter.

[63 FR 70576, Dec. 21, 1998, as amended at 65 FR 38690, June 21, 2000; 65 FR 57739, Sept. 26, 2000; 66 FR 59728, Nov. 30, 2001; 69 FR 5719, Feb. 6, 2004; 76 FR 73877, Nov. 29, 2011]

§ 54.717 Audits of the Administrator.

The Administrator shall obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things, whether the Administrator is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse:

(a) Before selecting an independent auditor, the Administrator shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing, to the Office of Managing Director.

(b) The Office of Managing Director shall review the preliminary audit requirements to determine whether they are adequate to meet the audit objectives. The Office of Managing Director shall prescribe modifications that shall be incorporated into the final audit requirements.

(c) After the audit requirements have been approved by the Office of Managing Director, the Administrator shall engage within thirty (30) calendar days an independent auditor to conduct the annual audit required by this paragraph. In making its selection, the Administrator shall not engage any independent auditor who has been involved in designing any of the accounting or reporting systems under review in the audit.

(d) The independent auditor selected by the Administrator to conduct the annual audit shall be instructed by the Administrator to develop a detailed audit program based on the final audit requirements and shall be instructed by the Administrator to submit the audit program to the Office of Managing Director. The Office of Managing Director shall review the audit program and make modifications, as needed, that shall be incorporated into the final audit program. During the course of the audit, the Office of Managing Director may direct the Administrator to direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements.

(e) During the course of the audit, the Administrator shall instruct the independent auditor to:

(1) Inform the Office of Managing Director of any revisions to the final audit program or to the scope of the audit;

(2) Notify the Office of Managing Director of any meetings with the Administrator in which audit findings are discussed; and

(3) Submit to the Chief of the Wireline Competition Bureau any accounting or rule interpretations necessary to complete the audit.

(f) Within 105 calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed by the Administrator to submit a draft of the audit report to the Office of Managing Director Audit Staff.

(g) The Office of Managing Director shall review the audit findings and audit workpapers and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Office of Managing Director to the findings and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(h) Within fifteen (15) calendar days after receiving the Office of Managing Director's recommendations and making any revisions to the audit report, the Administrator shall instruct the independent auditor to submit the audit report to the Administrator for its response to the audit findings. At this time the auditor also must send copies of its audit findings to the Office of Managing Director. The Administrator shall provide the independent auditor time to perform additional audit work recommended by the Office of Managing Director.

(i) Within thirty (30) calendar days after receiving the audit report, the Administrator shall respond to the audit findings and send copies of its response to the Office of Managing Director. The Administrator shall instruct the independent auditor that any reply that the independent auditor wishes to make to the Administrator's responses shall be sent to the Office of Managing Director as well as the Administrator. The Administrator's response and the independent auditor's replies shall be included in the final audit report;

(j) Within ten (10) calendar days after receiving the response of the Administrator, the independent auditor shall file with the Commission the final audit report.

(k) Based on the final audit report, the Managing Director may take any action necessary to ensure that the universal service support mechanisms operate in a manner consistent with the requirements of this part, as well as such other action as is deemed necessary and in the public interest.

[67 FR 13227, Mar. 21, 2002, as amended at 68 FR 18907, Apr. 17, 2003; 71 FR 38267, July 6, 2006; 77 FR 71712, Dec. 4, 2012]

Subpart I—Review of Decisions Issued by the Administrator

§ 54.719 Parties permitted to seek review of Administrator decision.

(a) Any party aggrieved by an action taken by the Administrator, as defined in § 54.701, § 54.703, or § 54.705, must first seek review from the Administrator.

(b) Any party aggrieved by an action taken by the Administrator, after seeking review from the Administrator, may then seek review from the Federal Communications Commission, as set forth in § 54.722.

(c) Parties seeking waivers of the Commission's rules shall seek relief directly from the Commission.

[79 FR 49204, Aug. 19, 2014]

§ 54.720 Filing deadlines.

(a) An affected party requesting review or waiver of an Administrator decision by the Commission pursuant to § 54.719, shall file such a request within sixty (60) days from the date the Administrator issues a decision.

(b) An affected party requesting review of an Administrator decision by the Administrator pursuant to § 54.719(a), shall file such a request within sixty (60) days from the date the Administrator issues a decision.

(c) In all cases of requests for review filed under § 54.719(a) through (c), the request for review shall be deemed filed on the postmark date. If the postmark date cannot be determined, the applicant must file a sworn affidavit stating the date that the request for review was mailed.

(d) Parties shall adhere to the time periods for filing oppositions and replies set forth in 47 CFR 1.45.

[80 FR 5991, Feb. 4, 2015]

§ 54.721 General filing requirements.

(a) Except as otherwise provided herein, a request for review of an Administrator decision by the Federal Communications Commission shall be filed with the Federal Communications Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned ''In the matter of Request for Review by (name of party seeking review) of Decision of Universal Service Administrator'' and shall reference the applicable docket numbers.

(b) A request for review pursuant to § 54.719(a) through (c) shall contain:

(1) A statement setting forth the party's interest in the matter presented for review;

(2) A full statement of relevant, material facts with supporting affidavits and documentation;

(3) The question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision;

(4) A statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(c) A copy of a request for review that is submitted to the Federal Communications Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in § 1.47 of this chapter.

(d) If a request for review filed pursuant to § 54.720(a) through (c) alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in § 1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party shall adhere to the time period for filing replies set forth in § 1.45 of this chapter and the requirement for service of documents set forth in § 1.47 of this chapter.

[63 FR 70578, Dec. 21, 1998, as amended at 68 FR 36944, June 20, 2003]

§ 54.722 Review by the Wireline Competition Bureau or the Commission.

(a) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission.

(b) An affected party may seek review of a decision issued under delegated authority by the Common Carrier Bureau pursuant to the rules set forth in part 1 of this chapter.

[63 FR 70578, Dec. 21, 1998, as amended at 67 FR 13228, Mar. 21, 2002]

§ 54.723 Standard of review.

(a) The Wireline Competition Bureau shall conduct *de novo* review of request for review of decisions issue by the Administrator.

(b) The Federal Communications Commission shall conduct *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Wireline Competition Bureau under delegated authority.

[67 FR 13228, Mar. 21, 2002]

§ 54.724 Time periods for Commission approval of Administrator decisions.

(a) The Wireline Competition Bureau shall, within ninety (90) days, take action in response to a request for review of an Administrator decision that is properly before it. The Wireline Competition Bureau may extend the time period for taking action on a request for review of an Administrator decision for a period of up to ninety days. The Commission may also at any time, extend the time period for taking action of a request for review of an Administrator decision pending before the Wireline Competition Bureau.

(b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law, or policy within ninety (90) days. The Commission may extend the time period for taking action on the request for review of an Administrator decision. The Wireline Competition Bureau also may extend action on a request for review of an Administrator decision for a period of up to ninety days.

[67 FR 13228, Mar. 21, 2002]

§ 54.725 Universal service disbursements during pendency of a request for review and Administrator decision.

(a) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the schools and libraries support mechanism or the rural health care support mechanism, the Administrator shall not reimburse a service provider for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

(b) When a party has sought review of an Administrator decision under § 54.719(a) through (c) in connection with the high cost and low income support mechanisms, the Administrator shall not disburse support to a service provider until a final decision has been issued either by the Administrator or

by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

Subpart J—Rural Digital Opportunity Fund

SOURCE: 85 FR 13798, Mar. 10, 2020, unless otherwise noted.

§ 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) All recipients of Rural Digital Opportunity Fund support must complete deployment to 40 percent of the required number of locations as determined by the Connect America Cost Model by the end of the third year, to 60 percent by the end of the fourth year, and to 80 percent by the end of the fifth year. The Wireline Competition Bureau will publish updated location counts no later than the end of the sixth year. A support recipient's final service milestones will depend on whether the Wireline Competition Bureau determines there are more or fewer locations than determined by the Connect America Cost Model in the relevant areas as follows:

(i) *More Locations.* After the Wireline Competition Bureau adopts updated location counts, in areas where there are more locations than the number of locations determined by the Connect America Cost Model, recipients of Rural Digital Opportunity Fund support must complete deployment to 100 percent of the number of locations determined by the Connect America Cost Model by the end of the sixth year. Recipients of Rural Digital Opportunity Fund support must then complete deployment to 100 percent of the additional number of locations determined by the Wireline Competition Bureau's updated location count by end of the eighth year. If the new location count exceeds 35% of the number of locations determined by the Connect America Cost Model within their area in each state, recipients of Rural Digital Opportunity Fund support will have the opportunity to seek additional support or relief.

(ii) *Fewer Locations.* In areas where there are fewer locations than the number of locations determined by the Connect America Cost Model, a Rural Digital Opportunity Fund support recipient must notify the Wireline Competition Bureau no later than March 1 following the fifth year of deployment. Upon confirmation by the Wireline Competition Bureau, Rural Digital Opportunity Fund support recipients must complete deployment to the number of locations required by the new location count by the end of the sixth year. Support recipients for which the new location count is less than 65 percent of the Connect America Cost Model locations within their area in each state shall have the support amount reduced on a pro rata basis by the number of reduced locations.

(iii) *Newly Built Locations.* In addition to offering the required service to the updated number of locations identified by the Wireline Competition Bureau, Rural Digital Opportunity Fund support recipients must offer service to locations built since the revised count, upon reasonable request. Support recipients are not required to deploy to any location built after milestone year eight.

(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.

(d) Any Connect America Phase II auction participant that defaulted on all of its Connect America Phase II auction winning bids is barred from participating in the Rural Digital Opportunity Fund.

§ 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 an independent 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 an independent certified 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) *Letter of credit commitment letter.* 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) *Audited financial statements.* 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 an independent certified public accountant.

(5) *Eligible telecommunications carrier designation.* 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 nonmaterial 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 in an amount equal to, at a minimum, one year of support, until the Universal Service Administrative Company has verified that the recipient has served 100 percent of the Connect America Cost Model-determined location total (or the adjusted Connect America Cost Model location count if there are fewer locations) by the end of year six.

(i) For year one of a recipient's support term, it must obtain a letter of credit valued at an amount equal to one year of support.

(ii) For year two of a recipient's support term, it must obtain a letter of credit valued at an amount equal to eighteen months of support.

(iii) For year three of a recipient's support term, it must obtain a letter of credit valued at an amount equal to two years of support.

(iv) For year four of a recipient's support term, it must obtain a letter of credit valued at an amount equal to three years of support.

(v) A recipient may obtain a new letter of credit or renew its existing letter of credit so that it is valued at an amount equal to one year of support once it meets its optional or required service milestones. The recipient may obtain or renew this letter of credit upon verification of its buildout by the Universal Service Administrative Company. The recipient may maintain its letter of credit at this level for the remainder of its deployment term, so long as the Universal Service Administrative Company verifies that the recipient successfully and timely meets its remaining required service milestones.

(vi) A recipient that fails to meet its required service milestones must obtain a new letter of credit or renew its existing letter of credit at an amount equal to its existing letter of credit, plus an additional year of support, up to a maximum of three years of support.

(vii) A recipient that fails to meet two or more required service milestones must maintain a letter of credit in the amount of three year of support and may be subject to additional non-

compliance penalties as described in § 54.320(d).

(2) *Bank eligibility*. 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:

(*1*) Located in the District of Columbia; or

(*2*) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations;

(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) *Bankruptcy opinion letter*. 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) *Non-compliance*. .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 for the location totals determined by the Connect America Cost Model, or the location total that is adjusted by the Wireline Competition Bureau for those areas where there are fewer locations than the number of locations determined by the Connect America Cost Model, 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 during the relevant cure period as described in §§ 54.320(d)(1)(iv)(B) or 54.320(d)(2) will trigger a recovery action by the Universal Service Administrative Company as described in § 54.320(d)(1)(iv)(B) or § 54.806(c)(1)(i), as applicable. 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.

[85 FR 13798, Mar. 10, 2020, as amended at 85 FR 75822, Nov. 25, 2020]

§ 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) Rural Digital Opportunity Fund support recipients meeting the minimum 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 250 GB per month, or that reflects the average usage of a majority of fixed broadband customers as announced annually by the Wireline Competition Bureau over the 10-year term.

(2) Rural Digital Opportunity Fund support recipients meeting the baseline performance tier standards are required to offer broadband service at actual speeds of at least 50 Mbps downstream and 5 Mbps upstream and offer a minimum usage allowance of 250 GB per month, or that reflects the average usage of a majority of fixed broadband customers as announced annually by the Wireline Competition Bureau over the 10-year term.

(2) Rural Digital Opportunity Fund support recipients 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) Rural Digital Opportunity Fund support recipients 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(a)–(c).

(c) Recipients of Rural Digital Opportunity Fund support shall be subject to the non-compliance measures set forth in § 54.320(d) subject to the following modifications related to the recovery of support.

(1) If the support recipient does not report it has come into full compliance after the grace period for its sixth year or eighth year service milestone as applicable or if USAC determines in the course of a compliance review that the eligible telecommunications carrier does not have sufficient evidence to demonstrate that it is offering service to all of the locations required by the sixth or eighth year service milestone as set forth in § 54.320(d)(3):

(i) Sixth year service milestone. Support will be recovered as follows after the sixth year service milestone grace period or if USAC later determines in the course of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it was offering service to all of the locations required by the sixth year service milestone:

(A) If an ETC has deployed to 95 percent or more of the Connect America Cost Model location count or the adjusted Connect America Cost Model location count if there are fewer locations, but less than 100 percent, USAC will recover an amount of support that is equal to 1.25 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;

(B) If an ETC has deployed to 90 percent or more of the Connect America Cost Model location count or the adjusted Connect America Cost Model location count if there are fewer locations, but less than 95 percent, USAC will recover an amount of support that is equal to 1.5 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 5 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state;

(C) If an ETC has deployed to fewer than 90 percent of the Connect America Cost Model location count or the adjusted Connect America Cost Model location count if there are fewer locations, USAC will recover an amount of support that is equal to 1.75 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 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state.

(ii) Eighth year service milestone. If a Rural Digital Opportunity Fund support recipient is required to serve more new locations than determined by the Connect America Cost Model, support will be recovered as follows after the eighth year service milestone grace period or if USAC later determines in the course of a compliance review that a support recipient does not have sufficient evidence to demonstrate that it was offering service to all of the locations required by the eighth year service milestone:

(A) If an ETC has deployed to 95 percent or more of its new location count, but less than 100 percent, USAC will recover an amount of support that is equal to the average amount of support per location received in the state for that ETC over the support term for the relevant number of locations;

(B) If an ETC has deployed to 90 percent or more of its new location count, but less than 95 percent, USAC will recover an amount of support that is equal to 1.25 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;

(C) If an ETC has deployed to 85 percent or more of its new location count, but less than 90 percent, USAC will recover an amount of support that is equal to 1.5 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 5 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state;

(D) If an ETC has deployed to less than 85 percent of its new location count, USAC will recover an amount of support that is equal to 1.75 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 percent of the support recipient's total Rural Digital Opportunity Fund support authorized over the 10-year support term for that state.

(2) Any support recipient that believes it cannot meet the third-year service milestone must notify the Wireline Competition Bureau within 10 business days of the third-year service milestone deadline and provide information explaining this expected deficiency. If a support recipient has not made such a notification by March 1 following the third-year service milestone, and has deployed to fewer than 20 percent of the required number of locations by the end of the third year, the recipient will immediately be in default and subject to support recovery. The Tier 4 status six-month grace period as set forth in § 54.320(d)(iv) will not be applicable.

EFFECTIVE DATE NOTE: At 85 FR 13798, Mar. 10, 2020, § 54.806 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart K—Interstate Common Line Support Mechanism for Rate-of-Return Carriers

SOURCE: 66 FR 59728, Nov. 30, 2001, unless otherwise noted.

§ 54.901 Calculation of Connect America Fund Broadband Loop Support.

(a) Connect America Fund Broadband Loop Support (CAF BLS) available to a rate-of-return carrier shall equal the Interstate Common Line Revenue Requirement per Study Area, plus the Consumer Broadband-Only Revenue Requirement per Study Area as calculated in accordance with part 69 of this chapter, minus:

(1) The study area revenues obtained from end user common line charges at their allowable maximum as determined by § 69.104(n) and (o) of this chapter;

(2) Imputed Consumer Broadband-only Revenues, to be calculated as:

(i) The lesser of $42 * the number of consumer broadband-only loops * 12 or the Consumer Broadband-Only Revenue Requirement per Study Area; or

(ii) For the purpose of calculating the reconciliation pursuant to § 54.903(b)(3), the greater of the amount determined pursuant to paragraph (a)(2)(i) of this section or the carrier's allowable Consumer Broadband-only rate calculated pursuant to § 69.132 of this chapter * the number of consumer broadband-only loops * 12;

(3) The special access surcharge pursuant to § 69.115 of this chapter; and

(4) The line port costs in excess of basic analog service pursuant to § 69.130 of this chapter.

(b) For the purpose of calculating support pursuant to paragraph (a) of this section, the Interstate Common Line Revenue Requirement and Consumer Broadband-only Revenue Requirement shall be subject to the limitations set forth in § 54.303.

(c) For purposes of calculating the amount of CAF BLS, determined pursuant to paragraph (a) of this section, that a non-price cap carrier may receive, the corporate operations expense allocated to the Common Line Revenue Requirement or the Consumer Broadband-only Loop Revenue Requirement, pursuant to § 69.409 of this chapter, shall be limited to the lesser of:

(1) The actual average monthly per-loop corporate operations expense; or

(2) The portion of the monthly per-loop amount computed pursuant to § 54.1308(a)(4)(ii) that would be allocated to the Interstate Common Line

Revenue Requirement or Consumer Broadband-only Loop Revenue Requirement pursuant to § 69.409 of this chapter.

(d) In calculating support pursuant to paragraph (a) of this section for periods prior to when the tariff charge described in § 69.132 of this chapter becomes effective, only Interstate Common Line Revenue Requirement and Interstate Common line revenues shall be included.

(e) To the extent necessary for ratemaking purposes, each carrier's CAF BLS shall be attributed as follows:

(1) First, support shall be applied to ensure that the carrier has met its Interstate Common Line Revenue Requirement for the prior period to which true-up payments are currently being applied.

(2) Second, support shall be applied to ensure that the carrier has met its Consumer Broadband-only Loop Revenue Requirement for the prior period to which true-up payments are currently being applied.

(3) Third, support shall be applied to ensure that the carrier will meet, on a forecasted basis, its Interstate Common Line Revenue Requirement during the current tariff year.

(4) Finally, support shall be applied as available to the Consumer Broadband-only Loop Revenue Requirement during the current tariff year.

(f) CAF BLS Support is subject to a reduction as necessary to meet the overall cap on support established by the Commission for support provided pursuant to this subpart and subpart M of this part. Reductions shall be implemented as follows:

(1) On May 1 of each year, the Administrator will publish a target amount for CAF BLS in the aggregate and the amount of CAF BLS that each study area will receive during the upcoming July 1 to June 30 tariff year. The target amount shall be the forecasted disbursement amount times a reduction factor. The reduction factor shall be the budget amount divided by the total forecasted disbursement amount for both High Cost Loop Support and CAF BLS for recipients in the aggregate. The forecasted disbursement for CAF BLS is the forecasted total disbursements for all recipients of CAF BLS, including both projections and true-ups in the upcoming July 1 to June 30 tariff year.

(2) [Reserved]

(3) The Administrator shall apply a pro rata reduction to CAF BLS for each recipient of CAF BLS as necessary to achieve the target amount.

(4) This paragraph (f) shall not apply to support provided from July 1, 2017 to June 30, 2018.

(g) For purposes of this subpart and consistent with § 69.132 of this chapter, a consumer broadband-only loop is a line provided by a rate-of-return incumbent local exchange carrier to a customer without regulated local exchange voice service, for use in connection with fixed Broadband Internet access service, as defined in § 8.2 of this chapter.

[81 FR 24342, Apr. 25, 2016, as amended at 82 FR 14340, Mar. 20, 2017; 83 FR 18964, May 1, 2018; 84 FR 4733, Feb. 19, 2019]

§ 54.902 Calculation of CAF BLS Support for transferred exchanges.

(a) In the event that a rate-of-return carrier acquires exchanges from an entity that is also a rate-of-return carrier, CAF BLS for the transferred exchanges shall be distributed as follows:

(1) Each carrier may report its updated line counts to reflect the transfer in the next quarterly line count filing pursuant to § 54.903(a)(1) that applies to the period in which the transfer occurred. During a transition period from the filing of the updated line counts until the end of the funding year, the Administrator shall adjust the CAF BLS Support received by each carrier based on the updated line counts and the per-line CAF BLS, categorized by customer class and, if applicable, disaggregation zone, of the selling carrier. If the acquiring carrier does not file a quarterly update of its line counts, it will not receive CAF BLS for those lines during the transition period.

(2) Each carrier's projected data for the following funding year filed pursuant to § 54.903(a)(3) shall reflect the transfer of exchanges.

(3) Each carrier's actual data filed pursuant to § 54.903(a)(4) shall reflect the transfer of exchanges. All post-transaction CAF BLS shall be subject

to true up by the Administrator pursuant to § 54.903(b)(3).

(b) In the event that a rate-of-return carrier acquires exchanges from a price-cap carrier, absent further action by the Commission, the exchanges shall receive the same amount of support and be subject to the same public interest obligations as specified in § 54.310 or § 54.312, as applicable.

(c) In the event that an entity other than a rate-of-return carrier acquires exchanges from a rate-of-return carrier, absent further action by the Commission, the carrier will receive model-based support and be subject to public interest obligations as specified in § 54.310.

(d) This section does not alter any Commission rule governing the sale or transfer of exchanges, including the definition of ''study area'' in part 36 of this chapter.

[81 FR 24343, Apr. 25, 2016]

§ 54.903 Obligations of rate-of-return carriers and the Administrator.

(a) To be eligible for CAF BLS, each rate-of-return carrier shall make the following filings with the Administrator.

(1) Each rate-of-return carrier shall submit to the Administrator on March 31 of each year the number of lines it served as of the prior December 31, within each rate-of-return carrier study area showing residential and single-line business line counts, multi-line business line counts, and consumer broadband-only line counts separately. For purposes of this report, and for purposes of computing support under this subpart, the residential and single-line business class lines reported include lines assessed the residential and single-line business End User Common Line charge pursuant to § 69.104 of this chapter, the multi-line business class lines reported include lines assessed the multi-line business End User Common Line charge pursuant to § 69.104 of this chapter, and consumer broadband-only lines reported include lines assessed the Consumer Broadband-only Loop rate charged pursuant to § 69.132 of this chapter or provided on a detariffed basis. For purposes of this report, and for purposes of computing support under this subpart, lines served using resale of the rate-of-return local exchange carrier's service pursuant to section 251(c)(4) of the Communications Act of 1934, as amended, shall be considered lines served by the rate-of-return carrier only and must be reported accordingly.

(2) A rate-of-return carrier may submit the information in paragraph (a) of this section in accordance with the schedule in § 54.1306, even if it is not required to do so. If a rate-of-return carrier makes a filing under this paragraph, it shall separately indicate any lines that it has acquired from another carrier that it has not previously reported pursuant to paragraph (a) of this section, identified by customer class and the carrier from which the lines were acquired.

(3) Each rate-of-return carrier shall submit to the Administrator annually by March 31 projected data necessary to calculate the carrier's prospective CAF BLS, including common line and consumer broadband-only loop cost and revenue data, for each of its study areas in the upcoming funding year. The funding year shall be July 1 of the current year through June 30 of the next year. The data shall be accompanied by a certification that the cost data is compliant with the Commission's cost allocation rules and does not reflect duplicative assignment of costs to the consumer broadband-only loop and special access categories.

(4) Each rate-of-return carrier shall submit to the Administrator on December 31 of each year the data necessary to calculate a carrier's Connect America Fund CAF BLS, including common line and consumer broadband-only loop cost and revenue data, for the prior calendar year. Such data shall be used by the Administrator to make adjustments to monthly per-line CAF BLS amounts to the extent of any differences between the carrier's CAF BLS received based on projected common line cost and revenue data, and the CAF BLS for which the carrier is ultimately eligible based on its actual common line and consumer broadband-only loop cost and revenue data during the relevant period. The data shall be accompanied by a certification that the cost data is compliant with the Commission's cost allocation rules and

does not reflect duplicative assignment of costs to the consumer broadband-only loop and special access categories.

(b) Upon receiving the information required to be filed in paragraph (a) of this section, the Administrator shall:

(1) Perform the calculations described in § 54.901 and distribute support accordingly;

(2) [Reserved]

(3) Perform periodic reconciliation of the CAF BLS provided to each carrier based on projected data filed pursuant to paragraph (a)(3) of this section and the CAF BLS for which each carrier is eligible based on actual data filed pursuant to paragraph (a)(4) of this section; and

(4) Report quarterly to the Commission on the collection and distribution of funds under this subpart as described in § 54.702(h). Fund distribution reporting will be by state and by eligible telecommunications carrier within the state.

[81 FR 24343, Apr. 25, 2016, as amended at 84 FR 4733, Feb. 19, 2019]

Subpart L—Mobility Fund and 5G Fund

SOURCE: 76 FR 73877, Nov. 29, 2011, unless otherwise noted.

§ 54.1001 Mobility Fund—Phase I.

The Commission will use competitive bidding, as provided in part 1, subpart AA, of this chapter, to determine the recipients of support available through Phase I of the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.1002 Geographic areas eligible for support.

(a) Mobility Fund Phase I support may be made available for census blocks identified as eligible by public notice.

(b) Except as provided in § 54.1004, coverage units for purposes of conducting competitive bidding and disbursing support based on designated road miles will be identified by public notice for each census block eligible for support.

§ 54.1003 Provider eligibility.

(a) Except as provided in § 54.1004, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase I support for that area. The applicant's designation as an Eligible Telecommunications Carrier may be conditional subject to the receipt of Mobility Fund support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase I support for that area. The applicant shall certify, in a form acceptable to the Commission, that it has received any Commission approvals necessary for such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for five (5) years after the date on which it is authorized to receive support. Pending requests for such approvals are not sufficient to satisfy this requirement.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase I in order to receive such support.

[76 FR 73877, Nov. 29, 2011, as amended at 77 FR 14303, Mar. 9, 2012]

EFFECTIVE DATE NOTE: At 77 FR 14303, Mar. 9, 2012, § 54.1003(b) was revised. This paragraph contains information and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 54.1004 Service to Tribal Lands.

(a) A Tribally-owned or -controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in any Mobility Fund Phase I auction, including any auction for support solely in Tribal lands, by bidding for support in areas located within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or -controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity

shall receive Mobility Fund Phase I support only after it has become an Eligible Telecommunications Carrier.

(b) In any auction for support solely in Tribal lands, coverage units for purposes of conducting competitive bidding and disbursing support based on designated population will be identified by public notice for each census block eligible for support.

(c) Tribally-owned or -controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or -controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by twenty-five (25) percent or purposes of determining winning bidders without any reduction in the amount of support available.

(d) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements.

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five (5) business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in §54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to §54.1009(a)(5), and prior to disbursement of support, pursuant to §54.1008(c), that it has substantively engaged appropriate Tribal officials regarding the issues specified in §54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

§ 54.1005 Application process.

(a) *Application to participate in competitive bidding for Mobility Fund Phase I support.* In addition to providing information specified in §1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase I support also shall:

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

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of §54.1006 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate;

(4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, and certify that the description is accurate and that the applicant will retain such access for at least five (5) years after the date on which it is authorized to receive support;

(5) Certify that it will not bid on any areas in which it has made a public commitment to deploy 3G or better wireless service by December 31, 2012; and

(6) Make any applicable certifications required in § 54.1004.

(b) *Application by winning bidders for Mobility Fund Phase I support*—(1) *Deadline*. Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase I support shall file an application for Mobility Fund Phase I support no later than 10 business days after the public notice identifying them as winning bidders.

(2) *Application contents*. (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 capable of meeting the public interest obligations of § 54.1006 in the geographic areas for which it seeks support.

(iii) Proof of the applicant's status as an Eligible Telecommunications Carrier or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate.

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is the winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, and a certification that the description is accurate and that the applicant will retain such access for at least five (5) years after the date on which it is authorized to receive support.

(v) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the budget and describes each specific phase of the project, *e.g.*, network design, construction, deployment, and maintenance. The applicant shall indicate whether the supported network will provide third generation (3G) mobile service within the period prescribed by § 54.1006(a) or fourth generation (4G) mobile service within the period prescribed by § 54.1006(b).

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase I and that the applicant will comply with all program requirements.

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in § 54.1007, or a written commitment from an acceptable bank, as defined in § 54.1007(a)(1), to issue such a letter of credit.

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period extending until five (5) years after the date on which it is authorized to receive support.

(ix) Any applicable certifications and showings required in § 54.1004.

(x) Certification that the party submitting the application is authorized to do so on behalf of the applicant.

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

(3) *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 nonmaterial 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 winning bidder that may be authorized to receive Mobility Fund Phase I support after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1007, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any Tribally-owned or -controlled applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1007, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than 10 business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Mobility Fund Phase I support.

§ 54.1006 Public interest obligations.

(a) *Deadline for construction—3G networks.* A winning bidder authorized to receive Mobility Fund Phase I support that indicated in its application that it would provide third generation (3G) service on the supported network shall, no later than two (2) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or a higher percentage established by Public Notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 50 kbps uplink and 200 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(b) *Deadline for construction—4G networks.* A winning bidder authorized to receive Mobility Fund Phase I support that indicated in its application that it would provide fourth generation (4G) service on the supported network shall, no later than three (3) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or an applicable higher percentage established by public notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(c) *Coverage test data.* Drive tests submitted in compliance with a recipient's public interest obligations shall cover roads designated in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's support. Scattered site tests submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's authorized support.

(d) *Collocation obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1009, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase I on newly constructed towers that the recipient owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(e) *Voice and data roaming obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1009, the recipient shall comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase I support.

(f) *Liability for failing to satisfy public interest obligations.* A winning bidder authorized to receive Mobility Fund Phase I support that fails to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase I support will be subject to repayment of the support disbursed together with an additional performance default payment. Such a winning bidder may be disqualified from receiving Mobility Fund Phase I support or other USF support. The additional performance default amount will be a percentage of the Mobility Fund Phase I support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1008. The percentage will be determined as specified in the public notice detailing competitive bidding procedures prior to the commencement of competitive bidding. The percentage will not exceed twenty percent.

§ 54.1007 Letter of credit.

(a) Before being authorized to receive Mobility Fund Phase I support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. Each winning bidder authorized to receive Mobility Fund Phase I support shall maintain its standby letter of credit or multiple standby letters of credit in an amount equal to the amount of Mobility Fund Phase I support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1008 plus the additional performance default amount described in § 54.1006(f), until at least 120 days after the winning bidder receives its final distribution of support pursuant to § 54.1008(b)(3).

(1) 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 that

(A) Is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Federal Deposit Insurance Corporation, and

(C) Who has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(ii) Any non-U.S. bank that

(A) Is among the 50 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 an A- or better rating by Standard & Poor's, and

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

(2) [Reserved]

(b) A winning bidder for Mobility Fund Phase I 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.

(c) Authorization to receive Mobility Fund Phase I support is conditioned upon full and timely performance of all of the requirements set forth in § 54.1006 and any additional terms and conditions upon which the support was granted.

(1) Failure by a winning bidder authorized to receive Mobility Fund Phase I support to comply with any of the requirements set forth in § 54.1006 or any other term or conditions upon which support was granted, or its loss

of eligibility for any reason for Mobility Fund Phase I support, will be deemed an automatic performance default, will entitle the Commission to draw the entire amount of the letter of credit, and may disqualify the winning bidder from the receipt of Mobility Fund Phase I support or additional USF support.

(2) A performance default will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their 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.

§ 54.1008 Mobility Fund Phase I disbursements.

(a) A winning bidder for Mobility Fund Phase I support will be advised by public notice whether it has been authorized to receive support. The public notice will detail how disbursement will be made available.

(b) Mobility Fund Phase I support will be available for disbursement to authorized winning bidders in three stages.

(1) One-third of the total possible support, if coverage were to be extended to 100 percent of the units deemed unserved in the geographic area, when the winning bidder is authorized to receive support.

(2) One-third of the total possible support with respect to a specific geographic area when the recipient demonstrates coverage of 50 percent of the coverage requirements of § 54.1006(a) or (b), as applicable.

(3) The remainder of the total support, based on the final total units covered, when the recipient demonstrates coverage meeting the requirements of § 54.1006(a) or (b), as applicable.

(c) A recipient accepting a final disbursement for a specific geographic area based on coverage of less than 100 percent of the units in the area previously deemed unserved waives any claim for the remainder of potential Mobility Fund Phase I support with respect to that area.

(d) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(e) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of Mobility Fund Phase I support at the time that it requests the disbursement.

§ 54.1009 Annual reports.

(a) A winning bidder authorized to receive Mobility Fund Phase I support shall submit an annual report no later than July 1 in each year for the five years after it was so authorized. Each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

(1) Electronic Shapefiles site coverage plots illustrating the area newly reached by mobile services at a minimum scale of 1:240,000;

(2) A list of relevant census blocks previously deemed unserved, with road miles and total resident population and resident population residing in areas newly reached by mobile services (based on Census Bureau data and estimates);

(3) If any such testing has been conducted, data received or used from drive tests, or scattered site testing in areas where drive tests are not feasible, analyzing network coverage for mobile services in the area for which support was received;

(4) Certification that the applicant offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas;

(5) Any applicable certifications and showings required in § 54.1004; and

(6) Updates to the information provided in § 54.1005(b)(2)(v).

(b) The party submitting the annual report must certify that they have been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing GN Docket No. 20–104; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

[76 FR 73877, Nov. 29, 2011, as amended at 77 FR 30915, May 24, 2012; 85 FR 34527, June 5, 2020]

§ 54.1010 Record retention for Mobility Fund Phase I.

A winning bidder authorized to receive Mobility Fund Phase I support and its agents are required to retain any documentation prepared for, or in connection with, the award of Mobility Fund Phase I support for a period of not less than ten (10) years after the date on which the winning bidder receives its final disbursement of Mobility Fund Phase I support.

§ 54.1011 5G Fund.

(a) The Commission will use competitive bidding, as provided in part 1, subpart AA, of this chapter, to determine the recipients of support available through the 5G Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

(b) 5G Fund support will be awarded in two phases using multi-round, descending clock auctions.

(c) Areas eligible for 5G Fund Phase I support will be those areas identified by the Office of Economics and Analytics and Wireline Competition Bureau in a public notice as showing a lack of 4G Long Term Evolution (LTE) and 5G coverage on an unsubsidized basis based on the mobile broadband coverage maps created by the Commission using coverage data submitted in the Digital Opportunity Data Collection pursuant to § 1.7004(c)(3).

(d) The Commission will incorporate an adjustment factor into the 5G Fund auction design that will assign a weight to each geographic area eligible in the 5G Fund Phase I auction using the adjustment factor values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice.

(e) The Commission will incorporate an adjustment factor into the methodology for disaggregation of high-cost legacy support pursuant to § 54.307(e)(5)(iii) and (e)(5)(iv) that will assign a weight to each geographic area using the adjustment factor values adopted by the Office of Economics and Analytics and Wireline Competition Bureau and announced in a public notice.

§ 54.1012 Geographic areas eligible for support.

(a) 5G Fund support will be made available for geographic areas identified as eligible by public notice.

(b) Coverage units for purposes of conducting competitive bidding and disbursing support based on square kilometers will be identified by public notice for each area eligible for support.

§ 54.1013 Applicant eligibility.

(a) An applicant for 5G Fund support shall be an eligible telecommunications carrier in an area in order to receive 5G Fund support for that area. The applicant may obtain its designation as an eligible telecommunications carrier after the close of a 5G Fund auction, provided that the applicant submits proof of its designation within 180 days after the release of the public notice identifying the applicant as a winning bidder. The eligible telecommunications carrier service area of a 5G Fund support recipient will not be required to conform to the service area of the rural telephone company serving the same area. An applicant for 5G Fund support shall not receive such support prior to the submission of proof of its designation as an eligible telecommunications carrier. After such submission, the eligible telecommunications carrier shall receive a balloon payment that will consist of the carrier's monthly 5G Fund support amount multiplied by the number of whole months between the first day of the month after the close of the auction and the issuance of the public notice authorizing the carrier to receive 5G Fund support.

(b) An applicant must have exclusive access to Commission licensed spectrum and sufficient bandwidth in an

area that enables it to satisfy the performance requirements specified in § 54.1015 in order to receive 5G Fund support for that area. The applicant shall describe its access to spectrum as specified in § 54.1014(a)(3) and certify, in a form acceptable to the Commission, that it has such access and sufficient bandwidth (at a minimum, 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) in each area in which it intends to bid for support at the time it applies to participate in competitive bidding, and that it will retain such access for at least ten (10) years after the date on which it is authorized to receive support. A winning bidder that applies for 5G Fund support applicant shall describe its access to spectrum as specified in § 54.1014(b)(2)(v) at the time it applies for support and certify, in a form acceptable to the Commission, that it has such access and sufficient bandwidth (at a minimum, 10 megahertz x 10 megahertz using frequency division duplex (FDD) or 20 megahertz using time division duplex (TDD)) in each area in which it is applying for support, and that it will retain such access for at least ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by the 5G Fund within the ten (10) year support term in each geographic area for which it seeks and is authorized to receive support.

§ 54.1014 Application process.

(a) *Application to participate in competitive bidding for 5G Fund support.* In addition to providing the information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for 5G Fund support shall:

(1) Certify that the applicant is financially and technically capable of meeting the public interest obligations and performance requirements in § 54.1015 in each area for which it seeks support;

(2) Disclose its status as an eligible telecommunications carrier in any area for which it will seek support and associated study area code(s) or as an entity that will file an application to become an eligible telecommunications carrier in any such area after being identified as a winning bidder for such area in a 5G Fund auction, and certify that the disclosure is accurate;

(3) Describe the Commission licensed spectrum to which the applicant has exclusive access that the applicant plans to use to meet its public interest obligations and performance requirements in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent upon receiving support in a 5G Fund auction, the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), the call sign, and the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed, and certify that the description is accurate, that the applicant has access to spectrum in each area for which it intends to bid for support, and that the applicant will retain such access for at least ten (10) years after the date on which it is authorized to receive 5G Fund support;

(4) Submit specified operational and financial information;

(i) Indicate whether the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is a wholly-owned subsidiary of an entity that has been providing such service for at least three years). An applicant for a 5G Fund auction will be deemed to have started providing mobile wireless broadband service on the date it began commercially offering service to end users. If the applicant is applying as a consortium or joint venture, the applicant will be permitted to rely on the length of time a member of the consortium or joint venture has been providing mobile service prior to the short-form application deadline in responding to this question;

(ii) If the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is a wholly-owned subsidiary of an entity that has been providing such service for at least three years), it must:

(A) Certify that the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for at least three years prior to the short-form application deadline (or is a wholly-owned subsidiary of an entity that has been providing such service for at least three years),

(B) Specify the number of years it (or its parent company, if it is a wholly-owned subsidiary) has been providing such service,

(C) Certify that it (or its parent company, if it is a wholly-owned subsidiary) has submitted mobile wireless voice and/or mobile wireless broadband data as required on FCC Form 477 and/or in the Digital Opportunity Data Collection, as applicable, during that time period,

(D) Provide each of the FCC Registration Numbers (FRNs) that the applicant or its parent company (and in the case of a holding company applicant, its operating companies) has used to submit mobile wireless voice and/or mobile wireless broadband data on FCC Form 477 and/or in the Digital Opportunity Data Collection, as applicable, during that time period.

(iii) If the applicant has been providing mobile wireless voice and/or mobile wireless broadband service for fewer than three years prior to the application deadline (or is not a wholly-owned subsidiary of an entity that has been providing such service for at least three years), it must:

(A) submit information concerning its operational history and a preliminary project description as prescribed by the Commission or the Office of Economics and Analytics and the Wireline Competition Bureau in a public notice;

(B) submit a letter of interest from a qualified bank that meets the qualifications set forth in § 54.1016 stating that the bank would provide a letter of credit as described in section to the applicant if the applicant becomes a winning bidder for bids of a certain dollar magnitude, as well as the maximum dollar amount for which the bank would be willing to issue a letter of credit to the applicant; and

(C) submit a statement that the bank would be willing to issue a letter of credit that is substantially in the same form as the Commission's model letter of credit.

(5) Certify that it will be subject to a forfeiture pursuant to § 1.21004 in the event of an auction default; and

(6) Certify that the party submitting the application is authorized to do so on behalf of the applicant.

(b) *Application by winning bidders for 5G Fund support*—(1) *Deadline*. Unless otherwise provided by public notice, winning bidders for 5G Fund support shall file an application for 5G Fund support no later than ten (10) business days after the public notice identifying them as winning bidders.

(2) *Application contents*. An application for 5G 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) Updated information regarding the agreements, arrangements, or understandings related to 5G Fund support disclosed in the application to participate in competitive bidding for 5G Fund support. A winning bidder may also be required to disclose in its application for 5G Fund support the specific terms, conditions, and parties involved in any agreement into which it has entered and the agreement itself;

(iii) Certification that the applicant is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support;

(iv) Proof of the applicant's status as an eligible telecommunications carrier, or a statement that the applicant will become an eligible telecommunications carrier in any area for which it seeks support within 180 days of the public notice identifying them as winning bidders, and certification that the proof is accurate;

(v) A description of the Commission licensed spectrum to which the applicant has exclusive access that the applicant plans to use to meet its public interest obligations and performance requirements in areas for which it is winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, along with any necessary renewal expectancy, the license applicable to the spectrum to be accessed, the type of service covered by the license, the particular frequency band(s), the call sign, and the total amount of bandwidth (in megahertz) to which the applicant has access under the license applicable to the spectrum to be accessed, and certification that the description is accurate, that the winning bidder has access to spectrum in each area for which it is applying for support, and that the applicant will retain such access for the entire ten (10) year 5G Fund support term;

(vi) A detailed project description that describes the network to be built, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the complete project budget, and discusses each specific phase of the project (*e.g.*, network design, construction, deployment, and maintenance), as well as a complete project schedule, including timelines, milestones, and costs;

(vii) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from 5G Fund and that the applicant will comply with all program requirements, including the public interest obligations and performance requirements set forth in § 54.1015;

(viii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit and opinion letter required in § 54.1016, or a written commitment from an acceptable bank, as defined in § 54.1016, to issue such a letter of credit;

(ix) Certification that the applicant will offer services in supported areas at rates that are reasonably comparable to the rates the applicant charges in urban areas;

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

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

(3) *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 nonmaterial 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 winning bidder that may be authorized to receive 5G Fund support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter from its outside legal counsel as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an eligible telecommunications carrier that any applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter from its outside legal counsel as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an eligible

telecommunications carrier no later than ten (10) business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive 5G Fund support.

EFFECTIVE DATE NOTE: At 85 FR 75822, Nov. 25, 2020, § 54.1014 was revised, however, paragraphs (a) and (b)(2) have a delayed effective date.

§ 54.1015 Public interest obligations and performance requirements for 5G Fund support recipients.

(a) *General.* A 5G Fund support recipient shall deploy voice and data services that meet at least the 5G–NR (New Radio) technology standards developed by the 3rd Generation Partnership Project with Release 15, or any successor release that may be adopted by the Office of Economics and Analytics and the Wireline Competition Bureau after notice and comment.

(b) *Interim and final service milestones and deadlines.* A 5G Fund support recipient shall deploy 5G service as specified in paragraph (a) of this section as follows:

(1) *Year three interim service milestone deadline.* A support recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 40 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the third full calendar year following authorization of support.

(2) *Year four interim service milestone deadline.* A support recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 60 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the fourth full calendar year following authorization of support.

(3) *Year five interim service milestone deadline.* A recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 80 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the fifth full calendar year following authorization of support.

(4) *Year six final service milestone deadline.* A support recipient shall deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 85 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the sixth full calendar year following funding authorization. In addition, a recipient shall deploy service meeting the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 75 percent of the total square kilometers associated with every census tract or census block group for which it was authorized to receive 5G Fund support no later than December 31 of the sixth full calendar year following authorization of support.

(5) *Optional year two interim service milestone deadline.* A support recipient may, at its option, deploy service that meets the 5G Fund performance requirements as specified in paragraph (c) of this section to at least 20 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive 5G Fund support in a state no later than December 31 of the second full calendar year following funding authorization. Meeting this optional interim service milestone would permit the support recipient, after confirmation of the service deployment by the Administrator, to reduce its letter of credit so that it is valued at an amount equal to one year of support as described in § 54.1016(a)(1)(v).

(c) *Performance requirements.* A recipient authorized to receive 5G Fund support shall meet the following minimum baseline performance requirements for data speeds, data latency, and data allowances in areas where it receives support:

(1) Median of 35 Mbps download and 3 Mbps upload, and with at least 90 percent of measurements recording data transmission rates of not less than 7 Mbps download and 1 Mbps upload; and

(2) Transmission latency of 100 milliseconds or less round trip for successfully transmitted measurements (*i.e.*, ignoring lost or timed-out packets), with at least 90 percent of measurements recording latency of 100 milliseconds or less round trip.

(3) At least one service plan offered must include a data allowance that is equivalent to the average United States subscriber data usage as specified by public notice.

(d) *Collocation obligations.* During the 5G Fund support term, a recipient authorized to receive 5G Fund support shall allow for reasonable collocation by other carriers of services that would meet the technological requirements of the 5G Fund on all newly constructed cell-site infrastructure constructed with universal service funds that it owns or manages in the area(s) for which it receives 5G Fund support. In addition, during the 5G Fund support term, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the newly constructed cell-site infrastructure.

(e) *Voice and data roaming obligations.* A recipient authorized to receive 5G Fund support shall comply with the Commission's voice and data roaming requirements that are currently in effect on networks that are built with 5G Fund support.

(f) *Reasonably comparable rates.* A recipient authorized to receive 5G Fund support shall offer its services in the areas for which it is authorized to receive support at rates that are reasonably comparable to those rates offered in urban areas and must advertise the voice and broadband services it offers in its subsidized service areas. A 5G Fund support recipient's rates shall be considered reasonably comparable to urban rates, based upon the most recently available decennial U.S. Census Bureau data identifying areas as urban, if rates for services in rural areas fall within a reasonable range of urban rates for reasonably comparable voice and broadband services.

(1) If the recipient offers service in urban areas, it may demonstrate that it offers reasonably comparable rates if it offers the same rates, terms, and conditions (including usage allowances, if any, for a specific rate) in both urban and rural areas or if one of the carrier's rural stand-alone voice service plans and one rural service plan offering data are substantially similar to plans it offers in urban areas.

(2) If the recipient does not offer service in urban areas, it may demonstrate that it offers reasonably comparable rates by identifying a carrier that does offer service in urban areas and the specific rate plans to which its rural plans are reasonably comparable, along with submission of corroborating evidence that its rates are reasonably comparable, such as marketing materials from the identified carrier.

(g) *Liability for failure to comply with performance requirements and public interest obligations.* A support recipient that fails to comply with the performance requirements set forth in paragraph (c) of this section is subject to the non-compliance measures set forth in § 54.1020. A support recipient that fails to comply with the public interest obligations or any other terms and conditions associated with receiving 5G Fund support may be subject to action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, revocation of eligible telecommunications carrier designation, and suspension or debarment pursuant to § 54.8.

§ 54.1016 Letter of credit.

(a) Before being authorized to receive 5G Fund support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) Each winning bidder that becomes authorized to receive 5G Fund support shall maintain the standby letter of credit in an amount equal to, at a minimum, one year of support, until the Administrator has verified that the support recipient serves at least 85 percent of the eligible square kilometers for which it is authorized to receive

support in a state, and at least 75 percent of the eligible square kilometers in each eligible census tract, by the Year Six Final Service Milestone..

(i) For Year One of a support recipient's support term, it must obtain a letter of credit valued at an amount equal to one year of support.

(ii) For Year Two of a support recipient's support term, it must obtain a letter of credit valued at an amount equal to eighteen months of support.

(iii) For Year Three of a support recipient's support term, it must obtain a letter of credit valued at an amount equal to two years of support.

(iv) For Year Four of a support recipient's support term, and for each year thereafter unless the support recipient is allowed to reduce it pursuant to § 54.1015(b), it must obtain a letter of credit valued at an amount equal to three years of support.

(v) A support recipient may obtain a new letter of credit or renew its existing letter of credit so that it is valued at an amount equal to one year of support once it meets its optional or required service milestones as specified in § 54.1015(b). The recipient may obtain or renew this letter of credit upon verification by the Administrator that it has deployed service that meets the 5G Fund deadlines as specified in § 54.1015(b) and performance requirements as specified in § 54.1015(c). The recipient may maintain its letter of credit at this level for the remainder of its deployment term, so long as the Administrator verifies that the recipient successfully and timely meets its remaining required interim and final service milestones.

(vi) A support recipient that fails to meet its required interim service milestones must obtain a new letter of credit or renew its existing letter of credit valued at an amount equal to its existing letter of credit, plus an additional year of support, up to a maximum of three years of support.

(vii) A support recipient that fails to meet two or more required interim service milestones must maintain a letter of credit valued at an amount equal to three years of support and may be subject to additional noncompliance penalties as set forth in § 54.1020.

(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

(i) Located in the District of Columbia; or

(ii) Located in New York City, New York, or such other branch office agreed to by the Commission, that will accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations; and

(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.

(b) Before being authorized to receive 5G Fund support, a winning bidder shall obtain an opinion letter from its outside 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''), that 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, or the bankruptcy estate of any other winning bidder-related entity requesting issuance of the letter of credit, under section 541 of the Bankruptcy Code.

(c) Authorization to receive 5G Fund support is conditioned upon full and timely performance of all of the performance requirements set forth in § 54.1015(c), and any additional terms and conditions upon which the support was granted.

(1) Failure by a 5G Fund support recipient to meet any of the service milestones set forth in § 54.1015(b) will trigger reporting obligations and the withholding of support as described in § 54.1020. Failure to come into full compliance during the relevant cure period as described in § 54.1020(b)(4)(ii) or § 54.1020(c) will trigger a recovery action by the Administrator set forth in § 54.1020(b)(4)(ii) or § 54.1020(c), as applicable. If the recipient authorized to receive 5G Fund support does not repay the requisite amount of support within six months, the Administrator will be entitled to draw upon the entire amount of the letter of credit and may disqualify the 5G Fund support recipient from the receipt of 5G Fund support or additional universal service support.

(2) The default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau, or its respective designees, which letter, describing the performance default and 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.

EFFECTIVE DATE NOTE: At 85 FR 75822, Nov. 25, 2020, § 54.1016 was revised, however, paragraph (b) has a delayed effective date.

§ 54.1017 5G Fund support disbursements.

(a) A winning bidder of 5G Fund support will be advised by public notice whether it has been authorized to receive support.

(b) 5G Fund support will be disbursed on a monthly basis to a recipient for ten (10) years following the date on which it is authorized to receive support.

(c) If a 5G Fund support recipient fails to comply with the performance requirements of the 5G Fund, the Administrator shall reduce, pause, or freeze, the monthly payments to the recipient until the recipient cures the non-compliance, as provided in § 54.1020. As set forth in § 54.1015(g), if a support recipient fails to comply with the public interest obligations or any other terms and conditions associated with receiving 5G Fund support, it may be subject reductions or suspension of support amounts.

(d) A winning bidder of 5G Fund support may not use such support to fulfill any enforceable commitments with the Commission to deploy 5G service.

§ 54.1018 Annual reports.

(a) A 5G Fund support recipient authorized to receive 5G Fund support shall submit an annual report to the Administrator no later than July 1 of each year after the year in which it was authorized to receive support. Each support recipient shall certify in its annual report that it is in compliance with the public interest obligations, performance requirements, and all of the terms and conditions associated with the receipt of 5G Fund support in order to continue receiving 5G Fund support disbursements.

(b) All 5G Fund support recipients shall supplement the information provided in an annual report to the Administrator within 10 business days from the onset of any reduction in the percentage of the total eligible square kilometers being served in a state after the filing of an annual certification report or in the event of any failure to comply with any of the 5G Fund requirements.

(c) The party submitting the annual report must certify that it has been authorized to do so by the 5G Fund support recipient.

(d) Each annual report shall be submitted solely via the Administrator's online portal.

(1) The Commission and the Administrator shall treat infrastructure data submitted as part of such a report as presumptively confidential.

(2) The Administrator shall make such reports available to the Commission and to the relevant state, territory, and Tribal governmental entities, as applicable.

(e) A 5G Fund support recipient shall have a continuing obligation to maintain the accuracy and completeness of the information provided in its annual reports. Any substantial change in the accuracy or completeness of any annual report must be reported as an update to the submitted annual report within ten (10) business days after the reportable event occurs.

(f) The Commission shall retain the authority to look behind 5G Fund support recipients' annual reports and to take action to address any violations.

EFFECTIVE DATE NOTE: At 85 FR 75822, Nov. 25, 2020, § 54.1018 was revised, however, paragraphs (a), (b) and (c) have a delayed effective date.

§ 54.1019 Interim service and final service milestone reports.

(a) A recipient authorized to receive 5G Fund support shall submit a report to the Administrator on or before March 1 after the third, fourth, fifth, and sixth service milestone deadlines established in § 54.1015(b) demonstrating that it has deployed service meeting the 5G Fund performance requirements specified in § 54.1015(c), which shall include the following:

(1) Certifications to representative data submitted in the Digital Opportunity Data Collection or as part of FCC Form 477, as applicable, demonstrating mobile transmissions to and from the network that establish compliance with the 5G Fund coverage, speed, and latency requirements;

(2) On-the-ground measurement tests to substantiate 5G broadband coverage data:

(i) With at least three tests conducted per square kilometer, measured by overlaying a uniform grid of one square kilometer (1 km by 1 km) on the recipient's submitted in-vehicle 5G coverage maps within the area for which 5G Fund support was awarded;

(ii) For a subset of drive-testable grid cells, such that the minimum percentage of drive-testable grid cells tested equals the minimum percentage of coverage required for each service buildout milestone (*i.e.*, interim milestones of 40 percent, 60 percent, and 80 percent, and the final milestone of 85 percent), with previously reported testing being cumulative; and

(iii) Where a drive-testable grid cell is any grid cell that has more than the *de minimis* amount of total roads specified in a public notice, based upon the most recent roadway data from the U.S. Census Bureau available for this purpose, considering roads classified in the primary road (S1100), secondary road (S1200), local road (S1400), and service drive (S1640) categories.

(3) Detailed cell-site and sector infrastructure information; and

(4) Additional information as required by the Commission in a public notice.

(b) All data submitted and certified to in compliance with a recipient's public interest obligations in the milestone report shall be in compliance with standards set forth in the applicable public notice and shall be certified by a professional engineer.

(c) Each service milestone report shall be submitted solely via the Administrator's online portal.

(d) All data submitted in and certified to in any service milestone report shall be subject to verification by the Administrator for compliance with the 5G Fund performance requirements specified in § 54.1015(c).

EFFECTIVE DATE NOTE: At 85 FR 75822, Nov. 25, 2020, § 54.1019 was revised, however, paragraphs (a)(1) through (a)(4) have a delayed effective date.

§ 54.1020 Non-compliance measures for 5G Fund support recipients.

(a) *General.* A 5G Fund support recipient that has not deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at

least 20 percent of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by the Year Three Interim Service Milestone deadline must notify the Commission and the Administrator within ten (10) business days after the Year Three Interim Service Milestone deadline that it failed to meet this milestone. Upon such notification, the support recipient will be deemed to be in default. The Wireline Competition Bureau will issue a letter evidencing the default and the support recipient will be subject to full support recovery. The provisions of paragraph (b) of this section will not be applicable to such a support recipient.

(b) *Interim service milestones.* A 5G Fund support recipient must notify the Commission, the Administrator, and the relevant state, U.S. Territory, or Tribal government, if applicable, within ten (10) business days after the applicable interim service milestone deadline if it has failed to meet an interim milestone. Upon notification that a support recipient has defaulted on an interim service milestone, the Wireline Competition Bureau will issue a letter evidencing the default. For purposes of determining whether a default has occurred, the support recipient must be offering service meeting the requisite performance requirements specified in § 54.1015(c). The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the 5G Fund support recipient's total monthly 5G Fund support, if applicable, starting the month after issuance of the letter:

(1) *Tier 1.* If a support recipient has a compliance gap of at least five percent but less than 15 percent of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone, the Wireline Competition Bureau will issue a letter to that effect. Starting three months after the issuance of this letter, a support recipient will be required to file a report with the Administrator every three months that identifies the eligible square kilometers to which the support recipient has newly deployed facilities capable of delivering service that meets the requisite 5G Fund performance requirements in the previous quarter. The support recipient must continue to file quarterly reports until it has reported, and the Administrator has verified, that it has reduced the compliance gap to less than five percent of the total square kilometers associated with the eligible areas for which it is authorized to receive support in a state by that interim service milestone and the Wireline Competition Bureau issues a letter to that effect. A support recipient that files a quarterly report late, but within seven days after the due date established by the letter issued by the Wireline Competition Bureau for filing the report, will have its 5G Fund support reduced by an amount equivalent to seven days of support. If a support recipient does not file a report within seven days after the report's due date, it will have its 5G Fund support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction, until such time as the quarterly report is filed.

(2) *Tier 2.* If a support recipient has a compliance gap of at least 15 percent but less than 25 percent of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone, the Administrator will withhold 15 percent of the support recipient's monthly support for that state and the support recipient will be required to file quarterly reports with the Administrator. Once the support recipient has reported, and the Administrator has verified, that it has reduced the compliance gap to less than 15 percent of the required eligible square kilometers for that interim service milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, the Administrator will stop withholding support, and the support recipient will receive all of the support that had been withheld. The support recipient will then move to Tier 1 status.

(3) *Tier 3.* If a support recipient has a compliance gap of at least 25 percent but less than 50 percent of the total

square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone, the Administrator will withhold 25 percent of the support recipient's monthly support for that state and the support recipient will be required to file quarterly reports with the Administrator. Once the support recipient has reported, and the Administrator has verified, that it has reduced the compliance gap to less than 25 percent of the required eligible square kilometers for that interim service milestone for that state, the Wireline Competition Bureau will issue a letter to that effect, and the support recipient will move to Tier 2 or Tier 1 status, as applicable.

(4) *Tier 4.* If a support recipient has a compliance gap of 50 percent or more of the total square kilometers associated with the eligible areas in a state for which it is to have deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) by the interim service milestone:

(i) The Administrator will withhold 50 percent of the support recipient's monthly support for that state and the support recipient will then be required to file quarterly reports with the Administrator. As with the other tiers, as the support recipient reports, and the Administrator verifies, that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau issues a letter to that effect, it will move through the tiers until it reaches Tier 1 (or no longer is out of compliance with the applicable interim service milestone).

(ii) If after having 50 percent of its support withheld for six months, the support recipient has not reported that it is eligible for Tier 3 status (or one of the lower tiers), the Administrator will withhold 100 percent of the support recipient's forthcoming monthly support for that state and will commence a recovery action for a percentage of support that is equal to the support recipient's compliance gap plus 10 percent of the support recipient's support in that state that has been disbursed to that date.

(5) If at any point prior to the Year Six Final Service Milestone the support recipient reports, and the Administrator verifies, that it is eligible for Tier 1 status or that it is no longer out of compliance with the 5G Fund performance requirements specified in § 54.1015(c), it will have its support fully restored and the Administrator will repay any funds that were recovered or withheld.

(c) *Year six final service milestone.* A 5G Fund support recipient must notify the Commission, the Administrator, and the relevant state, U.S. Territory, or Tribal government, if applicable, within 10 business days if it has failed to meet the Year Six Final Milestone. Upon notification that the support recipient has not met the Year Six Final Service Milestone, the support recipient will have twelve months from the date of the Year Six Final Milestone deadline to come into full compliance with this milestone. If the support recipient does not report that it has come into full compliance with the Year Six Final Milestone within twelve months, as verified by the Administrator, the Wireline Competition Bureau will issue a letter to this effect. Recipients of 5G Fund support shall be subject to the following non-compliance measures related to the recovery of support after this grace period:

(1) If a support recipient has deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 80 percent of the total eligible square kilometers in a state, but less than the required 85 percent of the total eligible square kilometers in that state, the Administrator will recover an amount of support that is equal to 1.25 times the average amount of support per square kilometer that the support recipient has received in the state times the number of square kilometers unserved up to the 85 percent requirement;

(2) If a support recipient has deployed service that meets the 5G Fund performance requirements specified in § 54.1015(c) to at least 75 percent, but less than 80 percent, of the total eligible square kilometers in that state, the Administrator will recover an amount of support that is equal to 1.5 times the average amount of support per square

kilometer that the support recipient has received in the state times the number of square kilometers unserved up to the 85 percent requirement, plus 5 percent of the support recipient's total 5G Fund support for the 10 year support term for that state;

(3) If a support recipient has deployed service that meets the 5G Fund performance requirements specified in §54.1015(c) to less than 75 percent of the total eligible square kilometers in a state, the Administrator will recover an amount of support that is equal to 1.75 times the average amount of support per square kilometer that the support recipient has received in the state times the number of square kilometers unserved up to the 85 percent requirement, plus 10 percent of the support recipient's total 5G Fund support for the 10 year support term for that state.

(d) *Additional evidence required at year six final service milestone deadline.* At the Year Six Final Service Milestone deadline, a 5G Fund support recipient is also required to provide evidence, which is subject to verification by the Administrator, that it has provided service that meets the 5G Fund performance requirements specified in §54.1015(c) to at least 75 percent of the total square kilometers for each census tract or census tract group in which it was authorized to receive support. If after the grace period permitted in paragraph (c) of this section the Administrator has not verified based on the evidence provided that the support recipient has provided service that meets the 5G Fund performance requirements specified in §54.1015(c) to at least 75 percent of the total square kilometers for each census tract or census tract group in which it was authorized to receive support, the Administrator will recover an amount of support that is equal to 1.5 times the average amount of support per square kilometer that the support recipient had received in the eligible area times the number of square kilometers unserved within that eligible area, up to the 75 percent requirement.

(e) *Compliance reviews.* If the Administrator determines subsequent to the Year Six Final Service Milestone that a support recipient does not have sufficient evidence to demonstrate that it continues to offer service that meets the 5G Fund performance requirements specified in §54.1015(c) to all of the eligible square kilometers in the state as required by the Year Six Final Service Milestone, the Administrator shall immediately recover a percentage of support from the support recipient as specified in paragraphs (c)(1) through(c)(3) and (d) of this section.

EFFECTIVE DATE NOTE: At 85 FR 75822, Nov. 25, 2020, §54.1020 was revised, however, paragraphs (a), (b), and (c)(1) and (c)(2) have a delayed effective date.

§54.1021 Record retention for the 5G Fund.

A recipient authorized to receive 5G Fund support and its agents are required to retain any documentation prepared for, or in connection with, the award of the 5G Fund support for a period of not less than ten (10) years after the date on which the recipient receives its final disbursement of 5G Fund support.

Subpart M—High Cost Loop Support for Rate-of-Return Carriers

SOURCE: 79 FR 39190, July 9, 2014, unless otherwise noted.

§54.1301 General.

(a) This subpart addresses support for loop-related costs included in §54.1308. The expense adjustment calculated pursuant to this subpart M shall be added to interstate expenses and deducted from state expenses after expenses and taxes have been apportioned pursuant to subpart D of part 36 of this chapter. Beginning January 1, 2012, this subpart will only apply to incumbent local exchange carriers that are rate-of-return carriers not affiliated, as ''affiliated companies'' are defined in §32.9000 of this chapter, with price cap local exchange carriers. Rate-of-return carriers and price cap local exchange carriers are defined pursuant to §54.5 and §61.3(bb) of this chapter, respectively.

(b) The expense adjustment will be computed on the basis of data for a preceding calendar year which may be updated at the option of the carrier pursuant to §54.1306(a).

§ 54.1302 Calculation of incumbent local exchange carrier portion of nationwide loop cost expense adjustment for rate-of-return carriers.

(a) Beginning January 1, 2013, and each calendar year thereafter, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the amount for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 54.1303.

(b) The annual rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall be reduced to reflect the transfer of rural incumbent local exchange carrier access lines that are eligible for expense adjustments pursuant to § 54.1310. The reduction shall equal the amount of the § 54.1310 expense adjustment available to the transferred access lines at the time of the transfer and shall be effective in the next calendar quarter after the access lines are transferred.

(c) Safety net additive support calculated pursuant to § 54.1304, and transferred high-cost support and safety valve support calculated pursuant to § 54.305 of this part shall not be included in the rural incumbent local exchange carrier portion of the annual nationwide loop cost expense adjustment.

§ 54.1303 Calculation of the rural growth factor.

(a) The Rural Growth Factor (RGF) is equal to the sum of the annual percentage change in the United States Department of Commerce's Gross Domestic Product—Chained Price Index (GPD–CPI) plus the percentage change in the total number of rural incumbent local exchange carrier working loops during the calendar year preceding the July 31st filing submitted pursuant to § 54.1305. The percentage change in total rural incumbent local exchange carrier working loops shall be based upon the difference between the total number of rural incumbent local exchange carrier working loops on December 31 of the calendar year preceding the July 31st filing and the total number of rural incumbent local exchange carrier working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to § 54.1305. Loops acquired by rural incumbent local exchange carriers shall not be included in the RGF calculation.

(b) Beginning July 31, 2012, pursuant to § 54.1301(a), the calculation of the Rural Growth Factor shall not include price cap carrier working loops and rate-of-return local exchange carrier working loops of companies that were affiliated with price cap carriers during the calendar year preceding the July 31st filing submitted pursuant to § 54.1305.

§ 54.1304 Calculation of safety net additive.

(a) *Safety net additive support.* Only those local exchange carriers that qualified for safety net additive based on 2011 or prior year costs shall be eligible to receive safety net additive pursuant to paragraph (c) of this section. A local exchange carrier shall not receive safety net additive unless the carrier's realized total growth in Telecommunications Plant in Service (TPIS) was more than 14 percent in 2011 or earlier, pursuant to paragraph (c) of this section.

(b) *Calculation of safety net additive support for companies that qualified based on 2011 or prior year costs.* Safety net additive support is equal to the amount of capped support calculated pursuant to this subpart M in the qualifying year minus the amount of support in the year prior to qualifying for support subtracted from the difference between the uncapped expense adjustment for the study area in the qualifying year minus the uncapped expense adjustment in the year prior to qualifying for support as shown in the following equation: Safety net additive support = (Uncapped support in the qualifying year – Uncapped support in the base year) – (Capped support in the qualifying year – Amount of support received in the base year).

(c) *Operation of safety net additive support for companies that qualified based on 2011 or prior year costs.* (1) In any year

in which the total carrier loop cost expense adjustment is limited by the provisions of § 54.1302, a rate-of-return incumbent local exchange carrier shall receive safety net additive support as calculated in paragraph (b) of this section, if in any study area, the rural incumbent local exchange carrier realizes growth in end of period TPIS, as prescribed in § 32.2001, on a per loop basis, of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.

(2) If paragraph (c)(1) of this section is met, the rural incumbent local exchange carrier must notify the Administrator; failure to properly notify the Administrator of eligibility shall result in disqualification of that study area for safety net additive, requiring the rural incumbent local exchange carrier to again meet the eligibility requirements in paragraph (c)(1) of this section for that study area in a subsequent period.

(3) Upon completion of verification by the Administrator that the study area meets the stated criterion in paragraphs (a), (b), or (c) of this section, the Administrator shall:

(i) Pay to any qualifying rural telephone company safety net additive support for the qualifying study area in accordance with the calculation set forth in paragraph (b) of this section; and

(ii) Continue to pay safety net additive support in any of the four succeeding years in which the total carrier loop expense adjustment is limited by the provisions of § 54.1302. Safety net additive support in the succeeding four years shall be the lesser of:

(A) The sum of capped support and the safety net additive support received in the qualifying year; or

(B) The rural telephone company's uncapped support.

§ 54.1305 Submission of information to the National Exchange Carrier Association (NECA).

(a) In order to allow determination of the study areas and wire centers that are entitled to an expense adjustment pursuant to § 54.1310, each incumbent local exchange carrier (LEC) must provide the National Exchange Carrier Association (NECA) (established pursuant to part 69 of this chapter) with the information listed for each study area in which such incumbent LEC operates, with the exception of the information listed in paragraph (h) of this section, which must be provided for each study area. This information is to be filed with NECA by July 31st of each year. The information provided pursuant to paragraph (i) of this section must be updated pursuant to § 54.1306. Rural telephone companies that acquired exchanges subsequent to May 7, 1997, and incorporated those acquired exchanges into existing study areas shall separately provide the information required by paragraphs (b) through (i) of this section for both the acquired and existing exchanges.

(b) Unseparated, i.e., state and interstate, gross plant investment in Exchange Line Cable and Wire Facilities (C&WF) Subcategory 1.3 and Exchange Line Central Office (CO) Circuit Equipment Category 4.13. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(c) Unseparated accumulated depreciation and noncurrent deferred federal income taxes, attributable to Exchange Line C&WF Subcategory 1.3 investment, and Exchange Line CO Circuit Equipment Category 4.13 investment. These amounts shall be calculated as of December 31st of the calendar year preceding each July 31st filing, and shall be stated separately.

(d) Unseparated depreciation expense attributable to Exchange Line C&WF Subcategory 1.3 investment, and Exchange Line CO Circuit Equipment Category 4.13 investment. This amount shall be the actual depreciation expense for the calendar year preceding each July 31st filing.

(e) Unseparated maintenance expense attributable to Exchange Line C&WF Subcategory 1.3 investment and Exchange Line CO Circuit Equipment Category 4.113 investment. This amount shall be the actual repair expense for the calendar year preceding each July 31st filing.

(f) Unseparated corporate operations expenses, operating taxes, and the benefits and rent proportions of operating expenses. The amount for each of these

categories of expense shall be the actual amount for that expense for the calendar year preceding each July 31st filing. The amount for each category of expense listed shall be stated separately.

(g) Unseparated gross telecommunications plant investment. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(h) Unseparated accumulated depreciation and noncurrent deferred federal income taxes attributable to local unseparated telecommunications plant investment. This amount shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(i) The number of working loops for each study area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. These figures shall be calculated as of December 31st of the calendar year preceding each July 31st filing.

(j) The number of consumer broadband-only loops for each study area, as defined in § 54.901(g), calculated as of December 31st of the calendar year preceding each July 31st filing.

[79 FR 39190, July 9, 2014, as amended at 83 FR 18964, May 1, 2018]

§ 54.1306 Updating Information Submitted to the National Exchange Carrier Association.

(a) Any incumbent local exchange carrier subject to § 54.1301(a) may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to § 54.1305 one or more times annually on a rolling year basis according to the schedule.

(1) Submit data covering the last nine months of the previous calendar year and the first three months of the existing calendar year no later than September 30th of the existing year;

(2) Submit data covering the last six months of the previous calendar year and the first six months of the existing calendar year no later than December 30th of the existing year;

(3) Submit data covering the last three months of the second previous calendar year and the first nine months of the previous calendar year no later than March 30th of the existing year.

(b) [Reserved]

§ 54.1307 Submission of Information by the National Exchange Carrier Association.

(a) On October 1 of each year, the National Exchange Carrier Association (NECA) shall file with the Commission and Administrator the information listed below. Information filed with the Commission shall be compiled from information provided to NECA by telephone companies pursuant to § 54.1305.

(1) The unseparated loop cost for each study area and a nationwide-average unseparated loop cost.

(2) The annual amount of the high cost expense adjustment for each study area, and the total nationwide amount of the expense adjustment.

(3) The dollar amount and percentage of the increase in the nationwide average unseparated loop cost, as well as the dollar amount and percentage increase for each study area, for the previous 5 years, or the number of years NECA has been receiving this information, whichever is the shorter time period.

(b) [Reserved]

§ 54.1308 Study Area Total Unseparated Loop Cost.

(a) For the purpose of calculating the expense adjustment, the study area total unseparated loop cost equals the sum of the following, however, subject to the limitations set forth in § 54.303:

(1) Return component for net unseparated Exchange Line C&WF subcategory 1.3 investment and Exchange Line CO Circuit Equipment Category 4.13 investment. This amount is calculated by deducting the accumulated depreciation and noncurrent deferred Federal income taxes attributable to C&WF Subcategory 1.3 investment and Exchange Line Category 4.13 circuit investment reported pursuant to § 54.1305(b) from the gross investment

in Exchange Line C&WF Subcategory 1.3 and CO Category 4.13 reported pursuant to § 54.1305(a) to obtain the net unseparated C&WF Subcategory 1.3 investment, and CO Category 4.13 investment. The net unseparated C&WF Subcategory 1.3 investment and CO Category 4.13 investment is multiplied by the study area's authorized interstate rate of return.

(2) Depreciation expense attributable to C&WF Subcategory 1.3 investment, and CO Category 4.13 investment as reported in § 54.1305(c).

(3) Maintenance expense attributable to C&WF Subcategory 1.3 investment, and CO Category 4.13 investment as reported in § 54.1305(d).

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 54.1305(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in § 54.1305(a), to the unseparated gross telecommunications plant investment, as reported in § 54.1305(f). Total Corporate Operations Expense for purposes of calculating high-cost loop support payments beginning January 1, 2012 shall be limited to the lesser of § 54.1308(a)(4)(i) or (ii).

(i) The actual average monthly per-loop Corporate Operations Expense; or

(ii) A monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A) through (D) of this section. To the extent that some carriers' corporate operations expenses are disallowed pursuant to these limitations, the national average unseparated cost per loop shall be adjusted accordingly. For the purposes of this paragraph (a)(4)(ii), ''total eligible lines'' refers to working loops as defined by this subpart and consumer broadband-only loops, as defined in § 54.901(g).

(A) For study areas with 6,000 or fewer total eligible lines, the monthly per-loop amount shall be $42.337 − (.00328 × the number of total eligible lines), or, $63,000/the number of total eligible lines, whichever is greater;

(B) For study areas with more than 6,000 but fewer than 17,887 total eligible lines, the monthly per-loop amount shall be $3.007 + (117,990/the number of total eligible lines); and

(C) For study areas with 17,887 or more total eligible lines, the monthly per-loop amount shall be $9.562.

(D) Beginning January 1, 2013, the monthly per-loop amount computed according to paragraphs (a)(4)(ii)(A), (a)(4)(ii)(B), and (a)(4)(ii)(C) of this section shall be adjusted each year to reflect the annual percentage change in the United States Department of Commerce's Gross Domestic Product-Chained Price Index (GDP–CPI).

(b) [Reserved]

[79 FR 39190, July 9, 2014, as amended at 81 FR 24344, Apr. 25, 2016; 83 FR 18964, May 1, 2018]

§ 54.1309 National and study area average unseparated loop costs.

(a) *National average unseparated loop cost per working loop.* Except as provided in paragraphs (c) and (d) of this section, this is equal to the sum of the Loop Costs for each study area in the country as calculated pursuant to § 54.1308(a) divided by the sum of the working loops reported in § 54.1305(h) for each study area in the country. The national average unseparated loop cost per working loop shall be calculated by the National Exchange Carrier Association. Until June 30, 2015 the national average unseparated loop cost for purposes of calculating expense adjustments for rural incumbent local exchange carriers, as that term is defined in § 54.5 is frozen at $240.00.

(1) The national average unseparated loop cost per working loop shall be recalculated by the National Exchange Carrier Association to reflect the September, December, and March update filings.

(2) Each new nationwide average shall be used in determining the additional interstate expense allocation for companies which made filings by the most recent filing date.

(3) The calculation of a new national average to reflect the update filings shall not affect the amount of the additional interstate expense allocation for

companies which did not make an update filing by the most recent filing date.

(b) *Study area average unseparated loop cost per working loop.* This is equal to the unseparated loop costs for the study area as calculated pursuant to § 54.1308(a) divided by the number of working loops reported in § 54.1305(i) for the study area.

(1) If a company elects to, or is required to, update the data which it has filed with the National Exchange Carrier Association as provided in § 54.1306(a), the study area average unseparated loop cost per working loop and the amount of its additional interstate expense allocation shall be recalculated to reflect the updated data.

(2) [Reserved]

(c) Until June 30, 2015, the national average unseparated loop Cost per working loop shall be the greater of:

(1) The amount calculated pursuant to the method described in paragraph (a) of this section; or

(2) An amount calculated to produce the maximum rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment allowable pursuant to § 54.1302(a).

(d) Beginning July 1, 2015, the national average unseparated loop cost per working loop shall be frozen at the national average unseparated loop cost per working loop as recalculated by the National Exchange Carrier Association to reflect the March 2015 update filing.

[79 FR 39190, July 9, 2014, as amended at 80 FR 4479, Jan. 27, 2015]

§ 54.1310 Expense adjustment.

(a) Until June 30, 2015, for study areas reporting 200,000 or fewer working loops pursuant to § 54.1305(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (a)(1) and (2) of this section.

(1) Sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 54.1309(b) in excess of 115 percent of the national average for this cost but not greater than 150 percent of the national average for this cost as calculated pursuant to § 54.1309(a) multiplied by the number of working loops reported in § 54.1305(h) for the study area; and

(2) Seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 54.1309(b) in excess of 150 percent of the national average for this cost as calculated pursuant to § 54.1309(a) multiplied by the number of working loops reported in § 54.1305(h) for the study area.

(b) Beginning July 1, 2015, the expense adjustment for each study area calculated pursuant to paragraph (a) of this section will be adjusted as follows:

(1) If the aggregate expense adjustments for all study areas exceed the maximum rural incumbent local exchange carrier portion of nationwide loop cost expense adjustment allowable pursuant to § 54.1302(a) (the HCLS cap), then each study area's expense adjustment will be reduced by multiplying it by the ratio of the HCLS cap to the aggregate expense adjustments for all study areas.

(2) If the aggregate expense adjustments for all study areas are less than the HCLS cap set pursuant to § 54.1302(a), then the expense adjustments for all study areas pursuant to paragraph (a) of this section shall be recalculated using a cost per loop calculated to produce an aggregate amount equal to the HCLS cap in place of the national average cost per loop.

(c) The expense adjustment calculated pursuant to paragraphs (a) and (b) of this section shall be adjusted each year to reflect changes in the amount of high-cost loop support resulting from adjustments calculated pursuant to § 54.1306(a) made during the previous year. If the resulting amount exceeds the previous year's fund size, the difference will be added to the amount calculated pursuant to paragraphs (a) and (b) of this section for the following year. If the adjustments made during the previous year result in a decrease in the size of the funding requirement, the difference will be subtracted from the amount calculated pursuant to paragraphs (a) and (b) of this section for the following year.

(d) High Cost Loop Support is subject to a reduction as necessary to meet the overall cap on support established by the Commission for support provided

pursuant to this subpart and subpart K of this chapter. Reductions shall be implemented as follows:

(1) On May 1 of each year, the Administrator will publish an annual target amount for High-Cost Loop Support in the aggregate. The target amount shall be the forecasted disbursement amount times a reduction factor. The reduction factor shall be the budget amount divided by the total forecasted disbursement amount for both High Cost Loop Support and Broadband Loop Support for recipients in the aggregate. The forecasted disbursement for High Cost Loop Support is the High Cost Loop Support cap determined pursuant to § 54.1302 as reflected in the most recent annual filing pursuant to § 54.1305.

(2) Each January 1 and July 1, the Administrator shall apply a pro rata reduction to High Cost Loop Support for each recipient of High Cost Loop Support as necessary to achieve the target amount.

(3) This paragraph (d) shall not apply to support provided from July 1, 2017 to June 30, 2018.

[80 FR 4479, Jan. 27, 2015, as amended at 81 FR 24344, Apr. 25, 2016; 83 FR 18965, May 1, 2018; 84 FR 4733, Feb. 19, 2019]

Subpart O—Uniendo a Puerto Rico Fund and Connect USVI Fund

SOURCE: 84 FR 59963, Nov. 7, 2019, unless otherwise noted.

§ 54.1501 Uniendo a Puerto Rico Fund and Connect USVI Fund—Stage 2 for service to fixed locations.

The Commission will use a competitive application process to determine the recipients of high-cost universal service support for offering voice and broadband service to fixed locations, and the amount of support that they may receive from Stage 2 of the fixed Uniendo a Puerto Rico Fund and of the fixed Connect USVI Fund for specific geographic areas in Puerto Rico and the U.S. Virgin Islands, respectively, subject to applicable procedures following the selection of competitive applications.

§ 54.1502 Geographic areas eligible for Stage 2 fixed support.

High-cost universal service support may be made available for Stage 2 of the fixed Uniendo a Puerto Rico Fund and the fixed Connect USVI Fund for all areas of Puerto Rico and the U.S. Virgin Islands, respectively, as announced by public notice.

§ 54.1503 Geographic area and locations to be served by Stage 2 fixed support recipients.

(a) For Stage 2 of the fixed Uniendo a Puerto Rico Fund, proposals will be accepted for each municipio in Puerto Rico.

(b) For Stage 2 of the fixed Connect USVI Fund, proposals will be accepted for one geographic area composed of St. John and St. Thomas islands together, and a second geographic area of St. Croix island.

(c) For both Funds, all locations must be served within each defined geographic area by the deployment milestone as defined in § 54.1506. The number of supported locations will be identified for each geographic area in the territories by public notice.

§ 54.1504 Term of Stage 2 fixed support, phase-down of legacy fixed support, and reporting obligations for phase-down support recipient.

(a) *Term of support.* Support awarded through Stage 2 of the fixed Uniendo a Puerto Rico Fund and of the fixed Connect USVI Fund shall be provided for ten years.

(b) *Phase-down of legacy support.* Stage 2 of the fixed Uniendo a Puerto Rico Fund and of the fixed Connect USVI Fund shall replace the legacy frozen high-cost support for the Territories. Beginning on a date determined by the Wireline Competition Bureau and announced by public notice following authorization of a winning application, frozen support recipient carriers will receive ⅔ frozen fixed support amortized for the first 12 months following the date announced by public

notice; and ⅓ frozen fixed support amortized over the second 12-month period. Beginning June 1, 2023, legacy frozen support recipient carriers that continue receiving phase-down legacy support for use in accordance with applicable rules shall be authorized to continue to receive ⅓ frozen fixed support for the geographic areas in which it was not selected as the winning applicant of the Stage 2 competitive process. The frozen support recipient carriers shall receive a monthly support amount equal to the amortized monthly ⅓ frozen fixed support amount until December 31, 2025, and zero frozen support thereafter.

[84 FR 59963, Nov. 7, 2019, as amended at 88 FR 29000, May 5, 2023]

§ 54.1505 Stage 2 fixed support application process.

(a) *Provider eligibility*. A provider shall be eligible to submit an application for support from Stage 2 of the fixed Uniendo a Puerto Rico Fund or of the fixed Connect USVI Fund if it had its own fixed network and provided broadband service in Puerto Rico or the U.S. Virgin Islands, respectively, according to its June 2018 FCC Form 477 data. A provider must obtain eligible telecommunications carrier designation no later than sixty (60) days after public notice of selection to receive fixed support. Any entity that is awarded support but fails to obtain ETC designation within sixty (60) days shall be considered in default and will not be eligible to receive high-cost funding.

(b) *Application processing*. 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.

(c) *Application format*. All applications must be substantially in the format as specified and announced by the Wireline Competition Bureau.

(1) 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.

(2) 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 nonmaterial information that was inadvertently omitted or was not available at the time the application was submitted.

(3) Applications to which major modifications are made after the deadline for submitting proposals shall be denied. Major modifications may 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.

(d) *Application contents*. In addition to providing information required by the Wireline Competition Bureau, any applicant for support from Stage 2 of the fixed Uniendo a Puerto Rico Fund or of the fixed Connect USVI Fund shall:

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

(2) Submit a detailed network plan and documents evidencing adequate financing for the project;

(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 application; and

(5) 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; and

(6) Provide a letter from a bank meeting the eligibility requirements

outlined in § 54.1508 committing to issue an irrevocable stand-by letter of credit, in the required form, to the winning 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.

(e) *Identification of winning applicant.* After receipt and review of the proposals, a public notice shall identify each winning applicant that may be authorized to receive support from Stage 2 of the fixed Uniendo a Puerto Rico Fund and the fixed Connect USVI Fund support after the winning applicant submits a letter of credit and an accompanying opinion letter, as described in this section, in a form acceptable to the Commission. Each such winning applicant shall submit a letter of credit and accompanying opinion letter in a form acceptable to the Commission no later than the number of days provided by public notice.

(f) *Authorization to receive support.* After receipt of all necessary information, a public notice will identify each winning applicant that is authorized to receive Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed support.

§ 54.1506 Stage 2 fixed support deployment milestones.

Recipients of support from Stage 2 of the fixed Uniendo a Puerto Rico Fund and the fixed Connect USVI Fund must complete deployment to at least 40 percent of supported locations at the end of the third year of support, at least 60 percent at the end of the fourth year, at least 80 percent at the end of the fifth year, and 100 percent by the end of the sixth year. Compliance with the percentage of completion shall be determined based on the total number of supported locations in each geographic area. Recipients will be subject to the notification and default rules in § 54.320(d).

§ 54.1507 Stage 2 public interest obligations for service to fixed locations.

(a) Recipients of Stage 2 Uniendo a Puerto Rico and the Connect USVI Fund fixed 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.

(1) 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.

(2) 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 at or below 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) Support recipients are required to offer broadband service meeting the performance standards as proposed in their selected applications, as follows:

(1) Actual speeds of at least 25 Mbps downstream and 3 Mbps upstream, and a minimum usage allowance of 200 GB per month or an amount 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) Actual speeds of at least 100 Mbps downstream and 20 Mbps upstream and at least 2 terabytes of monthly usage.

(3) Actual speeds of at least 1 Gigabit per second downstream and 500 Mbps upstream and at least 2 terabytes of monthly usage.

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

(1) Low latency recipients 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

(2) High latency recipients 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, and to demonstrate a score of four or higher using the Mean Opinion Score (MOS).

§ 54.1508 Letter of credit for stage 2 fixed support recipients.

(a) *Letter of credit*. Before being authorized to receive support from Stage 2 of the fixed Uniendo a Puerto Rico Fund or the fixed Connect USVI Fund, a winning applicant shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. No later than the number of days provided by public notice, the applicant shall submit a letter from a bank meeting the eligibility requirements outlined in this section committing to issue an irrevocable stand-by letter of credit, in the required form, to the winning 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. The letter of credit must remain open until the recipient has certified it has deployed broadband and voice service meeting the requirements in this subpart to 100% of the required number of locations, and Universal Service Administrative Company (USAC) has verified that the entity has fully deployed.

(b) *Value*. Each recipient authorized to receive the Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed 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 fixed support that has been disbursed and that will be disbursed in the coming year, until the USAC has verified that the recipient met the final service milestone.

(1) 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.

(2) 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 80 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

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

(1) Any United States bank:

(i) That is insured by the Federal Deposit Insurance Corporation; and

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

(2) 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

(3) 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

(4) Any non-United States bank:

(i) 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);

(ii) Has a branch office:

(A) Located in the District of Columbia, or

(B) Located in New York City, New York, or such other branch office agreed to by the Commission, that will

accept a letter of credit presentation from the Administrator via overnight courier, in addition to in-person presentations;

(iii) 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

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

(d) *Bankruptcy opinion letter*. A winning applicant of the Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed 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.

(e) *Authorization for Stage 2 support*. Authorization to receive the Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed 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.

(1) Failure by a Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed support recipient to meet its service milestones as required by § 54.1506 will trigger reporting obligations and the withholding of support as described in § 54.320(c). Failure to come into full compliance within 12 months will trigger a recovery action by the USAC. If the Uniendo a Puerto Rico Fund or Connect USVI Fund Stage 2 fixed support recipient does not repay the requisite amount of support within six months, the USAC will be entitled to draw the entire amount of the letter of credit and may disqualify the Uniendo a Puerto Rico Fund or Connect USVI Fund Stage 2 fixed support recipient from the receipt of any or all universal service support.

(2) A default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau, or the Chief's designee, 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.

[≤84 FR 59963, Nov. 7, 2019, as amended at 85 FR 75828, Nov. 25, 2020]

§ 54.1509 Uniendo a Puerto Rico Fund and the Connect USVI Fund—Stage 2 for mobile service.

(a) *Term of support*. Uniendo a Puerto Rico Fund or the Connect USVI Fund Stage 2 mobile support shall be provided to eligible mobile carriers that elect to make a commitment to its eligible service area for a three-year term to begin on a date determined by the Wireline Competition Bureau.

(b) *Election of support*. Eligible mobile carriers as provided in § 54.1510 shall have a one-time option to elect to participate in Stage 2 of the mobile Uniendo a Puerto Rico Fund and the mobile Connect USVI Fund for the eligible service area. An eligible mobile carrier may elect to receive all or a subset of the Stage 2 support for which it is eligible. FCC will publish the order adopting Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund in the FEDERAL REGISTER. To participate, an eligible provider must submit an election to participate within 30 days following that publication. Each provider must provide to the Commission through the Commission's Electronic Comment Filing System as well as by emailing a copy to *ConnectAmerica@fcc.gov* either a renewal of its Stage 1 certification specifying the number of subscribers (voice or broadband internet access service) it served in the territory as of June 30, 2017; or a new certification specifying the number of subscribers (voice or broadband internet access service) it served in the territory as of June 30, 2017, along with accompanying evidence. Each provider will make two simultaneous elections. First, each provider may elect to receive Stage 2 support for which it is eligible to restore, harden, and expand networks capable of providing 4G LTE or better services.

Second, each provider may elect to receive Stage 2 support for which it is eligible to deploy networks capable of providing 5G service.

(c) *Support amounts.* A carrier exercising the election of support specified in paragraph (b) of this section shall receive a pro rata share of the available mobile support based on the number of subscribers reported in its June 2017 FCC Form 477. Each carrier may receive up to 75% of its eligible pro rata support amount to restore, harden, and expand networks capable of provider 4G LTE or better services meeting the minimum service requirements provided in § 54.1514(b). Each carrier may also elect to receive up to 25% of its eligible pro rata support amount to deploy networks capable of providing 5G service.

(d) *Support payments.* Each eligible mobile provider that elects to participate in Stage 2 of the Uniendo a Puerto Rico Fund or the USVI Connect Fund will receive monthly installments of its pro rata share of mobile support amortized over the three-year support period provided in paragraph (a) of this section. Each recipient's pro rata share will be adjusted according to its election to receive or decline support for 4G LTE or 5G deployment. A mobile provider that fails to meet its commitment to use its eligible support for 4G LTE or 5G deployment shall return an amount equal the unused amount of Stage 2 support to the Administrator within 30 days following the end of the three-year support period.

(e) *Phase-down of legacy support.* An eligible mobile carrier may elect or decline to participate in Stage 2 of the mobile Uniendo a Puerto Rico and/or the mobile Connect USVI Fund. Beginning on a date to be determined by the Bureau and announced by public notice, an eligible mobile carrier that declines to participate in Stage 2 will receive one-half of its prior frozen fixed support amortized for a 12-month period and zero fixed support thereafter.

§ 54.1510 Stage 2 mobile carrier eligibility.

Facilities-based mobile carriers that provided mobile wireless services to consumers in the Territories as reported by their June 2017 FCC Form 477 shall be eligible to participate in Stage 2 of the mobile Uniendo a Puerto Rico Fund and the mobile Connect USVI Fund, respectively.

§ 54.1511 Appropriate uses of Stage 2 mobile support.

Recipients of Uniendo a Puerto Rico and Connect USVI Stage 2 mobile support shall use the support solely for:

(a) Deployment, replacement, and upgrade at 4G LTE or better technological network level, as specified in this part; and

(b) Hardening of 4G LTE or better network facilities to help prevent future damage from natural disasters.

§ 54.1512 Geographic area eligible for Stage 2 mobile support.

Uniendo a Puerto Rico Fund and Connect USVI Fund Stage 2 mobile support may be used for all geographic areas of Puerto Rico or of the U.S. Virgin Islands within a recipient's designated eligible telecommunications carrier service area consistent with the parameters of Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund.

§ 54.1513 Provision of Stage 2 mobile support.

(a) A recipient of Stage 2 mobile support shall commit to, at a minimum, the full restoration of its pre-hurricane network coverage area, as determined by FCC Form 477 reporting standards, at a level of service that meets or exceeds pre-hurricane network levels and at reasonably comparable levels to those services and rates available in urban areas.

(b) Each recipient of Stage 2 mobile support shall demonstrate mobile network coverage that is equal to or greater than 66 percent of its pre-hurricane coverage by the end of year two of the Stage 2 term of support, and that is equal to or greater than 100 percent of its pre-hurricane coverage by the end of year three of the Stage 2 term of support.

§ 54.1514 Stage 2 mobile additional annual reporting.

(a) Each recipient of Stage 2 mobile support shall submit no later than 30 days following the end of the calendar

year reports demonstrating and certifying to the fact that its mobile network coverage is equal to or greater than 66 percent of its pre-hurricane coverage by the end of year two of the Stage 2 term of support and 100 percent of its pre-hurricane coverage by the end of year three of the Stage 2 term of support.

(1) A recipient of Stage 2 mobile support shall submit with the report required by this section the documentation in paragraphs (a)(1)(i) through (iii) of this section in support of its milestone obligations:

(i) Electronic shapefiles site coverage plots illustrating the area reached by mobile services;

(ii) A list of all census blocks in the Territories reached by mobile services; and

(iii) Data received or used from drive, drone, and/or scattered site tests, analyzing network coverage for mobile services.

(2) [Reserved]

(b) Each recipient of Stage 2 mobile support shall report and certify, no later than thirty (30) days following the end of the third year of the Stage 2 term of support for all eligible areas where a provider used Stage 2 support, mobile transmissions supporting voice and data to and from the network meeting or exceeding the following:

(1) For 4G LTE service, outdoor data transmission rates of at least 10 Mbps download/1 Mbps upload, at least one service plan that includes a data allowance of at least 5 GB that is offered to consumers at a rate that is reasonable comparable to similar service plans offered by mobile wireless providers in urban areas, and latency of 100 milliseconds or less round trip; and

(2) For 5G service, outdoor data transmission rates of at least 35 Mbps download/3 Mbps upload and a plan offered to consumers at a rate that is reasonably comparable to similar service plans offered by mobile wireless providers in urban areas.

(c) Each recipient of Stage 2 mobile support shall submit no later than thirty (30) days after the end of the third year of the Stage 2 term of support a certification that it has met the requisite public interest obligations in paragraphs (a) and (b) of this section.

(d) Each recipient of Stage 2 mobile support shall submit no later than thirty (30) days following the end of the calendar year an annual map reporting the network hardening activities undertaken during the prior calendar year. The recipient must submit, along with the map, a detailed narrative description of the network hardening activities identified and of how it made use of the support to facilitate those network hardening activities.

(e) Each recipient that elects to receive Stage 2 mobile support for the deployment of 5G technological networks shall submit an annual certification no later than thirty (30) days after the end of each 12-month period the use of Stage 2 support for the deployment of 5G technology to ensure compliance with its commitment. Each recipient must report the total cost incurred and total amount of Stage 2 support spent related to the deployment of 5G technology during the preceding 12-month period. Each recipient must describe in detail how it used the support for deployment of 5G technology.

(f) Each report shall be submitted to the Office of the Secretary of the Commission, clearly referencing the appropriate docket for the Uniendo a Puerto Rico Fund and the Connect USVI Fund; the Administrator; and the authority in the U.S. Territory, or Tribal governments, as appropriate.

(g) Recipients of Stage 2 mobile support have a continuing obligation to maintain the accuracy and completeness of the information provided in their milestone reports. All recipients of Stage 2 mobile support shall provide information about any substantial change that may be of decisional significance regarding their eligibility for Stage 2 support and compliance with Uniendo a Puerto Rico Fund and the Connect USVI Fund requirements in this section as an update to their milestone report submitted to the entities listed in paragraph (f) of this section. Such notification of a substantial change, including any reduction in the network coverage area being served or any failure to comply with any of the Stage 2 requirements in this part, shall be submitted within ten (10) business days after the reportable event occurs.

(h) In order for a recipient of Stage 2 mobile support to continue to receive mobile support for the following calendar year, it must submit the milestone reports required by this section by the deadlines set forth in paragraphs (a) through (g) of this section.

§ 54.1515 Disaster preparation and response measures.

(a) Each recipient of fixed and mobile support from Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund shall create, maintain, and submit to the Wireline Competition Bureau for its review and approval a detailed Disaster Preparation and Response Plan document that describes and commits to the methods and procedures that it will use, during the period in which it receives Stage 2 support, to prepare for and respond to disasters in the Territories, including detailed descriptions of methods and processes to strengthen infrastructure; to ensure network diversity; to ensure backup power; to monitor its network; and to prepare for emergencies.

(b) Each Stage 2 support recipient shall submit the Disaster Preparation and Response Plan to the Bureau for its review and approval prior to receiving Stage 2 support. The Bureau shall approve submitted Disaster Preparation and Response Plans that are complete and thoroughly address the criteria enumerated in paragraph (a) of this section. The Bureau shall notify the support recipient of deficiencies identified in the Disaster Preparation and Response Plan and withhold authorization to receive funding until the support recipient has cured the deficiencies. Recipients shall materially comply with the representations in the document, once approved.

(c) Recipients shall amend their Disaster Preparation and Response Plan following any material change(s) to internal processes and responsibilities and provide the updated Disaster Preparation and Response Plan to the Bureau within 10 business days following the material change(s).

(d) Stage 2 support recipients shall use the Disaster Information Reporting System for mandatory reporting. (See *www.fcc.gov/general/disaster-information-reporting-system-dirs-0* for more information.)

§ 54.1516 Uniendo a Puerto Rico Fund and the Connect USVI Fund—Transitional support for mobile service.

(a) *Term of support.* Uniendo a Puerto Rico Fund or the Connect USVI Fund transitional mobile support shall be made available to eligible mobile carriers that elect to make a commitment to their eligible service areas for a term of up to 24 months to begin in the month immediately following the end of the carrier's Stage 2 mobile support. The term of support shall end the earlier of either 24 months following a carrier's authorization to begin receiving transitional support or the authorization of support under a long-term funding mechanism subsequently adopted by the Commission providing mobile wireless support in the carrier's respective territory.

(b) *Election of support.* Eligible mobile carriers as provided in § 54.1517 shall have a one-time option to elect to receive transitional mobile support from the Uniendo a Puerto Rico Fund and the Connect USVI Fund for the eligible service area. To participate, an eligible carrier must submit an election to participate within 15 days following publication in the FEDERAL REGISTER of the order adopting transitional mobile support of the Uniendo a Puerto Rico Fund and the Connect USVI Fund. Each carrier must submit its election to receive transitional support to the Commission through the Commission's Electronic Comment Filing System as well as by emailing a copy of its election to *ConnectAmerica@fcc.gov*.

(c) *Support amounts.* An eligible carrier that elects to receive transitional support shall receive a pro rata share of its monthly Stage 2 mobile support as of May 1, 2023. Each eligible carrier may receive 50% of its Stage 2 monthly mobile support amount as of May 1, 2023 in the first 12-month period (months 1–12) of transitional support, and 25% of its current monthly mobile Stage 2 support as if May 1, 2023 in the second 12-month period (months 13–24) of transitional support. However, the provision of monthly transitional support may end prior to the completion

of the 24-month term as provided in subsection (a).

(d) *Return of unused support.* Each eligible mobile carrier that elects to receive transitional support from the Uniendo a Puerto Rico Fund or the USVI Connect Fund will receive monthly installments of its pro rata share of mobile support over the support period provided in subsections (a) and (c). A mobile carrier that fails to use all its eligible transitional mobile support pursuant to section 54.1517 within one year of the end of the support term shall return an amount equal to the unused amount of transitional support to the Administrator within 30 days following the end of the term of support under paragraph (a).

[88 FR 29000, May 5, 2023]

§ 54.1517 Transitional support mobile carrier eligibility.

Facilities-based mobile carriers that are recipients of mobile support from Stage 2 as of May 1, 2023 of the Uniendo a Puerto Rico Fund or the Connect USVI Fund shall be eligible to elect and receive transitional mobile support in the areas where they receive Stage 2 support.

[88 FR 29000, May 5, 2023]

§ 54.1518 Appropriate uses of transitional mobile support.

Recipients of Uniendo a Puerto Rico and Connect USVI transitional mobile support shall use the support to improve the redundancy and resiliency of facilities for 4G LTE or better technologies to help ensure continuity of service by preventing or withstanding damage from disasters, including the maintenance of backup power systems for such networks.

[88 FR 29000, May 5, 2023]

§ 54.1519 Geographic area eligible for transitional mobile support.

Uniendo a Puerto Rico Fund and Connect USVI Fund transitional mobile support may be used for all geographic areas of Puerto Rico or of the U.S. Virgin Islands, respectively, within a recipient's designated eligible telecommunications carrier service area.

[88 FR 29000, May 5, 2023]

§ 54.1520 Provision of transitional mobile support.

A recipient of transitional mobile support shall commit to, at a minimum, maintaining its network coverage area as of June 30, 2023, or 100 percent of its network coverage area prior to Hurricanes Maria and Irma as specified by § 54.1514(a), whichever is greater. The recipient shall also commit to provide a minimum level of service that meets or exceeds network levels and at reasonably comparable levels to those services and rates available in urban areas as required by § 54.1521(a).

[88 FR 29000, May 5, 2023]

§ 54.1521 Transitional mobile support additional annual reporting.

(a) Each recipient of transitional mobile support shall report and certify, no later than thirty (30) days following the end of the calendar year in which it receives such transitional support, that it has met the requisite mobile transmissions supporting voice and data to and from the network meeting or exceeding the following:

(1) For 4G LTE service, outdoor data transmission rates of at least 10 Mbps download/1 Mbps upload, at least one service plan that includes a data allowance of at least 5 GB that is offered to consumers at a rate that is reasonably comparable to similar service plans offered by mobile wireless providers in urban areas, and latency of 100 milliseconds or less round trip; and

(2) For 5G–NR service, outdoor data transmission rates of at least 35 Mbps download/3 Mbps upload and a plan offered to consumers at a rate that is reasonably comparable to similar service plans offered by mobile wireless providers in urban areas.

(b) Each recipient of transitional mobile support shall submit no later than thirty (30) days following the end of the calendar year an annual map reporting the network hardening activities undertaken during the prior calendar year. The recipient must submit, along with the map, a detailed narrative description of the network hardening activities identified and of how it made use of the support to facilitate those network hardening activities.

(c) Each report shall be submitted to the Office of the Secretary of the Commission through the Electronic Comment Filing System clearly referencing the appropriate docket for the Uniendo a Puerto Rico Fund and the Connect USVI Fund; the Administrator; and the authority in the U.S. Territory, or Tribal governments, as appropriate. All filings and certifications shall also be submitted to the Bureau at *ConnectAmerica@fcc.gov*.

(d) Recipients of transitional mobile support have a continuing obligation to maintain the accuracy and completeness of the information provided in their reports. All recipients of transitional mobile support shall provide information about any substantial change that may be of decisional significance regarding their eligibility for transitional support and compliance with Uniendo a Puerto Rico Fund and the Connect USVI Fund requirements as an update to their report submitted to the entities listed in paragraph (c) of this section. Such notification of a substantial change, including any reduction in the network coverage area being served or any failure to comply with any of the transitional support requirements, shall be submitted within ten (10) business days after the reportable event occurs.

(e) In order for a recipient of transitional mobile support to continue to receive transitional mobile support for the second 12-month period, it must submit the reports and certification required by this section by the deadlines set forth above.

[88 FR 29000, May 5, 2023]

§ 54.1522 Security reporting.

By August 31, 2023, support recipients under § 54.1516 shall file their first network security report that identifies and explains the network security controls implemented, their effectiveness in fending off cybersecurity attacks, and how those controls are commensurate with established network security best practices and standards or an established risk management framework. By March 31, 2025, support recipients under § 54.1516 shall file their second network security report, covering the time period between August 31, 2023, and March 1, 2025, that identifies and explains the network security controls implemented, their effectiveness in fending off cybersecurity attacks and how those controls are commensurate with established network security best practices and standards or an established risk management framework.

[88 FR 29000, May 5, 2023]

§ 54.1523 Spending plans for recipients of legacy frozen phase-down support.

(a) *Spending plan submissions for phase-down support recipients*. By July 1, 2023, recipients of support under § 54.1504(b) shall submit a spending plan for its use of that support for redundancy, resiliency, and maintenance measures to the Bureau for approval. Phase-down support shall be suspended if a recipient fails to submit a spending plan by the requisite deadline or fails to receive approval from the Bureau. Recipients of support must submit an updated spending plan if the details in their spending plan change.

(b) *Annual reporting requirements for phase-down support recipients*. By January 31, 2024, 2025, and 2026, recipients of support under § 54.1504(b) shall file with the Commission a report of how they spent phase-down support on resiliency and redundancy measures consistent with the approved spending plan approved under paragraph (a).

(c) Recipients of support under § 54.1504(b) that fail to use all such support consistent with the approved spending plan approved under paragraph (a) by December 31, 2026 shall return an amount equal to the unused amount of support to the Administrator within 30 days of December 31, 2026.

(d) By January 31, 2027 recipients of support under § 54.1504(b) shall file with the Commission a final report of how they spent phase-down support on resiliency and redundancy measures consistent with the approved spending plan approved under paragraph (a).

[88 FR 29000, May 5, 2023]

§ 54.1524 Disaster preparation and response measures; Disaster Information Reporting System.

(a) Each recipient of support under § 54.1504(b) or § 54.1516 shall maintain a Disaster Preparation and Response

Plan document approved by the Bureau for Stage 2 of the Uniendo a Puerto Rico Fund or Connect USVI Fund, as applicable, that describes and commits to the methods and procedures that it will use, during the period in which it receives support under § 54.1516 or § 54.1504(b), to prepare for and respond to disasters in the Territories, including detailed descriptions of methods and processes to strengthen infrastructure; to ensure network diversity; to ensure backup power; to monitor its network; and to prepare for emergencies. If an eligible recipient has not previously submitted a Disaster Preparation and Response Plan that was approved by the Bureau prior to the authorization to receive fixed or mobile support, as applicable, the eligible recipient must submit a Disaster Preparation and Response Plan for Bureau approval by July 1, 2023. Phase-down support shall be suspended if a recipient fails to submit a Disaster Preparation and Response Plan by the requisite deadline or fails to receive approval from the Bureau.

(b) Each recipient of support under § 54.1504(b) or § 54.1516 shall maintain the Disaster Preparation and Response Plan approved by the Bureau for Stage 2 of each funding mechanism that completely and thoroughly address the criteria enumerated in paragraph (a) of this section. Recipients shall materially comply with the representations in the document and shall amend their Disaster Preparation and Response Plan following any material change(s) to internal processes and responsibilities and provide the updated Disaster Preparation and Response Plan to the Bureau within 10 business days following the material change(s).

(c) Each recipient of support under § 54.1504(b) or § 54.1516 shall perform mandatory Disaster Information Reporting System reporting.

(d) A recipient's failure to comply with the requirements of this section may result in the withholding of transitional or phase-down support until the support recipient has cured deficiencies identified by the Bureau.

[88 FR 29000, May 5, 2023]

Subpart P—Emergency Broadband Benefit Program

SOURCE: 86 FR 19560, Apr. 13, 2021, unless otherwise noted.

§ 54.1600 Definitions.

(a) *Broadband internet access service*. The term ''broadband internet access service'' has the meaning given such term in 47 CFR 8.1(b), or any successor regulation.

(b) *Broadband provider*. The term ''broadband provider'' means a provider of broadband internet access service.

(c) *Commission*. The term ''Commission'' means the Federal Communications Commission.

(d) *Connected device*. The term ''connected device'' means a laptop or desktop computer or a tablet.

(e) *Designated as an eligible telecommunications carrier*. The term ''designated as an eligible telecommunications carrier'', with respect to a broadband provider, means the broadband provider is designated as an eligible telecommunications carrier under section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)).

(f) *Direct service*. As used in this subpart, direct service means the provision of service directly to the qualifying low-income consumer.

(g) *Duplicative support*. ''Duplicative support'' exists when an Emergency Broadband Benefit subscriber is receiving two or more Emergency Broadband Benefit services concurrently or two or more subscribers in a household have received a connected device with an Emergency Broadband Benefit discount

(h) *Eligible household*. The term ''eligible household'' means, regardless of whether the household or any member of the household receives support under subpart E of 47 CFR part 54 (or any successor regulation), and regardless of whether any member of the household has any past or present arrearages with a broadband provider, a household in which—

(1) At least one member of the household meets the qualifications 47 CFR 54.409(a) or (b) (or any successor regulation);

(2) At least one member of the household has applied for and been approved to receive benefits under the free and

reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773);

(3) At least one member of the household has experienced a substantial loss of income since February 29, 2020, that is documented by layoff or furlough notice, application for unemployment insurance benefits, or similar documentation or that is otherwise verifiable through the National Verifier or National Lifeline Accountability Database;

(4) At least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) in the current award year, if such award is verifiable through the National Verifier or National Lifeline Accountability Database or the participating provider verifies eligibility under 47 CFR 54.1606(a)(2); or

(5) At least one member of the household meets the eligibility criteria for a participating provider's existing low-income or COVID–19 program, subject to the requirements of 47 CFR 54.1606(a)(2).

(i) *Emergency broadband benefit.* The term ''emergency broadband benefit'' means a monthly discount for an eligible household applied to the actual amount charged to such household, which shall be no more than the standard rate for an internet service offering and associated equipment, in an amount equal to such amount charged, but not more than $50, or, if an internet service offering is provided to an eligible household on Tribal land, not more than $75.

(j) *Emergency period.* The term ''emergency period'' means the period that—

(1) Begins on the date of the enactment of the Consolidated Appropriations Act; and

(2) Ends on the date that is 6 months after the date on which the determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists as a result of COVID–19, including any renewal thereof, terminates.

(k) *Enrollment representative.* An employee, agent, contractor, or subcontractor, acting on behalf of an eligible telecommunications carrier or third-party entity, who directly or indirectly provides information to the Administrator for the purpose of eligibility verification, enrollment, subscriber personal information updates, benefit transfers, or de-enrollment.

(l) *Household.* A ''household'' is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An ''economic unit'' consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.

(m) *Income.* ''Income'' means gross income as defined under section 61 of the Internal Revenue Code, 26 U.S.C. 61, for all members of the household. This means all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 U.S.C. 101 *et seq.*

(n) *Internet service offering.* The term ''internet service offering'' means, with respect to a broadband provider, broadband internet access service provided by such provider to a household, offered in the same manner, and on the same terms, as described in any of such provider's offerings for broadband internet access service to such household, as on December 1, 2020.

(o) *Lifeline qualifying assistance program.* A ''Lifeline qualifying assistance program'' means any of the Federal or Tribal assistance programs the participation in which, pursuant to 47 CFR 54.409(a) or (b), qualifies a consumer for Lifeline service, including Medicaid; Supplemental Nutrition Assistance

Program; Supplemental Security Income; Federal Public Housing Assistance; Veterans and Survivors Pension Benefit; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR).

(p) *National Lifeline Accountability Database*. The ''National Lifeline Accountability Database'' is an electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Commission.

(q) *National Lifeline Eligibility Verifier or National Verifier*. The ''National Lifeline Eligibility Verifier'' or ''National Verifier'' is an electronic and manual system with associated functions, processes, policies and procedures, to facilitate the determination of consumer eligibility for the Lifeline program and Emergency Broadband Benefit Program, as directed by the Commission.

(r) *Participating provider*. The term ''participating provider'' means a broadband provider that—

(1)(i) Is designated as an eligible telecommunications carrier; or

(ii) Meets requirements established by the Commission for participation in the Emergency Broadband Benefit Program and is approved by the Commission under 47 CFR 54.1601(b); and

(2) Elects to participate in the Emergency Broadband Benefit Program.

(s) *Standard rate*. The term ''standard rate'' means the monthly retail rate for the applicable tier of broadband internet access service as of December 1, 2020, excluding any taxes or other governmental fees.

(t) *Tribal lands*. For purposes of this subpart, ''Tribal lands'' include any Federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands—areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et seq., as amended; and any land designated as such by the Commission for purposes of subpart E of 47 CFR part 54 (or any successor regulation) pursuant to the designation process in 47 CFR 54.412.

§ 54.1601 Participating providers.

(a) *Eligible telecommunications carriers*. A broadband provider that is designated as an eligible telecommunications carrier may participate in the Emergency Benefit Broadband Program as a participating provider.

(b) *Other broadband providers*. A broadband provider that is not designated as an eligible telecommunications carrier may seek approval from the Wireline Competition Bureau to participate in the Emergency Broadband Benefit Program as a participating provider.

(1) The Wireline Competition Bureau shall review and act on applications to be designated as a participating provider on an expedited basis. Such applications shall contain:

(i) The states or territories in which the provider plans to participate;

(ii) The service areas in which the provider has the authority, if needed, to operate in each state or territory, but has not been designated an eligible telecommunications carrier; and,

(iii) Certifications and documentation of the provider's plan to combat waste, fraud, and abuse.

(2) Notwithstanding paragraph (b)(1) of this section, the Wireline Competition Bureau shall automatically approve as a participating provider a broadband provider that has an established program as of April 1, 2020, that is widely available and offers internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse. Such applications seeking automatic approval shall contain:

(i) The states or territories in which the provider plans to participate;

(ii) The service areas in which the provider has the authority, if needed, to operate in each state or territory, but has not been designated an Eligible Telecommunications Carrier; and,

(iii) A description, supported by documentation, of the established program

with which the provider seeks to qualify for automatic admission to the Emergency Broadband Benefit Program.

(c) *Election notice.* All participating providers must file an election notice with the Administrator. The election notice must be submitted in a manner and form consistent with the direction of the Wireline Competition Bureau and the Administrator. At a minimum the election notice should contain:

(1) The states or territories in which the provider plans to participate in the Emergency Broadband Benefit Program;

(2) A statement that, in each state or territory, the provider was a ''broadband provider'' as of December 1, 2020;

(3) A list of states or territories where the provider is an existing Eligible Telecommunications Carrier, if any;

(4) A list of states or territories where the provider received Wireline Competition Bureau approval, whether automatic or expedited, to participate, if any;

(5) Whether the provider intends to distribute connected devices;

(6) A description of the internet service offerings for which the provider plans to seek reimbursement in each state or territory; and,

(7) Documentation demonstrating the standard rates for those services in each state; and any other information necessary to establish participating providers in the Administrator's systems.

(d) *Suspension and debarment.* The prohibition on participation and suspension and debarment rules established in 47 CFR 54.8, shall apply to activities associated with or related to the Emergency Broadband Benefit Program.

§ 54.1602 Emergency Broadband Benefit.

(a) The Emergency Broadband Benefit Program shall provide reimbursement to a participating provider for providing a discount on the price of broadband internet access service (and associated equipment), a connected device, or both, to an eligible household during the emergency period.

(b) Participating providers may allow consumers whose households qualify for the Emergency Broadband Benefit Program pursuant to 47 CFR 54.1605, to apply the Emergency Broadband Benefit to any residential service plan that includes broadband internet access service or a bundle of broadband internet access service along with fixed or mobile voice telephony service, text messaging service, or both.

§ 54.1603 Emergency Broadband Benefit Program support amount.

(a) The Emergency Broadband Benefit Program support amount for all participating providers shall equal the actual discount provided to an eligible household off of the actual amount charged to such household, which shall be no more than the standard rate for an internet service offering and associated equipment, but not more than $50.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household, or not more than $75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household on Tribal lands, as defined in 47 CFR 54.1600(t).

(b) A participating provider that, in addition to providing the Emergency Broadband Benefit Program to an eligible household, supplies such household with a connected device may be reimbursed up to $100.00 for such connected device, if the charge to such eligible household is more than $10.00 but less than $50.00 for such connected device, except that a participating provider may receive reimbursement for no more than one (1) connected device per eligible household.

(c) If the amount of funding remaining in the Emergency Broadband Connectivity Fund is less than the total amount of valid reimbursement claims in the Emergency Broadband Benefit Program, the support amount for all participating providers submitting valid reimbursement claims for a month may be less than the full support amount permitted under this section.

§ 54.1604 Participating provider obligation to offer Emergency Broadband Benefit Program.

(a) All participating providers in the Emergency Broadband Benefit Program must make available the Emergency Broadband Benefit Program to qualifying low-income consumers.

(b) All participating providers in the Emergency Broadband Benefit Program are encouraged to:

(1) Publicize the availability of the Emergency Broadband Benefit Program in a manner reasonably designed to reach those likely to qualify for the service.

(2) Indicate on all materials describing the Emergency Broadband Benefit Program, using easily understood language in the dominant languages of the communities the provider serves:

(i) The eligibility requirements for consumer participation;

(ii) That the Emergency Broadband Benefit is non-transferable and is limited to one discount per household;

(iii) The monetary charges to the customer;

(iv) The available upload/download speeds and data caps for the covered services, and a list of connected devices, if any, with descriptions;

(v) The provider's customer service telephone number, which must be prominently displayed on all promotional materials and adequately staffed by customer service representatives; and

(vi) That the Emergency Broadband Benefit Program is a temporary emergency Federal Government benefit program operated by the Federal Communications Commission and, upon its conclusion, customers will be subject to the provider's regular rates, terms, and conditions.

§ 54.1605 Household qualification for Emergency Broadband Benefit Program.

(a) To constitute an eligible household:

(1) The household income as defined in 47 CFR 54.1600(m) must be at or below 135% of the Federal Poverty Guidelines for a household of that size; or

(2) At least one member of the household must receive benefits from one of the following Federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; or Veterans and Survivors Pension Benefit; or

(3) At least one member of the household has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773); or

(4) At least one member of the household has experienced a substantial loss of income since February 29, 2020, that is documented by layoff or furlough notice, application for unemployment insurance benefits, or similar documentation or that is otherwise verifiable through the National Verifier; or

(5) At least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) in the current award year, if such award is verifiable through the National Verifier or the participating provider verifies eligibility under 47 CFR 54.1606(a)(2); or

(6) At least one member of the household meets the eligibility criteria for a participating provider's existing low-income or COVID–19 program, subject to the requirements of 47 CFR 54.1606(a)(2); or

(7) If the household is located on Tribal lands, at least one member of the household participates in one of the following Tribal-specific Federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations.

(b) In addition to meeting the qualifications provided in paragraph (a) of this section, in order to constitute an eligible household, no member of the household may already be receiving an Emergency Broadband Benefit Program discount.

§ 54.1606 Household eligibility determinations.

(a) *Eligibility verification processes.* To verify whether a household is an eligible household, a participating provider shall—

(1) Use the National Verifier; or

(2) Rely upon an alternative verification process of the participating provider, if—

(i) The participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement; and

(ii) Not later than 7 days after receiving the information required under paragraph (a)(2)(i) of this section, the Wireline Competition Bureau—

(A) Determines that the alternative verification process will be sufficient to avoid waste, fraud, and abuse; and

(B) Notifies the participating provider of the determination under paragraph (a)(2)(ii)(A) of this section; or

(3) Rely on a school to verify the eligibility of a household based on the participation of the household in the free and reduced price lunch program or the school breakfast program as described in 47 CFR 54.1600(h)(2). The participating provider must retain documentation demonstrating the school verifying eligibility, the program(s) that the school participates in, the qualifying household, and the program(s) the household participates in.

(b) *Provider policies and procedures.* All participating providers must implement policies and procedures for ensuring that their Emergency Broadband Benefit Program households are eligible to receive the Emergency Broadband Benefit. A provider may not provide a consumer with service that it represents to be Emergency Broadband Benefit-supported service or seek reimbursement for such service, unless and until it has:

(1) Confirmed that the household is an eligible household pursuant to 47 CFR 54.1605;

(2) Completed any other necessary enrollment steps, and;

(3) Securely retained all information and documentation it receives related to the eligibility determination and enrollment, consistent with 47 CFR 54.1611.

(c) *One-Per-Household Worksheet.* If the prospective household shares an address with one or more existing Emergency Broadband Benefit Program subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber must complete a form certifying compliance with the one-per-household rule prior to initial enrollment.

(d) *The National Lifeline Accountability Database.* In order to receive Emergency Broadband Benefit Program support, participating providers must comply with the following requirements:

(1) All participating providers must query the National Lifeline Accountability Database to determine whether a prospective subscriber is currently receiving an Emergency Broadband Benefit-supported service from another participating provider; and whether anyone else living at the prospective subscriber's residential address is currently receiving an Emergency Broadband Benefit-supported service.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber who is not seeking to transfer his or her Emergency Broadband Benefit, is currently receiving an Emergency Broadband Benefit-supported service, the participating provider must not provide and shall not seek or receive Emergency Broadband Benefit reimbursement for that subscriber.

(3) Participating providers may query the National Lifeline Accountability Database only for the purposes provided in paragraphs (e)(1) and (2) of this section, and to determine whether information with respect to its subscribers already in the National Lifeline Accountability Database is correct and complete.

(4) Participating providers must transmit to the National Lifeline Accountability Database in a format prescribed by the Administrator each new and existing Emergency Broadband Benefit Program subscriber's full name; full residential address; date of birth; the telephone number associated with the Emergency Broadband Benefit Program service; the date on which the

Emergency Broadband Benefit Program discount was initiated; the date on which the Emergency Broadband Benefit Program discount was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for the Emergency Broadband Benefit Program.

(5) All participating providers must update an existing Emergency Broadband Benefit Program subscriber's information in the National Lifeline Accountability Database within ten business days of receiving any change to that information, except as described in paragraph (d)(7) of this section.

(6) All participating providers must obtain, from each new and existing subscriber, consent to transmit the subscriber's information. Prior to obtaining consent, the participating provider must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Emergency Broadband Benefit Program, and that failure to provide consent will result in subscriber being denied the Emergency Broadband Benefit.

(7) When a participating provider de-enrolls a subscriber from the Emergency Broadband Benefit Program, it must transmit to the National Lifeline Accountability Database the date of Emergency Broadband Benefit Program de-enrollment within one business day of de-enrollment.

(8) All participating providers must securely retain subscriber documentation that the participating provider reviewed to verify subscriber eligibility, for the purposes of production during audits or investigations or to the extent required by National Lifeline Accountability Database or National Verifier processes, which require, inter alia, verification of eligibility, identity, address, and age.

(9) A participating provider must not enroll or claim for reimbursement a prospective subscriber in the Emergency Broadband Benefit Program if the National Lifeline Accountability Database or National Verifier cannot verify the subscriber's status as alive, unless the subscriber produces documentation to demonstrate his or her identity and status as alive.

(e) *Connected device reimbursement and the National Lifeline Accountability Database.* In order to receive Emergency Broadband Benefit Program reimbursement for a connected device, participating providers must comply with the following requirements:

(1) Such participating provider must query the National Lifeline Accountability Database to determine whether a prospective connected device benefit recipient has previously received a connected device benefit.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber has received a connected device benefit, the participating provider must not seek a connected device reimbursement for that subscriber.

(3) Such participating provider shall not seek a connected device reimbursement for a subscriber that is not receiving the Emergency Broadband Benefit for service provided by the same participating provider.

(4) Where two or more participating providers file a claim for a connected device reimbursement for the same subscriber, only the participating provider whose information was received and processed by the National Lifeline Accountability Database or Lifeline Claims System first, as determined by the Administrator, will be entitled to a connected device reimbursement for that subscriber.

(5) All participating providers must obtain from each subscriber consent to transmit the information required under paragraph (e)(1) of this section. Prior to obtaining consent, the participating provider must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Emergency Broadband Benefit Program connected device benefit, and that failure to provide consent will result in the subscriber being denied the Emergency

Broadband Benefit Program connected device benefit.

§ 54.1607 Enrollment representative registration.

Enrollment representative registration. A participating provider must require that enrollment representatives register with the Administrator before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.

(a) As part of the registration process, participating providers must require that all enrollment representatives provide the Administrator with identifying information, which may include first and last name, date of birth, the last four digits of his or her social security number, email address, and residential address. Enrollment representatives will be assigned a unique identifier, which must be used for:

(1) Accessing the National Lifeline Accountability Database;

(2) Accessing the National Verifier;

(3) Accessing any eligibility database; and

(4) Completing any Emergency Broadband Benefit Program enrollment or verification forms.

(b) Participating providers must ensure that enrollment representatives shall not use another person's unique identifier to enroll Emergency Broadband Benefit Program subscribers, recertify Emergency Broadband Benefit Program subscribers, or access the National Lifeline Accountability Database or National Verifier.

(c) Participating providers must ensure that enrollment representatives shall regularly recertify their status with the Administrator to maintain their unique identifier and maintain access to the systems that rely on a valid unique identifier. Participating providers must also ensure that enrollment representatives shall update their registration information within 30 days of any change in such information.

§ 54.1608 Reimbursement for providing Emergency Broadband Benefit Program discount.

(a) Emergency Broadband Benefit Program support for providing a qualifying broadband internet access service shall be provided directly to a participating provider based on the number of actual qualifying low-income households listed in the National Lifeline Accountability Database that the participating provider serves directly as of the first of the month.

(b) For each eligible household receiving Emergency Broadband Benefit-supported service, the reimbursement amount shall equal the appropriate support amount as described in 47 CFR 54.1603, except as otherwise provided by 47 CFR 54.1603(c). The participating provider's Emergency Broadband Benefit Program reimbursement shall not exceed the participating provider's standard rate for that offering.

(c) A participating provider offering an Emergency Broadband Benefit Program service with a standard rate that does not require the participating provider to assess and collect a monthly fee from its subscribers must certify that every subscriber claimed has used their supported service, as defined by 47 CFR 54.407(c)(2), at least once during the service month being claimed prior in order to claim that subscriber for reimbursement in that month.

(d) A participating provider that, in addition to providing the Emergency Broadband Benefit to an eligible household, provides such household with a connected device may be reimbursed up to $100.00 for such connected device, if the charge to such eligible household is more than $10.00 but less than $50.00 for such connected device, except that a participating provider may receive reimbursement for no more than one (1) connected device per eligible household.

(e) In order to receive Emergency Broadband Benefit Program reimbursement, an officer of the participating provider must certify, as part of each request for reimbursement, that:

(1) The officer is authorized to submit the request on behalf of the participating provider;

(2) The officer has read the instructions relating to reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the Emergency Broadband Benefit Program rules and requirements;

(3) The participating provider is in compliance with all of the rules in this subpart;

(4) The participating provider has obtained valid certification and application forms as required by the rules in this subpart for each of the subscribers for whom it is seeking reimbursement;

(5) The amount for which the participating provider is seeking reimbursement from the Emergency Broadband Connectivity Fund is not more than the standard rate;

(6) Each eligible household for which the participating provider is seeking reimbursement for providing an internet service offering—

(i) Has not been and will not be charged—

(A) For such offering, if the standard rate for such offering is less than or equal to the amount of the emergency broadband benefit for such household; or

(B) More for such offering than the difference between the standard rate for such offering and the amount of the emergency broadband benefit for such household;

(ii) Will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such internet service offering if such household later terminates such contract;

(iii) Was not, after the date of the enactment of the Consolidated Appropriations Act, subject to a mandatory waiting period for such internet service offering based on having previously received broadband internet access service from such participating provider; and

(iv) Will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other customers.

(7) Each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device was charged by the provider more than $10.00 but less than $50.00 for such connected device;

(8) That the connected device claimed meets the Commission's requirements, that the reimbursement claim amount reflects the market value of the device, and that the connected device has been delivered to the household;

(9) The process used by the participating provider to verify that a household is eligible for the Emergency Broadband Benefit Program, if the provider elects an alternative verification process and that such verification process was designed to avoid waste, fraud, and abuse.

(10) The provider has retained the relevant supporting documents that demonstrate the connected devices requested are eligible for reimbursement;

(11) All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through the Emergency Broadband Benefit Program, and are subject to audit;

(12) The provider neither received nor paid kickbacks, as defined by 41 U.S.C. 8701, in connection with the Emergency Broadband Benefit Program;

(13) The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to officer by employees responsible for the information being submitted;

(14) The officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject the officer to criminal, civil, or administrative penalties for fraud, false statements, false claims, or otherwise. (18 U.S.C. 286–287, 1001, 1341, 31 U.S.C. 3729–3730, 3801–3812.); and

(15) No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any Federal program.

(f) In order to receive Emergency Broadband Benefit Program reimbursement, a participating provider must keep accurate records of the revenues it forgoes in providing Emergency Broadband Benefit-supported services. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals

as directed by the Administrator or as provided in this subpart.

(g) In order to receive reimbursement, participating providers shall submit certified reimbursement claims through Lifeline Claims System by the 15th of each month, or the following business day in the event the 15th is a holiday or falls on a weekend. If the participating provider fails to submit a certified reimbursement claim by the deadline for that month, the reimbursement claim will not be processed.

§ 54.1609 De-enrollment from the Emergency Broadband Benefit Program.

(a) *De-enrollment generally*. If a participating provider has a reasonable basis to believe that an Emergency Broadband Benefit Program subscriber does not meet or no longer meets the criteria to be considered an eligible household under 47 CFR 54.1605, the participating provider must notify the subscriber of impending termination of his or her Emergency Broadband Benefit discount. Notification of impending termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. The participating provider must allow a subscriber 30 days following the date of the impending termination letter to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the National Verifier or the participating provider consistent with the participating provider's approved alternative verification process. A participating provider must de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's deadline to respond.

(b) *De-enrollment for duplicative support*. Notwithstanding paragraph (a) of this section, upon notification by the Administrator to any participating provider that a subscriber is receiving the Emergency Broadband Benefit discount from another participating provider, or that more than one member of a subscriber's household is receiving the Emergency Broadband Benefit discount and that the subscriber should be de-enrolled from participation in that provider's Emergency Broadband Benefit program, the participating provider must de-enroll the subscriber from participation in that provider's Emergency Broadband Benefit discount within five business days. A participating provider shall not claim any de-enrolled subscriber for Emergency Broadband Benefit reimbursement following the date of that subscriber's de-enrollment.

(c) *De-enrollment requested by subscriber*. If a participating provider receives a request from a subscriber to de-enroll, it must de-enroll the subscriber within two business days after the request.

§ 54.1610 Expiration of Emergency Broadband Benefit Program.

(a) Prior to the conclusion of the Emergency Broadband Benefit Program, the Administrator will notify participating providers of the projected final service month for which participating providers will be eligible to receive reimbursement for valid reimbursement claims submitted pursuant to 47 CFR 54.1608. In that final month when valid reimbursement claims exceed remaining funds, the amount disbursed for both service and connected device claims to participating providers will be reduced on a pro-rata basis but will be no less than 50% of the total support amount for timely filed claims for service and connected devices provided to households.

(b) Concurrent with release of the notice by the Administrator pursuant to paragraph (a) of this section, no new households shall be enrolled in the Emergency Broadband Benefit Program.

(c) No later than 15 days after the Administrator provides notice pursuant to paragraph (a) of this section, participating providers shall give notice to subscribers receiving the Emergency Broadband Benefit of the last date or service month that the full benefit will apply to the household's bill, the last date or service month that the partial, final-month benefit will apply to their bill, and the expected rate of the broadband service once the benefit expires.

(d) At least 30 days before the end of the Emergency Broadband Benefit Program, as indicated in the notice sent by the Administrator pursuant to paragraph (a) of this section, participating providers must notify households about the upcoming end to the Emergency Broadband Benefit Program and clearly state that the household will be subject to the participating provider's generally applicable terms and conditions at the conclusion of the Emergency Broadband Benefit Program if the household elects to continue receiving broadband service from the participating provider.

§ 54.1611 Recordkeeping requirements.

Participating providers must maintain records to document compliance with all Commission requirements governing the Emergency Broadband Benefit Program for the six full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Participating providers must maintain the documentation related to the eligibility determination and reimbursement claims for an Emergency Broadband Benefit Program subscriber for as long as the subscriber receives the Emergency Broadband Benefit discount from that participating provider, but for no less than the six full preceding calendar years.

§ 54.1612 Validity of electronic signatures.

(a) For the purposes of this subpart, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(b) For the purposes of this subpart, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

Subpart Q—Emergency Connectivity Fund

SOURCE: 86 FR 29158, May 28, 2021, unless otherwise noted.

§ 54.1700 Terms and definitions.

(a) *Advanced telecommunications and information services.* ''Advanced telecommunications and information services'' are services, as such term is used in section 254(h) of the Communications Act, 47 U.S.C. 254(h).

(b) *Billed entity.* A ''billed entity'' is the entity that remits payment to service providers for equipment and services rendered to eligible schools and libraries.

(c) *Connected devices.* ''Connected devices'' are laptop computers or tablet computers that are capable of connecting to advanced telecommunications and information services. Connected devices do not include desktop computers or smartphones.

(d) *Consortium.* A ''consortium'' is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for Emergency Connectivity Fund support that seeks funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

(e) *COVID–19 emergency period.* The ''COVID–19 emergency period'' has the meaning given the term in title VII, section 7402(d)(5), Public Law 117–2 (the American Rescue Plan Act).

(f) *Educational purposes.* For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students in the case of a school, or integral, immediate, and proximate to the provision of library services to library patrons in the case of a library, qualify as ''educational purposes.''

(g) *Elementary school.* An ''elementary school'' means an elementary school as defined in 20 U.S.C. 7801, a non-profit institutional day or residential school,

including a public elementary charter school, that provides elementary education, as determined under state law.

(h) *Library*. A ''library'' includes:

(1) A public library;

(2) A public elementary school or secondary school library;

(3) A Tribal library;

(4) An academic library;

(5) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this paragraph (h).

(i) *Library consortium*. A ''library consortium'' is any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of this subpart, references to library will also refer to library consortium.

(j) *National school lunch program*. The ''national school lunch program'' is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced-price lunches to economically-disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced-price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

(k) *Secondary school*. A ''secondary school'' means a secondary school as defined in 20 U.S.C. 7801, a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

(l) *Wi-Fi*. ''Wi-Fi'' is a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11.

(m) *Wi-Fi hotspot*. A ''Wi-Fi hotspot'' is a device that is capable of receiving advanced telecommunications and information services, and sharing such services with another connected device through the use of Wi-Fi.

§ 54.1701 Eligible recipients.

(a) *Schools*. (1) Only schools meeting the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.1700, and not excluded under paragraph (a)(2) or (3) of this section shall be eligible for support under this subpart.

(2) Schools operating as for-profit businesses shall not be eligible for support under this subpart.

(3) Schools with endowments exceeding $50,000,000 shall not be eligible for support under this subpart.

(b) *Libraries*. (1) Only libraries eligible for assistance from a state library administrative agency under the Library Services and Technology Act and not excluded under paragraph (b)(2) or (3) of this section shall be eligible for support under this subpart.

(2) A library's eligibility for Emergency Connectivity Fund support shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for support as libraries under this subpart.

(3) Libraries operating as for-profit businesses shall not be eligible for support under this subpart.

(c) *Consortia*. For consortia, reimbursement through the Emergency Connectivity Fund shall apply only to the portion of eligible equipment and services purchased by eligible schools and libraries and used by students, school staff, or library patrons as provided for by this subpart.

§ 54.1702 Emergency Connectivity Fund eligible equipment and services.

(a) *Eligible equipment*. For the purposes of this subpart, the following shall be considered equipment eligible for Emergency Connectivity Fund support:

(1) Wi-Fi hotspots;

(2) Modems;

(3) Routers;

(4) Devices that combine a modem and a router; and

(5) Connected devices.

(b) *Eligible services*. (1) For purposes of this subpart, except as provided in paragraph (b)(2) of this section, services eligible for Emergency Connectivity Fund support shall be commercially-available fixed or mobile broadband internet access services, including those available for purchase by schools and libraries through bulk purchasing arrangements.

(2) For eligible entities unable to provide students, school staff, or library patrons commercially-available fixed or wireless broadband internet access services, services eligible for Emergency Connectivity Fund support shall include the reasonable costs of construction of new networks, including self-provisioned networks included in the Emergency Connectivity Fund eligible services list; and/or the reasonable costs of customer premises equipment to receive datacasting services.

§ 54.1703 Emergency Connectivity Fund competitive bidding requirements.

A school, library, or consortium seeking to participate in the Emergency Connectivity Fund must comply with all applicable state, local, or Tribal procurement requirements for all equipment and services supported by the Emergency Connectivity Fund.

§ 54.1704 Emergency Connectivity Fund gift restrictions.

(a) *Gift restrictions*. (1) Subject to paragraphs (a)(3) and (4) of this section, an eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Emergency Connectivity Fund Program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided in this section. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth $20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this subpart, if the value of these items received by any individual does not exceed $50 from any one service provider per funding year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (a)(2)(ii) of this section.

(2) For purposes of this paragraph (a):

(i) The terms ''school, library, or consortium'' include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the Emergency Connectivity Fund Program, including individuals who prepare, approve, sign or submit Emergency Connectivity Fund Program applications, or other forms related to the Emergency Connectivity Fund Program, or who prepare bids, communicate, or work with Emergency Connectivity Fund Program service providers, Emergency Connectivity Fund Program consultants, or with the Administrator, as well as any staff of such entities responsible for monitoring compliance with the Emergency Connectivity Fund Program; and

(ii) The term ''service provider'' includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph (a) shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any

other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions:

(i) Are motivated solely by a personal relationship;

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium; and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to Emergency Connectivity Fund procurement activities or decisions and are not given by service providers to circumvent Emergency Connectivity Fund Program rules in this subpart.

(b) *COVID–19 pandemic exception*. Any service provider may offer and provide, and any applicant may solicit and accept, broadband connections, devices, networking equipment, or other things of value directly related to addressing remote learning needs of students, school staff, and library patrons due to the COVID–19 pandemic through June 30, 2022.

§ 54.1705 Emergency Connectivity Fund eligible uses.

Eligible equipment and services purchased with Emergency Connectivity Fund support must be used primarily for educational purposes, as defined in § 54.1700.

§ 54.1706 Emergency Connectivity Fund service locations.

(a)(1) Eligible schools and libraries can request and receive support for the purchase of eligible equipment and services for use by:

(i) In the case of a school, students and school staff at locations other than the school; and

(ii) In the case of a library, patrons of the library at locations other than the library.

(2) Service locations may include, but are not limited to, homes, community centers, churches, school buses, bookmobiles, and any other off-campus locations where students, school staff, and library patrons are engaged in remote learning activities.

(b) Eligible schools and libraries cannot request and receive support from the Emergency Connectivity Fund for the purchase of eligible equipment and services for use solely at the school or library during the COVID–19 emergency period. However, some use of eligible equipment, as defined in § 54.1700, and eligible mobile services, purchased for off-campus may be used at the school or library is permitted.

(c) Emergency Connectivity Fund support for eligible equipment and services is limited to no more than one fixed broadband internet access connection per location, and one connected device and one Wi-Fi hotspot device per student, school staff member, or library patron. For purposes of the per-location limitation imposed on fixed broadband internet access services in this paragraph (c), each unit in a multi-tenant environment is a separate location for purposes of this paragraph (c).

§ 54.1707 Emergency Connectivity Fund reasonable support amounts.

Except as provided elsewhere in this subpart, in providing support from the Emergency Connectivity Fund, the Commission shall reimburse 100% of the costs associated with the eligible equipment and/or services, except that any reimbursement of for the costs associated with any eligible equipment or service may not exceed a reasonable support amount as provided in paragraphs (a) and (b) of this section.

(a) Support amounts are limited up to $400 for connected devices and up to $250 for Wi-Fi hotspots.

(b) The Wireline Competition Bureau is delegated authority to provide guidance to the Administrator to assess the reasonableness of requests for other eligible equipment or services, including those identified by the Administrator

as containing costs that are inconsistent with other requests.

§ 54.1708 Emergency Connectivity Fund cap and requests.

(a) *Cap*. (1) The Emergency Connectivity Fund shall have a cap of $7,171,000,000.

(2) $1,000,000 to remain available until September 30, 2030, for the Inspector General of the Commission to conduct oversight of support provided through the Emergency Connectivity Fund.

(3) Not more than 2% of the cap, or approximately $143,420,000, shall be used by the Commission and the Administrator for administration of the Emergency Connectivity Fund.

(b) *Requests*. The Administrator shall implement an initial filing window, covering funding for purchases made between July 1, 2021 and June 30, 2022 for eligible equipment and services provided to students, school staff, and library patrons who would otherwise lack connected devices and/or broadband internet access services sufficient to engage in remote learning. All schools and libraries filing an application within that the initial filing period will have their applications treated as if they were simultaneously received. The initial filing period shall conclude after 45 days. If demand does not exceed available funds for the first filing window, the Wireline Competition Bureau will direct the Administrator to open a second application window for schools and libraries to seek funding for eligible equipment and services schools and libraries previously purchased to address the needs of students, school staff, and library patrons who would otherwise have lacked access to the equipment or services sufficient to engage in these activities during the COVID–19 pandemic. During this second application window, applicants will be able to submit requests for funding for purchases made from March 1, 2020 to June 30, 2021. However, in consideration of the importance of providing support for unconnected students, in the event that demand for prospective support in the first window appears to be far short of meeting current needs, the Commission may consider opening a second prospective window before opening an application window to fund previously purchased eligible equipment and services. If demand does not exceed available funds after the close of the second filing window, the Wireline Competition Bureau may direct the Administrator to open additional filing windows until the funds are exhausted or the emergency period ends, whichever is earlier.

(c) *Rules of distribution*. (1) When the filing window(s) described in paragraph (b) of this section closes, the Administrator shall calculate the total demand for support submitted by applicants during the filing window. If total demand exceeds the total support available, the Administrator shall allocate funds to these requests for support, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries category one discount matrix in § 54.505(c) adjusted to provide a five percent increase for rural schools and libraries, as shown in the following matrix.

TABLE 1 TO PARAGRAPH (c)(1)

% of students eligible for National School Lunch Program	Emergency connectivity fund prioritization matrix	
	Discount level	
	Urban	Rural
< 1	20	30
1–19	40	55
20–34	50	65
35–49	60	75
50–74	80	85
75–100	90	95

(2) Schools and libraries eligible for a 95 percent discount shall receive first priority for the funds. The Administrator shall next allocate funds toward the requests submitted by schools and libraries eligible for an 90 percent discount, then for a 85 percent discount, and shall continue committing funds in the same manner to the applicants at each descending discount level until there are no funds remaining. If the remaining funds are not sufficient to support all of the funding requests within a particular discount level, the Administrator shall allocate funds at that discount level using the percentage of students eligible for the National School Lunch Program.

§ 54.1709 Availability period of the Emergency Connectivity Fund.

The Emergency Connectivity Fund was established by Congress in the United States Treasury through an appropriation of $7.171 billion, to remain available until September 30, 2030.

§ 54.1710 Emergency Connectivity Fund requests for funding.

(a) *Filing of the FCC Form 471.* An eligible school, library, or consortium that includes an eligible school or library seeking to receive Emergency Connectivity Fund support for eligible equipment and services under this subpart shall submit a completed FCC Form 471 to the Administrator.

(1) The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this application on behalf of the above-named applicant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this application has been examined and is true, accurate and complete. I acknowledge that any false statement on this application or on other documents submitted by this applicant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, this applicant is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this application, I certify that the information contained in this application is true, complete, and accurate, and the projected expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The school meets the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.1700, does not operate as for-profit businesses, and does not have endowments exceeding $50 million.

(v) The library or library consortia eligible is for assistance from a State library administrative agency under the Library Services and Technology Act, does not operate as for-profit businesses, and their budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(vi) The school, library, or consortia listed on the FCC Form 471 application has complied with all applicable state, local, or Tribal local laws regarding procurement of services for which support is being sought.

(vii) The school or school consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to students and school staff who would otherwise lack connected devices and/or broadband services sufficient to engage in remote learning.

(viii) The library or library consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to library patrons who have signed and returned a statement that the library patron would otherwise lack access to equipment or services sufficient to meet the patron's educational needs if not for the use of the equipment or service being provided by the library.

(ix) The school, library, or consortia is not seeking Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased and reimbursed in full with other Federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanism.

(x) The applicant or the relevant student, school staff member, or library patron has received, or the applicant has ordered or will order, the equipment and services for which funding is sought.

(xi) The equipment and services the school, library, or consortium purchases or will purchase using Emergency Connectivity Fund support will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.1713.

(xii) The school, library, or consortium will create and maintain an equipment and service inventory as required by § 54.1715.

(xiii) The school, library, or consortium has complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding.

(xiv) The applicant recognizes that it may be audited pursuant to its application, that it will retain for ten years any and all records related to its application, and that, if audited, it shall produce shall records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity.

(xv) No kickbacks, as defined in 41 U.S.C. 8701 and/or 42 U.S.C. 1320a–7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(2) Applicants seeking support for new network construction or end-user equipment for datacasting services through the Emergency Connectivity Fund must also certify under penalty of perjury that they sought service from existing service providers in the relevant area and that such service providers were unable or unwilling to provide broadband internet access services sufficient to meet the remote learning needs of their students, school staff, or library patrons.

(3) All information submitted as part of an FCC Form 471 application shall be treated as public and non-confidential by the Administrator.

(b) *Service substitution.* (1) A request by an applicant to substitute equipment or service for one identified on its FCC Form 471 must be in writing.

(2) The Administrator shall approve such written request where:

(i) The equipment or service has the same functionality; and

(ii) This substitution does not violate any contract provisions or state, local, or Tribal procurement law.

(3) In the event that an equipment or service substitution results in a change in the amount of support, support shall be based on the lower of either the price for the equipment or service for which support was originally requested or the price of the new, substituted equipment or service. Reimbursement for substitutions shall only be provided after the Administrator has approved a written request for substitution.

(c) *Mixed eligibility equipment and services.* If equipment or service includes both ineligible and eligible components, the applicant must remove the cost of the ineligible components of the

equipment or service from the request for funding submitted to the Administrator.

[86 FR 29158, May 28, 2021, as amended at 86 FR 38570, July 22, 2021; 86 FR 41409, Aug. 2, 2021]

§ 54.1711 Emergency Connectivity Fund requests for reimbursement.

(a) *Submission of request for reimbursement (FCC Form 472 or FCC Form 474).* Emergency Connectivity Fund Program reimbursement for the costs associated with eligible equipment and/or services shall be provided directly to an eligible school, library, consortium that includes an eligible school or library, or service provider seeking reimbursement from the Emergency Connectivity Fund Program upon submission and approval of a completed FCC Form 472 (Billed Entity Applicant Reimbursement Form) or a completed FCC Form 474 (Service Provider Invoice) to the Administrator.

(1) The FCC Form 472 shall be signed by the person authorized to submit requests for reimbursement for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this request for reimbursement on behalf of the above-named school, library or consortium and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, the school, library or consortium is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The funds sought in the request for reimbursement are for eligible equipment and/or services that were purchased or ordered in accordance with the Emergency Connectivity Fund Program rules and requirements in this subpart and received by either the school, library, or consortium, or the students, school staff, or library patrons as appropriate.

(v) The portion of the costs eligible for reimbursement and not already paid for by another source was either paid for in full by the school, library, or consortium, or will be paid to the service provider within 30 days of receipt of funds.

(vi) The amount for which the school, library, or consortium is seeking reimbursement from the Emergency Connectivity Fund consistent with the requirements set out in § 54.1707.

(vii) The school, library, or consortium is not seeking Emergency Connectivity Fund reimbursement for eligible equipment and/or services that have been purchased and reimbursed in full with other Federal pandemic relief funding (*e.g.*, the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Emergency Broadband Benefit Program, or other provisions of the American Rescue Plan), targeted state

funding, other external sources of targeted funding, or targeted gifts or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.

(viii) The equipment and services the school, library, or consortium purchased using Emergency Connectivity Fund support will be used primarily for educational purposes as defined in § 54.1700 and that the authorized person is not willfully or knowingly requesting reimbursement for equipment or services that are not being used.

(ix) The equipment and services the school, library, or consortium purchased will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.1713.

(x) The school, library, or consortium recognizes that it may be subject to an audit, inspection or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Emergency Connectivity Fund reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity.

(xi) No kickbacks, as defined in 41 U.S.C. 8701 and/or 42 U.S.C. 1320a–7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(xii) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.

(2) The FCC Form 474 shall be signed by the person authorized to submit requests for reimbursement for the service provider and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this request for reimbursement on behalf of the above-named service provider and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, the service provider is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The funds sought in the request for reimbursement are for eligible equipment and/or services that were purchased or ordered in accordance with the Emergency Connectivity Fund Program rules and requirements in this subpart and received by either the school, library, or consortium, or by students, school staff, or library patrons, as appropriate.

(v) The amount for which the service provider is seeking reimbursement from the Emergency Connectivity Fund is consistent with the requirements set forth in § 54.1707.

(vi) The service provider is not willfully or knowingly requesting reimbursement for services that are not being used.

(vii) The service provider is not seeking Emergency Connectivity Fund reimbursement for eligible equipment and/or services for which it has already been paid.

(viii) The service provider recognizes that it may be subject to an audit, inspection, or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Emergency Connectivity Fund reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity.

(ix) No kickbacks, as defined in 41 U.S.C. 8701 and/or 42 U.S.C. 1320a–7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(x) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.

(b) *Required documentation.* Along with the submission of a completed FCC Form 472 or a completed FCC Form 474, an eligible school, library, consortium that includes an eligible school or library, or service provider seeking reimbursement from the Emergency Connectivity Fund must submit invoices detailing the items purchased or ordered to the Administrator at the time the FCC Form 472 or FCC Form 474 is submitted. Applicants that seek payment from the Emergency Connectivity Fund prior to paying their service provider(s) must also provide verification of payment to the service provider(s) within 30 days of receipt of funds.

(c) *Reimbursement and invoice processing.* The Administrator shall accept and review requests for reimbursement and invoices subject to the invoice filing deadlines provided in paragraph (d) of this section.

(d) *Invoice filing deadline.* Invoices must be submitted to the Administrator within 60 days from the date of a funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of a previously denied or reduced funding; notification by the Administrator of a processed returned funds (or refund) request; or service delivery date, whichever is later.

(e) *Service delivery date.* (1) Except as provided in paragraphs (e)(1)(i) and (ii) of this section, for the initial filing window set forth in § 54.1708(b) and second application filing window, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2023.

(i) If the funding commitment decision letter or a revised funding commitment decision letter approving an appeal, waiver, or post-commitment request for equipment, is received on or after July 1, 2022, the service delivery date for service funding requests is 14 months from the date of that letter or June 30, 2024, whichever date is earlier.

(ii) If the funding commitment decision letter or a revised funding commitment decision letter approving an

appeal, waiver, or post-commitment request for equipment, is received on or after January 1, 2023, the service delivery date for equipment is 180 days from the date of that letter or June 30, 2024, whichever date is earlier.

(2) For the third application filing window and any subsequent filing windows covering funding for purchases made between July 1, 2022, and June 30, 2024, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2024.

[, as amended at 86 FR 41409, Aug. 2, 2021, as amended at 86 FR 70985, Dec. 14, 2021; 87 FR 14181, Mar. 14, 2022; 87 FR 19395, Apr. 4, 2022; 88 FR 36513, June 5, 2023; 88 FR 58511, Aug. 28, 2023]

§ 54.1712 Duplicate support.

Entities participating in the Emergency Connectivity Fund may not seek Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased with or reimbursed in full from other Federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.

§ 54.1713 Treatment, resale, and transfer of equipment.

(a) *Prohibition on resale.* Eligible equipment and services purchased with Emergency Connectivity Fund support shall not be sold, resold, or transferred in consideration of money or any other thing of value, except as provided in paragraph (b) of this section.

(b) *Disposal of obsolete equipment.* Eligible equipment purchased using Emergency Connectivity Fund support shall be considered obsolete if the equipment are at least three years old. Obsolete equipment may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded.

§ 54.1714 Audits, inspections, and investigations.

(a) *Audits.* Schools, libraries, consortia, and service providers shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements in this subpart for the Emergency Connectivity Fund, including those requirements pertaining to what equipment and services are purchased, what equipment and services are delivered, and how equipment and services are being used.

(b) *Inspections and investigations.* Schools, libraries, consortia, and service providers shall permit any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity to enter their premises to conduct inspections for compliance with the statutory and regulatory requirements in this subpart of the Emergency Connectivity Fund.

(c) *Production of records for audits, inspections, and investigations.* Where necessary for compliance with Federal or state privacy laws, Emergency Connectivity Fund participants may produce records regarding students, school staff, and library patrons in an anonymized or deidentified format. When requested by the Administrator or the Commission, as part of an audit or investigation, schools, libraries, and consortia must seek consent to provide personally identification information from a student who has reached the age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

§ 54.1715 Records retention.

(a) *Equipment and service inventory requirements.* Schools, libraries, and consortia shall keep asset and service inventories as follows:

(1) For each connected device or other piece of equipment provided to an individual student, school staff member, or library patron, the asset inventory must identify:

(i) The device or equipment type (*i.e.* laptop, tablet, mobile hotspot, modem, router);

(ii) The device or equipment make/model;

(iii) The device or equipment serial number;

(iv) The full name of the person to whom the device or other piece of equipment was provided; and

(v) The dates the device or other piece of equipment was loaned out and returned to the school or library, or the date the school or library was notified that the device or other piece of equipment was missing, lost, or damaged.

(2) For each connected device or other piece of eligible equipment not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the asset inventory must contain:

(i) The device type or equipment type (*i.e.* laptop, tablet, mobile hotspot, modem, router);

(ii) The device or equipment make/model;

(iii) The device or equipment serial number;

(iv) The name of the school or library employee responsible for that device or equipment; and

(v) The dates the device or equipment was in service.

(3) For services provided to individual students, school staff, or library patrons, the service inventory must contain:

(i) The type of service provided (*i.e.*, DSL, cable, fiber, fixed wireless, satellite, mobile wireless);

(ii) The service plan details, including upload and download speeds and monthly data cap;

(iii) The full name of the person(s) to whom the service was provided;

(iv) The service address (for fixed broadband service only);

(v) The installation date of the service (for fixed broadband service only); and

(vi) The last date of service, as applicable (for fixed broadband service only).

(4) For services not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the service inventory must contain:

(i) The type of service provided (*i.e.*, DSL, cable, fiber, fixed wireless, satellite, mobile wireless);

(ii) The service plan details, including upload and download speeds and monthly data cap;

(iii) The name of the school or library employee responsible for the service;

(iv) A description of the intended service area;

(v) The service address (for fixed broadband service only);

(vi) The installation date of the service (for fixed broadband service only); and

(vii) The last date of service, as applicable (for fixed broadband service only).

(b) *Records retention.* All Emergency Connectivity Fund participants shall retain records related to their participation in the program sufficient to demonstrate compliance with all program rules in this subpart for at least ten (10) years from the last date of service or delivery of equipment.

(c) *Production of records.* All Emergency Connectivity Fund participants shall present such records upon request any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity. When requested by the Administrator or the Commission, schools, libraries, and consortia must seek consent to provide personally identification information from a student who has reached the age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

§ 54.1716 Children's Internet Protection Act certifications.

(a) *Definitions*—(1) *School.* For the purposes of the certification requirements of this section, school means school, school board, school district, local education agency or other authority responsible for administration of a school.

(2) *Library.* For the purposes of the certification requirements of this section, library means library, library board or authority responsible for administration of a library.

(3) *Billed entity*. Billed entity is defined in § 54.1700. In the case of a consortium, the billed entity is the lead member of the consortium.

(4) *Connected devices*. Connected devices are defined in § 54.1700.

(b) *Who is required to make certifications*? (1) A school or library that receives support for internet access, internet service, or internal connections services under the Federal universal service support mechanism for schools and libraries, or internet access or internet service through the Emergency Connectivity Fund, must make such certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(2) A school or library that receives support for connected devices through the Emergency Connectivity Fund and uses internet access or internet service funded through the Federal universal service support mechanism for schools and libraries or through the Emergency Connectivity Fund must make the certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(3) Schools and libraries that are not receiving support for internet access, internet service, or internal connections under the Federal universal service support mechanism for schools and libraries; internet access or internet service through the Emergency Connectivity Fund; or connected devices that do not use internet access or internet service funded through the Federal universal service support mechanism for schools and libraries or the Emergency Connectivity Fund are not subject to the requirements in 47 U.S.C. 254(h) and (l), but must indicate, pursuant to the certification requirements in paragraph (c) of this section, that they are not receiving support for such services or that the connected devices do not use internet access or internet service funded through the Federal universal service support mechanism for schools and libraries or the Emergency Connectivity Fund.

(c) *Certifications required under 47 U.S.C. 254(h) and (1)*. (1) An Emergency Connectivity Fund applicant need not complete additional Children's Internet Protection Act (CIPA) compliance certifications if the applicant has already certified its CIPA compliance for the relevant funding year (*i.e.*, has certified its compliance in an FCC Form 486 or FCC Form 479).

(2) Emergency Connectivity Fund applicants that have not already certified their CIPA compliance for an E-Rate application for the relevant funding year (*i.e.*, have not completed a FCC Form 486 or FCC Form 479), will be required to certify:

(i) That they are in compliance with CIPA requirements under sections 254(h) and (l);

(ii) That they are undertaking the actions necessary to comply with CIPA requirements as part of their request for support through the Emergency Connectivity Fund; or

(iii) If applicable, that the requirements of CIPA do not apply, because the applicant is not receiving support for internet access, internet service, or internal connections under the Federal universal service support mechanism for schools and libraries or internet access or internet service through the Emergency Connectivity Fund, or the connected devices do not use internet access or internet service funded through the Federal universal support mechanism for schools and libraries or the Emergency Connectivity Fund.

(d) *Failure to provide certifications*—(1) *Schools and libraries*. A school or library that knowingly fails to submit certifications as required by this section shall not be eligible for support through the Emergency Connectivity Fund until such certifications are submitted.

(2) *Consortia*. A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire consortium ineligible for support through the Emergency Connectivity Fund.

(3) *Reestablishing eligibility*. At any time, a school or library deemed ineligible for equipment and services under

the Emergency Connectivity Fund because of failure to submit certifications required by this section may reestablish eligibility for support by providing the required certifications to the Administrator and the Commission.

(e) *Failure to comply with the certifications*—(1) *Schools and libraries.* A school or library that knowingly fails to comply with the certifications required by this section must reimburse any funds and support received under the Emergency Connectivity Fund for the period in which there was noncompliance.

(2) *Consortia.* In the case of consortium applications, the eligibility for support of consortium members who comply with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to comply with such requirements.

(3) *Reestablishing compliance.* At any time, a school or library deemed ineligible for support through the Emergency Connectivity Fund for failure to comply with the certification requirements of this section and that has been directed to reimburse the program for support received during the period of noncompliance may reestablish compliance by complying with the certification requirements under this section. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school or library shall be eligible for support through the Emergency Connectivity Fund.

(f) *Waivers based on state or local procurement rules and regulations and competitive bidding requirements.* Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section before the close of the relevant funding year.

§ 54.1717 Administrator of the Emergency Connectivity Fund.

(a) The Universal Service Administrative Company is appointed the permanent Administrator of the Emergency Connectivity Fund and shall be responsible for administering the Emergency Connectivity Fund.

(b) The Administrator shall be responsible for reviewing applications for funding, recommending funding commitments, issuing funding commitment decision letters, reviewing invoices and recommending payment of funds, as well as other administration-related duties.

(c) The Administrator may not make policy, interpret unclear provisions of statutes or rules, or interpret the intent of Congress. Where statutes or the Commission's rules in this subpart are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

(d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the Emergency Connectivity Fund.

(e) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools and libraries.

(f) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the Emergency Connectivity Fund.

(g) The administrator shall provide performance measurements pertaining to the Emergency Connectivity Fund as requested by the Commission by order or otherwise.

(h) The Commission shall have the authority to audit all entities reporting data to the Administrator regarding the Emergency Connectivity Fund. When the Commission, the Administrator, or any independent auditor hired by the Commission or the Administrator, conducts audits of the participants of the Emergency Connectivity Fund, such audits shall be conducted in accordance with generally accepted government auditing standards.

(i) The Commission shall establish procedures to verify support amounts provided by the Emergency Connectivity Fund and may suspend or delay support amounts if a party fails to provide adequate verification of the support amounts provided upon reasonable request from the Administrator.

(j) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the support mechanisms, if its participation in administering the Emergency Connectivity Fund ends. If its participation in administering the Emergency Connectivity Fund ends, the Administrator shall be subject to close-out audits at the end of its term.

§54.1718 Appeal and waiver requests.

(a) *Parties permitted to seek review of Administrator decision.* (1) Any party aggrieved by an action taken by the Administrator must first seek review from the Administrator.

(2) Any party aggrieved by an action taken by the Administrator under paragraph (a)(1) of this section may seek review from the Federal Communications Commission as set forth in paragraph (b) of this section.

(3) Parties seeking waivers of the Commission's rules in this subpart shall seek relief directly from the Commission and need not first file an action for review from the Administrator under paragraph (a)(1) of this section.

(b) *Filing deadlines.* (1) An affected party requesting review of a decision by the Administrator pursuant to paragraph (a)(1) of this section shall file such a request within thirty (30) days from the date the Administrator issues a decision.

(2) An affected party requesting review by the Commission pursuant to paragraph (a)(2) of this section of a decision by the Administrator under paragraph (a)(1) of this section shall file such a request with the Commission within thirty (30) days from the date of the Administrator's decision. Further, any party seeking a waiver of the Commission's rules under paragraph (a)(3) of this section shall file a request for such waiver within thirty (30) days from the date of the Administrator's initial decision, or, if an appeal is filed under paragraph (a)(1) of this section, within thirty days from the date of the Administrator's decision resolving such an appeal.

(3) In all cases of requests for review filed under paragraphs (a)(1) through (3) of this section, the request for review shall be deemed filed on the postmark date. If the postmark date cannot be determined, the applicant must file a sworn affidavit stating the date that the request for review was mailed.

(4) Parties shall adhere to the time periods for filing oppositions and replies set forth in §1.45 of this chapter.

(c) *General filing requirements.* (1) Except as otherwise provided in this section, a request for review of an Administrator decision by the Federal Communications Commission shall be filed with the Federal Communications Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned ''In the Matter of Request for Review by (name of party seeking review) of Decision of Universal Service Administrator'' and shall reference the applicable docket numbers.

(2) A request for review pursuant to paragraphs (a)(1) through (3) of this section shall contain:

(i) A statement setting forth the party's interest in the matter presented for review;

(ii) A full statement of relevant, material facts with supporting affidavits and documentation;

(iii) The question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; and

(iv) A statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(3) A copy of a request for review that is submitted to the Federal Communications Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in §1.47 of this chapter.

(4) If a request for review filed pursuant to paragraphs (a)(1) through (3) of this section alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in § 1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party shall adhere to the time period for filing replies set forth in § 1.45 of this chapter and the requirement for service of documents set forth in § 1.47 of this chapter.

(d) *Review by the Wireline Competition Bureau or the Commission.* (1) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law, or policy shall be considered by the full Commission.

(2) An affected party may seek review of a decision issued under delegated authority by the Wireline Competition Bureau pursuant to the rules set forth in part 1 of this chapter.

(e) *Standard of review.* (1) The Wireline Competition Bureau shall conduct *de novo* review of request for review of decisions issued by the Administrator.

(2) The Federal Communications Commission shall conduct *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Wireline Competition Bureau under delegated authority.

(f) *Emergency Connectivity Fund disbursements during pendency of a request for review and Administrator decision.* When a party has sought review of an Administrator decision under paragraphs (a)(1) through (3) of this section, the Commission shall not process a request for the reimbursement of eligible equipment and/or services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Commission may authorize disbursement of funds for any amount of support that is not the subject of an appeal.

Subpart R—Affordable Connectivity Program

SOURCE: 87 FR 8373, Feb. 14, 2022 unless otherwise noted.

§ 54.1800 Definitions.

(a) *Administrator.* The term ''Administrator'' means the Universal Service Administrative Company.

(b) *Affordable connectivity benefit.* The term ''affordable connectivity benefit'' means a monthly discount for an eligible household, applied to the actual amount charged to such household, in an amount equal to such amount charged, but not more than $30, or, if an internet service offering is provided to an eligible household on Tribal land, not more than $75.

(c) *Broadband internet access service.* The term ''broadband internet access service'' has the meaning given such term in 47 CFR 8.1(b) or any successor regulation.

(d) *Broadband provider.* The term ''broadband provider'' means a provider of broadband internet access service.

(e) *Commission.* The term ''Commission'' means the Federal Communications Commission.

(f) *Connected device.* The term ''connected device'' means a laptop or desktop computer or a tablet.

(g) *Designated as an eligible telecommunications carrier.* The term ''designated as an eligible telecommunications carrier,'' with respect to a broadband provider, means the broadband provider is designated as an eligible telecommunications carrier under section 214(e) of the Communications Act of 1934 (47 U.S.C. 214(e)).

(h) *Direct service.* As used in this subpart, direct service means the provision of service directly to the qualifying low-income consumer.

(i) *Duplicative support.* ''Duplicative support'' exists when an Affordable Connectivity Program subscriber or household is receiving two or more Affordable Connectivity Program services concurrently or two or more subscribers in a household have received a

connected device with an Affordable Connectivity Program discount.

(j) *Eligible household*. The term ''eligible household'' means, regardless of whether the household or any member of the household receives support under subpart E of this Part, and regardless of whether any member of the household has any past or present arrearages with a broadband provider, a household in which—

(1) At least one member of the household meets the qualifications in § 54.409(a)(2) or (b) of this part (or any successor regulation);

(2) The household's income as defined in § 54.1800(k) is at or below 200% of the Federal Poverty Guidelines for a household of that size;

(3) At least one member of the household has applied for and been approved to receive benefits under the free and reduced price lunch program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq*.) or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), or at least one member of the household is enrolled in a school or school district that participates in the Community Eligibility Provision (42 U.S.C. 1759a);

(4) At least one member of the household has received a Federal Pell Grant under section 401 of the Higher Education Act of 1965 (20 U.S.C. 1070a) in the current award year, if such award is verifiable through the National Verifier or National Lifeline Accountability Database or the participating provider verifies eligibility under § 54.1806(a)(2);

(5) At least one member of the household meets the eligibility criteria for a participating provider's existing low-income program, subject to the requirements of § 54.1806(a)(2); or

(6) At least one member of the household receives assistance through the special supplemental nutritional program for women, infants and children established by section 17 of the Child Nutrition Act of 1996 (42 U.S.C. 1786).

(k) *Enrollment representative*. ''Enrollment representative'' means an employee, agent, contractor, or subcontractor, acting on behalf of a participating provider or third-party entity, who directly or indirectly provides information to the Administrator for the purpose of eligibility verification, enrollment, subscriber personal information updates, benefit transfers, or de-enrollment.

(l) *Household*. A ''household'' is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An ''economic unit'' consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.

(m) *Income*. ''Income'' means gross income as defined under section 61 of the Internal Revenue Code, 26 U.S.C. 61, for all members of the household. This means all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 U.S.C. 101 *et seq*.

(n) *Internet service offering*. The term ''internet service offering'' means, with respect to a broadband provider, broadband internet access service provided by such provider to a household.

(o) *Lifeline qualifying assistance program*. A ''Lifeline qualifying assistance program'' means any of the Federal or Tribal assistance programs the participation in which, pursuant to § 54.409(a) or (b), qualifies a consumer for Lifeline service, including Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; Veterans and Survivors Pension Benefit; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR).

(p) *National Lifeline Accountability Database*. The ''National Lifeline Accountability Database'' is an electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Commission.

(q) *National Lifeline Eligibility Verifier or National Verifier*. The ''National Lifeline Eligibility Verifier'' or ''National Verifier'' is an electronic and manual system with associated functions, processes, policies and procedures, to facilitate the determination of consumer eligibility for the Lifeline program and Affordable Connectivity Program, as directed by the Commission.

(r) *Participating provider*. The term ''participating provider'' means a broadband provider that—

(1) Is designated as an eligible telecommunications carrier; or

(2) Meets the requirements established by the Commission for participation in the Affordable Connectivity Program and is approved by the Commission under § 54.1801(b); and

(3) Elects to participate in the Affordable Connectivity Program; and

(4) Has not been removed or voluntarily withdrawn from the Affordable Connectivity Program pursuant to § 54.1801(e).

(s) *Tribal lands*. For purposes of this subpart, ''Tribal lands'' include any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands—areas held in trust for Native Hawaiians by the State of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, *et. seq.*, as amended; and any land designated as such by the Commission for purposes of subpart E of this part pursuant to the designation process in § 54.412.

§ 54.1801 Participating providers.

(a) *Eligible telecommunications carriers*. A broadband provider that is designated as an eligible telecommunications carrier may participate in the Affordable Connectivity Program as a participating provider.

(b) *Other broadband providers*. A broadband provider that is not designated as an eligible telecommunications carrier may seek approval from the Wireline Competition Bureau to participate in the Affordable Connectivity Program as a participating provider.

(1) The Wireline Competition Bureau shall review and act on applications to be designated as a participating provider on an expedited basis. Such applications shall contain:

(i) The states or territories in which the provider plans to participate;

(ii) The service areas in which the provider has the authority, if needed, to operate in each State or territory, but has not been designated an eligible telecommunications carrier; and,

(iii) Certifications of the provider's plan to combat waste, fraud, and abuse, which shall:

(A) Confirm a household's eligibility for the Program through either the National Verifier or a Commission-approved eligibility verification process prior to seeking reimbursement for the respective subscriber;

(B) Follow all enrollment requirements and obtain all certifications as required by the Program, including providing eligible households with information describing the Program's eligibility requirements, one-per-household rule, and enrollment procedures;

(C) Interact with the necessary Administrator systems, including the National Verifier, National Lifeline Accountability Database, and Representative Accountability Database, before submitting claims for reimbursement, including performing the necessary checks to ensure the household is not receiving duplicative benefits within the Program;

(D) De-enroll from the Program any household it has a reasonable basis to believe is no longer eligible to receive the benefit consistent with Program requirements;

(E) Comply with the Program's document retention requirements and agree to make such documentation available to the Commission or USAC, upon request or any entities (for example, auditors) operating on their behalf; and

(F) Agree to the Commission's enforcement and forfeiture authority.

(2) Notwithstanding paragraph (b)(1) of this section, the Wireline Competition Bureau shall automatically approve as a participating provider a broadband provider that has an established program as of April 1, 2020, that is widely available and offers internet service offerings to eligible households and maintains verification processes that are sufficient to avoid fraud, waste, and abuse. Such applications seeking automatic approval shall contain:

(i) The States or territories in which the provider plans to participate;

(ii) The service areas in which the provider has the authority, if needed, to operate in each State or territory, but has not been designated an Eligible Telecommunications Carrier; and,

(iii) A description, supported by documentation, of the established program with which the provider seeks to qualify for automatic admission to the Affordable Connectivity Program.

(c) *Election notice.* All participating providers shall file an election notice with the Administrator. The election notice shall be submitted in a manner and form consistent with the direction of the Wireline Competition Bureau and the Administrator. All participating providers shall maintain up-to-date contact and other administrative information contained in the election notice as designated by the Wireline Competition Bureau and the Administrator. These updates shall be made within 10 business days of the change in designated information contained in the election notice. The election notice shall be made under penalty of perjury or perjury and at a minimum should contain:

(1) The states or territories in which the provider plans to participate in the Affordable Connectivity Program;

(2) A statement that, in each State or territory, the provider was a ''broadband provider;''

(3) A list of states or territories where the provider is an existing Eligible Telecommunications Carrier, if any;

(4) A list of states or territories where the provider received Wireline Competition Bureau approval, whether automatic or expedited, to participate, if any;

(5) Whether the provider intends to distribute connected devices, and if so, documentation and information detailing the equipment, co-pay amount charged to eligible households, and market value of the connected devices in compliance with the rules and orders of the Affordable Connectivity Program; and

(6) Any other information necessary to establish the participating provider in the Administrator's systems.

(d) *Alternative verification process application.* In accordance with § 54.1806(a)(2), all participating providers seeking to verify household eligibility with an alternative verification process shall submit an application in a manner and form consistent with the direction of Wireline Competition Bureau. All participating providers shall maintain up-to-date information contained in the application as designated by the Wireline Competition Bureau. These updates shall be made within 10 business days of the change in designated information. The alternative verification process application shall be made under penalty of perjury and at a minimum should contain:

(1) A description of how the participating provider will collect a prospective subscriber's—

(i) Full name,

(ii) Phone number,

(iii) Date of birth,

(iv) Email address,

(v) Home and mailing addresses,

(vi) Name and date of birth of the benefit qualifying person if different than applicant,

(vii) Household eligibility criteria and documentation supporting verification of eligibility, and

(viii) Certifications from the household that the information included in the application is true.

(2) A description of the process the participating provider uses to verify the required subscriber information contained in paragraph (d)(1) of this section and why this process is sufficient to prevent waste, fraud, and abuse,

(3) A description of the training the participating provider uses for its employees and agents to prevent ineligible enrollments, including enrollments based on fabricated documents,

(4) A description of why any of the criteria contained in paragraphs (d)(1) through (3) of this section is not necessary to prevent waste, fraud, and abuse if any of the criteria are not part of the alternative verification process, and

(5) A description of why the participating provider's established program requires approval of an alternative verification process and why the participating provider proposes to use an alternative verification process instead of the National Verifier for eligibility determinations.

(e) *Voluntary withdrawal or involuntary removal of participating providers from the Affordable Connectivity Program*—(1) *Definitions*. For purposes of this paragraph (e):

(i) *Removal*. Removal means involuntary discontinuation of a provider's participation in the Affordable Connectivity Program pursuant to the process outlined in paragraphs (e)(2)(ii) and (iii) of this section.

(ii) *Suspension*. Suspension means exclusion of a participating provider from activities related to the Affordable Connectivity Program for a temporary period pending completion of a removal proceeding.

(2) *Suspension and removal*—(i) *Suspension and removal in general*. The Commission may suspend and/or remove a participating provider for any of the causes in paragraph (e)(2)(ii) of this section. Suspension or removal of a participating provider constitutes suspension or removal of all its divisions, other organizational elements, and individual officers and employees, unless the Commission limits the application of the suspension or removal to specifically identified divisions, other organizational elements, or individuals or to specific types of transactions.

(ii) *Causes for suspension or removal*. Causes for suspension or removal are any of the following:

(A) Violations of the rules or requirements of the Affordable Connectivity Program, the Emergency Broadband Benefit Program, the Lifeline program, the Emergency Connectivity Fund or successor programs, or any of the Commission's Universal Service Fund programs;

(B) Any action that indicates a lack of business integrity or business honesty that seriously and directly affects the provider's responsibilities under the Affordable Connectivity Program, that undermines the integrity of the Affordable Connectivity Program, or that harms or threatens to harm prospective or existing program participants, including without limitation fraudulent enrollments.

(C) A conviction or civil judgment for attempt or commission of fraud, theft, embezzlement, forgery, bribery, falsification or destruction of records, false statements, receiving stolen property, making false claims, obstruction of justice, or similar offense, that arises out of activities related to the Affordable Connectivity Program, the Emergency Broadband Benefit Program, the Lifeline program, the Emergency Connectivity Fund or successor programs, or any of the Commission's Universal Service Fund programs.

(iii) *Suspension and removal procedures*. The following procedures apply to the suspension and removal of a participating provider:

(A) The Chief of the Wireline Competition Bureau or Enforcement Bureau will commence a removal proceeding by providing to the participating provider a notice via electronic mail and/or U.S. mail setting forth the legal and factual bases for the initiation of the removal proceeding (as well as notice of any interim measures taken under paragraph (e)(2)(iii)(B) of this section and reasons therefor) and informing the provider of its duty to respond within 30 days of the date of the notice.

(B) Concurrent with the issuance of such notice commencing the removal proceeding, or at any time before a final determination in the proceeding is rendered, the Chief of the Wireline Competition Bureau or Enforcement Bureau may, in light of the facts and circumstances set forth in the notice commencing the removal proceeding, and with notice to the provider of this interim measure, direct that the participating provider be removed from

the Commission's list of providers, from the Administrator's Companies Near Me Tool, or from any similar records, and also may direct the Administrator to temporarily suspend the provider's ability to enroll or transfer in new subscribers during the pendency of the removal proceeding. Any such interim actions may be taken only {i} if based upon adequate evidence of willful misconduct that would warrant removal under paragraph (e)(2)(ii) of this section, and {ii} after determining that immediate action is necessary to protect the public interest. In addition, the Chief of the Wireline Competition Bureau or Enforcement Bureau may also direct, with notice to the provider, that an interim funding hold (or partial hold) be placed on the provider upon a determination that there is adequate evidence that the provider's misconduct is likely to cause or has already resulted in improper claims for Affordable Connectivity Program reimbursement and is necessary to protect the public interest. Any funding hold should be tailored in a manner that relates to and is proportionate to the alleged misconduct.

(C) The participating provider shall respond within 30 days of the date of the notice commencing the removal proceeding with any relevant evidence demonstrating that a rule violation or other conduct warranting removal has not in fact occurred and that the provider should not be removed from the Affordable Connectivity Program. Failure to respond or to provide evidence in a timely manner will result in a finding against the provider, removal from the program, and revocation of the provider's authorization to participate in the Affordable Connectivity Program.

(D) Within 30 days of receiving the response, the Chief of the Wireline Competition Bureau or Enforcement Bureau will make a determination and issue an order providing a detailed explanation for the determination. If the Chief of the Wireline Competition Bureau or Enforcement Bureau determines that a preponderance of the evidence fails to demonstrate that there has been conduct warranting removal, then any measures taken under paragraph (e)(2)(iii)(B) of this section will be discontinued immediately. If the Chief of the Wireline Competition Bureau or Enforcement Bureau determines by a preponderance of the evidence that there has been conduct warranting removal, the provider's authorization to participate in the Affordable Connectivity Program will be revoked, and the provider shall be immediately removed from the program. Upon removal from the program, the former participating provider shall be barred from seeking to rejoin, and from participating in, the Affordable Connectivity Program for at least five years, or such longer period as provided for in the order, based upon review of all relevant circumstances. Any such providers will be similarly barred from participation in any Affordable Connectivity Program successor program during the removal period determined under the order.

(E) A provider may request reconsideration of the Bureau Chief's determination under paragraph (e)(2)(iii)(D) of this section or submit a request for review by the full Commission pursuant to the Commission's rules. *See* §§ 1.106, 1.115 of this chapter. A provider may also seek a stay of the Bureau Chief's determination under §§ 1.43 and 1.102(b)(3) of this chapter.

(3) *Voluntary withdrawal.* A participating provider may withdraw its election to participate in the Affordable Connectivity Program by submitting a written notice of voluntary withdrawal to the Administrator at least 90 days before the intended effective date of the withdrawal. The notice of voluntary withdrawal shall include statements that the provider is complying with each of the transition provisions set forth in paragraph (d)(4) of this section.

(4) *Transition provisions for participating providers that are removed or that voluntarily withdraw from the program and their subscribers.* (i) A participating provider shall cease to enroll or transfer in new households or to advertise or market the discounted rates for its services subject to the affordable connectivity benefit—

(A) Immediately upon the effective date of the final removal determination, unless the provider has already been precluded on an interim basis

from transferring in or enrolling new households; or

(B) At least 90 days before the effective date of the provider's voluntary withdrawal from the program.

(ii) A participating provider shall provide notices regarding its removal from the program to its existing eligible household subscribers to which it provides service at discounted rates subject to the affordable connectivity benefit.

(A) The provider shall issue the first notice within 30 days of the removal determination and the second notice at least 15 days before the effective date of the provider's removal from the Affordable Connectivity Program.

(B) Such notices shall include—

(*1*) A statement that the participating provider will be removed from and no longer be participating in the Affordable Connectivity Program;

(*2*) The effective date of the provider's removal from the Affordable Connectivity Program;

(*3*) A statement that upon the effective date of the removal, the service purchased by the eligible household will no longer be available from the provider at the discounted rate subject to the affordable connectivity benefit;

(*4*) The amount that the eligible household will be expected to pay if it continues purchasing the service from the provider after the discounted rate is no longer available;

(*5*) An explanation that in order to continue receiving internet service with an affordable connectivity benefit after the provider has been removed from the program, the eligible household must transfer its affordable connectivity benefit to a different participating provider;

(*6*) Information on how to locate providers participating in the Affordable Connectivity Program, including the web address for USAC's Companies Near Me tool, any provider listing published by the Commission, and other resources as applicable;

(*7*) Instructions on how to find and select a new participating provider and to request such a transfer;

(*8*) The provider's customer service telephone number and the telephone number and email address of the Administrator's Affordable Connectivity Program support center; and

(*9*) Other information as determined by the Wireline Competition Bureau.

(iii) A participating provider shall provide written notices regarding its voluntary withdrawal from the program to its existing eligible household subscribers to which it provides service at discounted rates subject to the affordable connectivity benefit.

(A) The provider shall issue such notices 90 days, 60 days, and 30 days before the effective date of the provider's voluntary withdrawal from the program.

(B) Such notices shall include—

(*1*) The date when the service purchased by the eligible household will no longer be available from the provider at the discounted rate subject to the affordable connectivity benefit;

(*2*) The amount that the eligible household will be expected to pay if it continues purchasing the service from the provider after the affordable connectivity program discount is no longer available and the effective date of the new rate;

(*3*) An explanation that in order to continue receiving internet service with an affordable connectivity benefit after the provider withdraws from the Affordable Connectivity Program, the eligible household shall transfer its affordable connectivity benefit to a different participating provider;

(*4*) Instructions on how to find and select a new participating provider and to request such a transfer;

(*5*) Information on how to locate providers participating in the Affordable Connectivity Program, including the web address for the Administrator's Companies Near Me tool, any provider listing published by the Commission, and other resources as applicable; and

(*6*) The provider's customer service telephone number and the telephone number and email address of the Administrator's Affordable Connectivity Program support center.

(iv) A provider shall continue providing service to its existing eligible household subscribers at discounted rates subject to the affordable connectivity benefit—

(A) Until the date 60 days after the effective date of the removal or order; or

(B) Until the effective date of its voluntary withdrawal from the program.

(v) A provider that has been removed or that has voluntarily withdrawn from the program may continue to request and receive reimbursements from the Administrator for the amount of the affordable connectivity benefit discounts that it provided to eligible household subscribers during the required 60 days following removal or until voluntary withdrawal, subject to the deadline for filing reimbursement claims.

(vi) The provider shall retain records demonstrating its compliance with these transition requirements.

(f) *Annual certification by participating providers*. An officer of the participating provider who oversees Affordable Connectivity Program business activities shall annually certify, under the penalty of perjury, that the participating provider has policies and procedures in place to comply with all Affordable Connectivity Program rules and procedures. This annual certification shall be made in a manner prescribed by the Wireline Competition Bureau and the Administrator. At a minimum, the annual certification requires the aforementioned officer of the participating provider attest to:

(1) The participating provider having policies and procedures in place to ensure that its enrolled households are eligible to receive Affordable Connectivity Program support;

(2) The participating provider having policies and procedures in place to ensure it accurately and completely provides information to required administrative systems, including the National Verifier, National Lifeline Accountability Database, Representative Accountability Database, and other Administrator Systems; and,

(3) The participating provider acknowledging that:

(i) It is subject to the Commission's enforcement, fine, or forfeiture authority under the Communications Act;

(ii) It is liable for violations of the Affordable Connectivity Program rules and that its liability extends to violations by its agents, contractors, and representatives;

(iii) Failure to be in compliance and remain in compliance with the Affordable Connectivity Program rules and orders, or for its agents, contractors, or representatives to fail to be in compliance, may result in the denial of funding, cancellation of funding commitments, and the recoupment of past disbursements; and

(iv) Failure to comply with the rules and orders governing the Affordable Connectivity Program could result in civil or criminal prosecution by law enforcement authorities.

§ 54.1802 Affordable connectivity benefit.

(a) The Affordable Connectivity Program will provide reimbursement to a participating provider for the monthly affordable connectivity benefit on the price of broadband internet access service (including associated equipment necessary to provide such service) it provides to an eligible household plus any amount the participating provider is entitled to receive for providing a connected device to such a household under § 54.1803(b).

(b) A participating provider may allow an eligible household to apply the affordable connectivity benefit to any residential service plan selected by the eligible household that includes broadband internet access service or a bundle of broadband internet access service along with fixed or mobile voice telephony service, text messaging service, or both.

[87 FR 8373, Feb. 14, 2022, as amended at 87 FR 8382, Feb. 14, 2022]

§ 54.1803 Affordable Connectivity Program support amounts.

(a) The monthly affordable connectivity benefit support amount for all participating providers shall equal the actual discount provided to an eligible household off of the actual amount charged to such household but not more than $30.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household, or not more than $75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible

household on Tribal lands, as defined in § 54.1800(s).

(b) A participating provider that, in addition to providing a broadband internet access service subject to the affordable connectivity benefit to an eligible household, supplies such household with a connected device may be reimbursed by an amount equal to the market value of the device less the amount charged to and paid by the eligible household, but no more than $100.00 for such connected device.

(1) A participating provider that provides a connected device to an eligible household shall charge and collect from the eligible household more than $10.00 but less than $50.00 for such connected device;

(2) An eligible household may receive, and a participating provider may receive reimbursement for, no more than one (1) connected device per eligible household;

(3) The eligible household shall not receive such a discount for a connected device, and the participating provider shall not receive reimbursement for providing the connected device at such a discount, if the household or any member of the household previously received a discounted connected device from a participating provider in the Emergency Broadband Benefit Program or in the Affordable Connectivity Program.

EFFECTIVE DATE NOTE: At 88 FR 60354, Sept. 1, 2023, § 54.1803 was amended by revising paragraph (a), effective Oct. 2, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 54.1803 Affordable Connectivity Program support amounts.

(a) The monthly affordable connectivity benefit support amount for all participating providers shall equal the actual discount provided to an eligible household off of the actual amount charged to such household but not more than $30.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household, or not more than $75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household on Tribal lands, as defined in § 54.1800(s), or not more than $75.00 per month, if that provider certifies that it will pass through the full amount of support to the eligible household in a high-cost area, as defined in § 54.1814(a), and is approved to offer the enhanced high-cost benefit in that high-cost area pursuant to the process in § 54.1814(b).

§ 54.1804 Participating provider obligation to offer the Affordable Connectivity Program.

All participating providers in the Affordable Connectivity Program shall:

(a) Make available the affordable connectivity benefit to eligible households.

(b) Publicize the availability of the Affordable Connectivity Program in a manner reasonably designed to reach those likely to qualify for the service and in a manner that is accessible to individuals with disabilities.

(c) Notify all consumers who either subscribe to or renew a subscription to an internet service offering about the Affordable Connectivity Program and how to enroll.

(1) Providers shall deliver a notice in writing or orally, in a manner that is accessible to persons with disabilities:

(i) During enrollment for new subscribers;

(ii) At least 30 days before the date of renewal for subscribers not enrolled in the Affordable Connectivity Program who have fixed-term plans longer than one month; and

(iii) Annually for subscribers not already enrolled in the Affordable Connectivity Program who have month-to-month or similar non-fixed term plans.

(2) The notice shall, at a minimum, indicate;

(i) The eligibility requirements for consumer participation;

(ii) That the Affordable Connectivity Program is non-transferable and limited to one monthly internet discount and a one-time connected device discount per household;

(iii) How to enroll, such as a customer service phone number or relevant website information; and

(iv) That the Affordable Connectivity Program is a Federal Government benefit program operated by the Federal Communications Commission and, if the Program ends, or when a household is no longer eligible, subscribers will be subject to the provider's regular rates, terms, and conditions.

(d) Frequently carry out public awareness campaigns in their Affordable Connectivity Program areas of

service that highlight the value and benefits of broadband internet access service and the existence of the Affordable Connectivity Program in collaboration with State agencies, public interest groups, and non-profit organizations and retain documentation sufficient to demonstrate their compliance with the public awareness obligations.

[87 FR 8382, Feb. 14, 2022]

§ 54.1805 Household qualifications for Affordable Connectivity Program.

(a) To qualify for the Affordable Connectivity Program, a household must constitute an eligible household under the definition in § 54.1800(j).

(b) In addition to meeting the qualifications provided in paragraph (a) of this section, in order to qualify to receive an affordable connectivity benefit from a participating provider, neither the eligible household nor any member of the household may already be receiving another affordable connectivity benefit from that participating provider or any other participating provider.

§ 54.1806 Household eligibility determinations and annual recertification.

(a) *Eligibility verification processes*. To verify whether a household is an eligible household, a participating provider shall—

(1) Use the National Verifier; or

(2) Rely upon an alternative verification process of the participating provider, if—

(i) The participating provider submits information as required by the Commission regarding the alternative verification process prior to seeking reimbursement; and

(ii) Not later than 7 days after receiving the information required under paragraph(a)(2)(i) of this section, the Wireline Competition Bureau—

(A) Determines that the alternative verification process will be sufficient to avoid waste, fraud, and abuse; and

(B) Notifies the participating provider of the determination under paragraph (a)(2)(ii)(A) of this section.

(3) Rely on a school to verify the eligibility of a household based on the participation of the household in the free and reduced price lunch program or the school breakfast program as described in § 54.1800(j)(3). The participating provider shall retain documentation demonstrating the school verifying eligibility, the program(s) that the school participates in, the qualifying household, and the program(s) the household participates in.

(4) Check its own electronic systems, whether such systems are maintained by the participating provider or a third party, to confirm that the household is not already receiving another affordable connectivity benefit from that participating provider.

(5) Collect and retain documentation establishing at least one member of the household is enrolled in a school or school district that participates in the National School Lunch Program's Community Eligibility Provision (CEP) (42 U.S.C. 1759a) if enrolling households based on CEP eligibility.

(b) *Participating providers' obligations*. All participating providers shall implement policies and procedures for ensuring that their Affordable Connectivity Program households are eligible to receive the affordable connectivity benefit. A provider may not provide a consumer with service that it represents to be Affordable Connectivity Program-supported service or seek reimbursement for such service, unless and until it has:

(1) Confirmed that the household is an eligible household pursuant to § 54.1805(a) and (b);

(2) Completed any other necessary enrollment steps, and;

(3) Securely retained all information and documentation it receives related to the eligibility determination and enrollment, consistent with § 54.1811.

(c) *One-per-household worksheet*. If the prospective household shares an address with one or more existing Affordable Connectivity Program subscribers according to the National Lifeline Accountability Database or National Verifier, the prospective subscriber shall complete a form certifying compliance with the one-per-household rule set forth in § 54.1805(b) prior to initial enrollment.

(d) *The National Lifeline Accountability Database*. In order to receive Affordable

Connectivity Program support, participating providers shall comply with the following requirements:

(1) All participating providers shall query the National Lifeline Accountability Database to determine whether a prospective subscriber is currently receiving an Affordable Connectivity Program supported service from another participating provider; and whether anyone else living at the prospective subscriber's residential address is currently receiving an Affordable Connectivity Program-supported service.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber who is not seeking to transfer his or her affordable connectivity benefit, is currently receiving an Affordable Connectivity Program-supported service, the participating provider shall not provide and shall not seek or receive Affordable Connectivity Program reimbursement for that subscriber.

(3) Participating providers may query the National Lifeline Accountability Database only for the purposes provided in paragraphs (d)(1) and (2) and (e)(1) and (2) of this section, and to determine whether information with respect to its subscribers already in the National Lifeline Accountability Database is correct and complete.

(4) Participating providers shall transmit to the National Lifeline Accountability Database in a format prescribed by the Administrator each new and existing Affordable Connectivity Program subscriber's full name; full residential address; date of birth; the telephone number associated with the Affordable Connectivity Program service; the date on which the Affordable Connectivity Program discount was initiated; the date on which the Affordable Connectivity Program discount was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for the Affordable Connectivity Program.

(5) All participating providers shall update an existing Affordable Connectivity Program subscriber's information in the National Lifeline Accountability Database within ten business days of receiving any change to that information, except as described in paragraph (d)(7) of this section.

(6) All participating providers shall obtain, from each new and existing subscriber, consent to transmit the subscriber's information. Prior to obtaining consent, the participating provider shall describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Affordable Connectivity Program, and that failure to provide consent will result in subscriber being denied the affordable connectivity benefit.

(7) When a participating provider de-enrolls a subscriber from the Affordable Connectivity Program, it shall transmit to the National Lifeline Accountability Database the date of Affordable Connectivity Program de-enrollment within one business day of de-enrollment.

(8) All participating providers shall securely retain subscriber documentation that the participating provider reviewed to verify subscriber eligibility, for the purposes of production during audits or investigations or to the extent required by National Lifeline Accountability Database or National Verifier processes, which require, inter alia, verification of eligibility, identity, address, and age.

(9) A participating provider shall not enroll or claim for reimbursement a prospective subscriber in the Affordable Connectivity Program if the National Lifeline Accountability Database or National Verifier cannot verify the subscriber's status as alive, unless the subscriber produces documentation to demonstrate his or her identity and status as alive.

(10) A participating provider shall apply the Affordable Connectivity Program benefit no later than the start of the first billing cycle after the household's enrollment or transfer, and pass through the discount to the household prior to claiming reimbursement for the discount in the Affordable Connectivity Program.

(e) *Connected device reimbursement and the National Lifeline Accountability*

Database. In order to receive Affordable Connectivity Program reimbursement for a connected device, participating providers shall comply with § 54.1803(b) and the following requirements:

(1) Such participating provider shall query the National Lifeline Accountability Database to determine whether a prospective connected device benefit recipient has previously received a connected device benefit.

(2) If the National Lifeline Accountability Database indicates that a prospective subscriber has received a connected device benefit, the participating provider shall not seek a connected device reimbursement for that subscriber.

(3) Such participating provider shall not seek a connected device reimbursement for a subscriber that is not receiving the affordable connectivity benefit for service provided by the same participating provider, except that a participating provider may seek reimbursement for a connected device provided to a household if the household had been receiving an Affordable Connectivity Program-supported service from that provider at the time the connected device was supplied to the household, but the household subsequently transferred its benefit to another provider before the provider had an opportunity to claim the connected device.

(4) Where two or more participating providers file a claim for a connected device reimbursement for the same subscriber, only the participating provider whose information was received and processed by the National Lifeline Accountability Database or Lifeline Claims System first, as determined by the Administrator, will be entitled to a connected device reimbursement for that subscriber.

(5) All participating providers shall obtain from each subscriber consent to transmit the information required under paragraphs (d)(1) and (e)(1) of this section. Prior to obtaining consent, the participating provider shall describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Affordable Connectivity Program connected device benefit, and that failure to provide consent will result in the subscriber being denied the Affordable Connectivity Program connected device benefit.

(6) In a manner and form consistent with the direction of the Wireline Competition Bureau and the Administrator, a participating provider shall provide to the Administrator information concerning the connected device supplied to the household, including device type, device make, device model, subscriber ID of the household that received the device, date the device was delivered to the household, method used to provide the device (shipped, in store, or installed by provider), market value of the device, and amount paid by the household to the provider for the device. No claim for reimbursement for a connected device supplied by the participating provider to the household shall be submitted prior to payment by the household of the amount described in § 54.1803(b)(1).

(f) *Annual eligibility re-certification*. (1) Participating providers shall re-certify annually all Affordable Connectivity Program subscribers whose initial eligibility was verified through the participating provider's approved alternative verification process or through a school, except where the Administrator using the National Verifier is responsible for the annual recertification of Affordable Connectivity Program subscribers. The Administrator using the National Verifier will re-certify the eligibility of all other Affordable Connectivity Program subscribers. Affordable Connectivity Program subscribers who are also enrolled in Lifeline may rely on a successful recertification for the Lifeline program to satisfy this requirement.

(2) In order to recertify a subscriber's eligibility for the Affordable Connectivity Program, a participating provider shall confirm a subscriber's current eligibility to receive an affordable connectivity benefit by following the eligibility process and requirements under paragraphs (b)(1) through (5) of this section and shall also follow the requirements and processes for either its alternative verification processes approved under paragraph (a)(2)

of this section or the eligibility verification processes and requirements for school-based eligibility verifications in paragraph (a)(3) of this section, confirming that the subscriber still meets the program or income-based eligibility requirements for the Affordable Connectivity Program, and documenting the results of that review.

(3) Where the Administrator is responsible for re-certification of a subscriber's Affordable Connectivity Program eligibility, the Administrator shall confirm a subscriber's current eligibility to receive Affordable Connectivity Program service by:

(i) Querying the appropriate eligibility databases, confirming that the subscriber still meets the program-based eligibility requirements for the Affordable Connectivity Program, and documenting the results of that review; or

(ii) Querying the appropriate income databases, confirming that the subscriber continues to meet the income-based eligibility requirements for the Affordable Connectivity Program, and documenting the results of that review; or

(iii) If the subscriber's program-based or income-based eligibility for the Affordable Connectivity Program cannot be determined by accessing one or more eligibility or income databases, then the Administrator shall obtain a signed certification from the subscriber confirming the subscriber's continued eligibility. If the subscriber's eligibility was previously confirmed through an eligibility or income database during enrollment or a prior re-certification and the subscriber is no longer included in any eligibility or income database the Administrator shall obtain both an approved Annual Recertification Form and acceptable documentation demonstrating eligibility from that subscriber to complete the recertification process.

(4) Where the Administrator is responsible for re-certification of subscribers' Affordable Connectivity Program eligibility, the Administrator shall provide to each provider the results of its annual re-certification efforts with respect to that provider's subscribers.

(5) If a provider is unable to re-certify a subscriber or has been notified by the Administrator that it is unable to re-certify a subscriber, the provider shall comply with the de-enrollment requirements provided for in § 54.1809(d).

(6) One-Per-Household Worksheet—at re-certification, if the subscriber resides at the same address as another Affordable Connectivity Program subscriber and there are changes to the subscriber's household relevant to whether the subscriber is only receiving one affordable connectivity benefit per household, then the subscriber shall complete a new Household Worksheet. Providers must retain the one-per-household worksheet for subscribers subject to this requirement in accordance with § 54.1811.

§ 54.1807 Enrollment representative registration and compensation.

(a) *Enrollment representative registration.* A participating provider shall require that enrollment representatives register with the Administrator before the enrollment representative can provide information directly or indirectly to the National Lifeline Accountability Database or the National Verifier.

(1) As part of the registration process, participating providers shall require that all enrollment representatives provide the Administrator with identifying information, which may include first and last name, date of birth, the last four digits of his or her social security number, email address, and residential address. Enrollment representatives will be assigned a unique identifier, which shall be used for:

(i) Accessing the National Lifeline Accountability Database;

(ii) Accessing the National Verifier;

(iii) Accessing any eligibility database; and

(iv) Completing any Affordable Connectivity Program enrollment or verification forms.

(2) Participating providers shall ensure that enrollment representatives shall not use another person's unique identifier to enroll Affordable

Connectivity Program subscribers, recertify Affordable Connectivity Program subscribers, or access the National Lifeline Accountability Database or National Verifier.

(3) Participating providers shall ensure that enrollment representatives shall regularly recertify their status with the Administrator to maintain their unique identifier and maintain access to the systems that rely on a valid unique identifier. Participating providers shall also ensure that enrollment representatives shall update their registration information within 30 days of any change in such information.

(b) *Prohibition of commissions for enrollment representatives.* A participating provider shall not offer or provide to enrollment representatives, their direct supervisors, or entities that operate on behalf of the participating provider, any form of compensation that is—

(1) Based on the number of consumers or households that apply for or are enrolled in the Affordable Connectivity Program with the participating provider;

(2) Based on revenues that the participating provider has received or expects to receive in connection with the Affordable Connectivity Program, including payments for connected devices;

(3) Based on the participating provider permitting the retention of cash payments received from the subscriber as part of the required contribution for a connected device;

(4) Shifted, characterized or otherwise classified as compensation paid in connection with other services, business operations, or unrelated to Affordable Connectivity Program activities that is based on Affordable Connectivity Program applications, enrollments, or revenues.

[87 FR 8373, Feb. 14, 2022, as amended at 87 FR 8383, Feb. 14, 2022]

§ 54.1808 Reimbursement for providing monthly affordable connectivity benefit.

(a) Affordable Connectivity Program support for providing a qualifying broadband internet access service shall be provided directly to a participating provider based on the number of actual qualifying low-income households listed in the National Lifeline Accountability Database that the participating provider serves directly as of the first day of the calendar month.

(b) For each eligible household receiving the affordable connectivity benefit on a broadband internet access service, the reimbursement amount shall equal the appropriate support amount as described in § 54.1803. The participating provider's Affordable Connectivity Program reimbursement shall not exceed the actual amount charged by the participating provider.

(c) A participating provider offering a service subject to the affordable connectivity benefit that does not require the participating provider to assess and collect a monthly fee from its subscribers shall not receive support for a subscriber to such service until the subscriber activates the service by whatever means specified by the provider; and

(1) After service activation, shall only continue to receive reimbursement for the affordable connectivity benefit on such service provided to subscribers who have used the service within the last 30 days, or who have cured their non-usage as provided for in § 54.1809(c); and

(2) Shall certify that every subscriber claimed has used their service subject to the affordable connectivity benefit, as ''usage'' is defined by § 54.407(c)(2), at least once in the last 30 consecutive days or has cured their non-usage as provided in § 54.1809(c), in order to claim that subscriber for reimbursement for a given service month.

(d) A participating provider that, in addition to providing the affordable connectivity benefit to an eligible household, provides such household with a connected device may be reimbursed in the amount and subject to the conditions specified in §§ 54.1803(b) and 54.1806(e).

(e) In order to receive Affordable Connectivity Program reimbursement, an officer of the participating provider shall certify, under penalty of perjury, as part of each request for reimbursement, that:

(1) The officer is authorized to submit the request on behalf of the participating provider;

(2) The officer has read the instructions relating to reimbursements and the funds sought in the reimbursement request are for services and/or devices that were provided in accordance with the purposes and objectives set forth in the statute, rules, requirements, and orders governing the Affordable Connectivity Program;

(3) The participating provider is in compliance with and satisfied all requirements in the statute, rules, and orders governing the Affordable Connectivity Program reimbursement, and the provider acknowledges that failure to be in compliance and remain in compliance with Affordable Connectivity Program statutes, rules, and orders may result in the denial of reimbursement, cancellation of funding commitments, and/or recoupment of past disbursements;

(4) The participating provider has obtained valid certification and application forms as required by the rules in this subpart for each of the subscribers for whom it is seeking reimbursement;

(5) The amount for which the participating provider is seeking reimbursement from the Affordable Connectivity Fund is not more than the amount charged to the eligible household and the discount has already been passed through to the household;

(6) Each eligible household for which the participating provider is seeking reimbursement for providing an internet service offering discounted by the affordable connectivity benefit—

(i) Has not been and will not be charged for the amount the provider is seeking for reimbursement;

(ii) Will not be required to pay an early termination fee if such eligible household elects to enter into a contract to receive such internet service offering if such household later terminates such contract;

(iii) Was not, after the date of the enactment of the Consolidated Appropriations Act, 2021, as amended by the Infrastructure Investment and Jobs Act, subject to a mandatory waiting period for such internet service offering based on having previously received broadband internet access service from such participating provider; and

(iv) Will otherwise be subject to the participating provider's generally applicable terms and conditions as applied to other subscribers.

(7) Each eligible household for which the participating provider is seeking reimbursement for supplying such household with a connected device was charged by the provider and has paid more than $10.00 but less than $50.00 for such connected device;

(8) If offering a connected device, the connected device claimed meets the Commission's requirements, the representations regarding the devices made on the provider's website and promotional materials are true and accurate, that the reimbursement claim amount does not exceed the market value of the connected device less the amount charged to and paid by the eligible household, and that the connected device has been delivered to the household;

(9) If the participating provider used an alternative verification process to verify that each household is eligible for the Affordable Connectivity Program, the verification process used was designed to avoid waste, fraud, and abuse;

(10) If seeking reimbursement for a connected device, the provider has retained the relevant supporting documents that demonstrate the connected devices requested are eligible for reimbursement and submitted the required information;

(11) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10;

(12) All documentation associated with the reimbursement form, including all records for services and/or connected devices provided, will be retained for a period of at least six years after the last date of delivery of the supported services and/or connected devices provided through the Affordable Connectivity Program, and are subject to audit, inspection, or investigation

and will be made available at the request of any representative (including any auditor) appointed by the Commission and its Office of Inspector General, or any local, State, or Federal agency with jurisdiction over the provider;

(13) The provider has not offered, promised, received, or paid kickbacks, as defined by 41 U.S.C. 8701, in connection with the Affordable Connectivity Program;

(14) The information contained in this form is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to the officer by employees responsible for the information being submitted;

(15) The officer is aware that any false, fictitious, or fraudulent information, or the omission of any material fact on this request for reimbursement or any other document submitted by the provider, may subject the provider and the officer to punishment by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b), 1606), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001, 286–87, 1343), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733, 3801–3812);

(16) No service costs or devices sought for reimbursement have been waived, paid, or promised to be paid by another entity, including any other Federal or State program;

(17) All enrollments and transfers completed by the provider were bona fide, requested and consented by the subscriber household after receiving the disclosures required under § 54.1810(a) and (b), and made pursuant to program rules; and

(18) The provider used the National Lifeline Accountability Database as a tool for enrollment, reimbursement calculations, and duplicate checks in all States, territories, and the District of Columbia, and checked their records in accordance with § 54.1806(a)(4).

(f) In order to receive Affordable Connectivity Program reimbursement, a participating provider shall keep accurate records of the revenues it forgoes in providing Affordable Connectivity Program-supported services. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this subpart.

(g) In order to receive reimbursement, participating providers shall submit certified reimbursement claims through the Lifeline Claims System within six months of the snapshot date in paragraph (a) of this section, or the following business day in the event the 1st is a holiday or falls on a weekend. If the participating provider fails to submit a certified reimbursement claim by the six-month deadline, the reimbursement claim will not be processed.

[87 FR 8373, Feb. 14, 2022, as amended at 87 FR 8383, Feb. 14, 2022]

§ 54.1809 De-enrollment from the Affordable Connectivity Program.

(a) *De-enrollment generally*. If a participating provider has a reasonable basis to believe that an Affordable Connectivity Program subscriber does not meet or no longer meets the criteria to be considered an eligible household under § 54.1805, the participating provider shall notify the subscriber of impending termination of his or her affordable connectivity benefit. Notification of impending termination shall be sent in writing separate from the subscriber's monthly bill, if one is provided, and shall be written in clear, easily understood language. The participating provider shall allow a subscriber 30 days following the date of the impending termination letter to demonstrate continued eligibility. A subscriber making such a demonstration shall present proof of continued eligibility to the National Verifier or the participating provider consistent with the participating provider's approved alternative verification process. A participating provider shall de-enroll any subscriber who fails to demonstrate eligibility within five business days after the expiration of the subscriber's deadline to respond.

(b) *De-enrollment for duplicative support*. Notwithstanding paragraph (a) of this section, upon notification by the Administrator to any participating provider that a subscriber is receiving the affordable connectivity benefit from another participating provider, or

that more than one member of a subscriber's household is receiving the affordable connectivity benefit and that the subscriber should be de-enrolled from participation in that provider's Affordable Connectivity Program, the participating provider shall de-enroll the subscriber from participation in that provider's Affordable Connectivity Program within five business days. A participating provider shall not claim any de-enrolled subscriber for Affordable Connectivity Program reimbursement following the date of that subscriber's de-enrollment.

(c) *De-enrollment for non-usage*. Notwithstanding paragraph (a) of this section, if an Affordable Connectivity Program subscriber fails to use, as ''usage'' is defined in § 54.407(c)(2), for 30 consecutive days an Affordable Connectivity Program service that does not require the participating provider to assess and collect a monthly fee from its subscribers, the participating provider shall provide the subscriber 15 days' notice, using clear, easily understood language, that the subscriber's failure to use the Affordable Connectivity Program service within the 15-day notice period will result in service termination for non-usage under this paragraph (c).

(d) *De-enrollment for failure to re-certify*. Notwithstanding paragraph (a) of this section, a participating provider shall de-enroll an Affordable Connectivity Program subscriber who does not respond to the provider's attempts to obtain re-certification of the subscriber's continued eligibility as required by § 54.1806(f); or who fails to provide the annual one-per-household re-certification as required by § 54.1806(f)(6). Prior to de-enrolling a subscriber under this paragraph, the provider shall notify the subscriber in writing separate from the subscriber's monthly bill, if one is provided, using clear, easily understood language, that failure to respond to the re-certification request will trigger de-enrollment. A subscriber shall be given 60 days to respond to recertification efforts. If a subscriber does not respond to the provider's notice of impending de-enrollment, the provider shall de-enroll the subscriber from the Affordable Connectivity Program within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.

(e) *De-enrollment requested by subscriber*. If a participating provider receives a request from a subscriber to de-enroll from the Affordable Connectivity Program, it shall de-enroll the subscriber within two business days after the request.

[87 FR 8373, Feb. 14, 2022, as amended at 87 FR 8383, Feb. 14, 2022]

§ 54.1810 Consumer protection requirements.

(a) *Disclosures and consents for enrollment*. Prior to enrolling a consumer in the Affordable Connectivity Program, participating providers shall obtain affirmative consumer consent either orally or in writing that acknowledges that after having reviewed the required disclosures about the Affordable Connectivity Program, the household consents to enroll with the provider.

(1) The disclosures that shall be presented to the consumer shall convey in clear, easily understood terms that:

(i) The Affordable Connectivity Program is a government program that reduces the customer's broadband internet access service bill;

(ii) The household may obtain Affordable Connectivity Program-supported broadband service from any participating provider of its choosing;

(iii) The household may apply the affordable connectivity benefit to any broadband service offering of the participating provider at the same terms available to households that are not eligible for Affordable Connectivity Program-supported service;

(iv) The provider may disconnect the household's Affordable Connectivity Program-supported service after 90 consecutive days of non-payment;

(v) The household will be subject to the provider's undiscounted rates and general terms and conditions if the Affordable Connectivity Program ends, if the consumer transfers their benefit to another provider but continues to receive service from the current provider, or upon de-enrollment from the Affordable Connectivity Program; and

(vi) The household may file a complaint against its provider via the Commission's Consumer Complaint Center.

(2) If standard disclosure and consent language has been provided by the Commission, providers shall present that language to consumers prior to enrollment.

(3) A participating provider shall not link enrollment in the Affordable Connectivity Program to some other action or information supplied to the provider for purposes other than the Affordable Connectivity Program, including but not limited to:

(i) Not clearly distinguishing the process of signing up for ACP-supported services and devices from the process of signing up for, renewing, upgrading, or modifying other services, including Lifeline-supported services;

(ii) Suggesting or implying that signing up for ACP-supported services and devices is required for obtaining or continuing other services, including Lifeline-supported services; and

(iii) Tying the submission of customer information provided for another purpose (*e.g.*, address verification or equipment upgrade or replacement) to enrollment in the Affordable Connectivity Program.

(b) *Transfers in the Affordable Connectivity Program.* Participating providers shall comply with the following requirements for transferring an eligible household's affordable connectivity program benefit between providers.

(1) *Disclosures and subscriber consent.* (i) Prior to transferring an eligible household's affordable connectivity program benefit, the provider transferring in the household shall obtain the household's affirmative consent either orally or in writing that acknowledges that after having reviewed the required disclosures, the household consents to transfer its benefit to the transfer-in provider.

(ii) The oral or written disclosures shall be provided in clear, easily understood language and convey the following information:

(A) That the subscriber will be transferring its affordable connectivity program benefit to the transfer-in provider;

(B) That the effect of the transfer is that the subscriber's affordable connectivity program benefit will be applied to the transfer-in provider's service and will no longer be applied to service retained from the transfer-out provider;

(C) That the subscriber may be subject to the transfer-out provider's undiscounted rates as a result of the transfer if the subscriber elects to maintain service from the transfer-out provider; and

(D) That the subscriber is limited to one affordable connectivity program benefit transfer transaction per service month, with limited exceptions for situations where the subscriber seeks to reverse an unwanted transfer or is unable to receive service from a specific provider.

(iii) The household's oral or written consent shall:

(A) Clearly identify the subscriber name;

(B) Acknowledge the subscriber was provided the disclosure language required under paragraph (b)(1)(ii) of this section;

(C) Indicate that having received the required disclosures, the subscriber gave its informed consent to transfer its benefit to the transfer-in provider; and

(D) Indicate the date of the subscriber's consent.

(iv) Participating providers shall use any standard consent and disclosure language provided by the Commission.

(v) Participating providers shall satisfy the disclosure and consent requirements for each transfer transaction.

(2) *Notification to subscribers.* Within five business days of completing a subscriber transfer in the National Lifeline Accountability Database, the transfer-in provider shall provide written notice to the transferred subscriber that indicates the following:

(i) The name of the transfer-in provider to which the subscriber's affordable connectivity program benefit was transferred;

(ii) The date the transfer was initiated; and

(iii) An explanation of the dispute process if the subscriber believes the transfer was improper.

(3) *Limitation on transfers per month.* Participating subscribers can only transfer their affordable connectivity benefit between providers once in a

given service month, with the following limited exceptions:

(i) The subscriber's benefit was improperly transferred;

(ii) The subscriber's service provider ceases operations or fails to provide service;

(iii) The subscriber's current service provider is found to be in violation of affordable connectivity program rules, and the violation impacts the subscriber for which the exception is sought;

(iv) The subscriber changes its location to a residential address outside of the provider's service area for the Affordable Connectivity Program.

(c) *Credit checks.* (1) A participating provider shall not:

(i) Consider the results of a credit check as a condition of enrollment in the Affordable Connectivity Program.

(ii) Consider the results of a credit check to determine to which Affordable Connectivity Program-supported internet service plan a household may apply the affordable connectivity benefit.

(iii) Use the results of a credit check to decline to transfer a household's Affordable Connectivity Program benefit.

(d) *Non-payment.* (1) Bill payment due date means the due date for payment specified on a bill for service charges.

(2) A participating provider shall not terminate an eligible household's service subject to the affordable connectivity benefit on the grounds that the household has failed to pay the charges set forth on a bill for such service unless 90 consecutive days have passed since the bill payment due date.

(e) *Upselling and downselling*—(1) *Prohibition of inappropriate upselling and downselling.* A participating provider and its agents shall not exert pressure on an eligible household to induce the purchase of a broadband internet access service or bundled plan that is more costly, less costly, affords different features, provides higher or lower speed or bandwidth, is subject to higher or lower data caps, or is bundled with additional services, equipment, or features, or fewer services, equipment, or features, than the service or plan that the household is already purchasing or has inquired about purchasing through the Affordable Connectivity Program.

(2) *Specific prohibited activities.* Prohibited activities include, but are not limited to:

(i) Requiring, as a condition of enrolling the household or applying the affordable connectivity benefit, that the household select a service, bundled plan, or equipment, other than the service or bundled plan that the eligible household subscriber is already purchasing or using or has inquired about.

(ii) Pressuring an eligible household to purchase a service or bundled plan to benefit the provider but not the household.

(3) *Permitted activities.* Provided that they do not exert pressure on existing or prospective eligible household subscribers, participating providers—

(i) May communicate information regarding tiers of service that afford higher or lower speeds or bandwidth, are available at higher or lower prices, or have features that differ from a service or plan that an eligible household is already purchasing or has inquired about for the Affordable Connectivity Program; and

(ii) May create or promote service plans that are specially priced or designed to meet the needs of eligible households.

(f) *Extended service contracts and early termination fees*—(1) *Definitions.* (i) An extended service contract is typically an offer of service at a discount price in exchange for a commitment from the subscriber to remain on that service plan for a set period of time, usually at least a year.

(ii) Early termination fees are fees that a subscriber is obligated to pay if it purchases a service plan subject to an extended service contract but terminates service before the end of the specified term of the contract.

(2) *Extended service contracts.* An eligible household may elect to purchase and apply the affordable connectivity benefit to a participating provider's service plan subject to an extended service contract.

(3) *Early termination fees.* Notwithstanding the provisions that apply to subscribers to extended service contracts who are not eligible households,

an eligible household shall not be liable for early termination fees if it purchases and applies its affordable connectivity benefit to a service plan subject to an extended service contract but terminates service before the end of the specified term of the contract.

(g) *Restrictions on switching service offerings.* A participating provider shall not impose any restrictions on a household's ability to switch internet service offerings, unless, once the consumer enters a delinquent status after the bill due date, the provider limits available service plans to offerings that are covered by the full benefit amount, and the household consents to switch service plans.

(h) *Restrictions on switching providers.* (1) A participating provider shall not engage in any practice that is reasonably likely to cause a household to believe it is prohibited or restricted from transferring its benefit to a different participating provider.

(2) A participating provider shall not:

(i) Misrepresent or fail to accurately disclose to a household the rules and requirements pertaining to transfers to another participating provider in the Affordable Connectivity Program;

(ii) Charge a household a fee to transfer their benefit to another participating provider; or

(iii) Suggest or imply that the provider may change the household's service plan if it transfers the benefit to another participating provider.

(i) *Unjust and unreasonable acts or practices.* (1) Providers are prohibited from engaging in unjust and unreasonable acts or practices that would undermine the purpose, intent, or integrity of the Affordable Connectivity Program.

(2) Such unjust and unreasonable acts or practices include, but are not limited to:

(i) Advertising or holding itself out as a participating provider if it is not authorized to participate in the Affordable Connectivity Program;

(ii) Engaging in false or misleading advertising of the Affordable Connectivity Program;

(iii) Failing to timely provide service, equipment, or devices that are advertised, promoted, or marketed as part of the Affordable Connectivity Program;

(iv) Failing to enroll an eligible household as soon as practicable once the provider receives the household's affirmative consent to enroll with that provider;

(v) Failing to apply the affordable connectivity benefit to such household on or before the start of the household's next billing cycle;

(vi) Failing to deliver a supported connected device within 30 days of obtaining the household's affirmative consent to receive such device; and

(vii) Violating any Program rule.

[87 FR 8373, Feb. 14, 2022, as amended at 87 FR 8383, Feb. 14, 2022]

§ 54.1811 Recordkeeping requirements.

Participating providers shall maintain records to document compliance with all Commission requirements governing the Affordable Connectivity Program for the six full preceding calendar years and provide that documentation to the Commission or Administrator, or their designee, upon request. Participating providers shall maintain the documentation related to the eligibility determination and reimbursement claims for an Affordable Connectivity Program subscriber for as long as the subscriber receives the Affordable Connectivity Program discount from that participating provider, but for no less than the six full preceding calendar years.

§ 54.1812 Validity of electronic signatures.

(a) For the purposes of this subpart, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(b) For the purposes of this subpart, an electronic record, defined by the Electronic Signatures in Global and National Commerce Act as a contract or other record created, generated, sent, communicated, received, or stored by electronic means, constitutes a record.

§ 54.1813 Affordable Connectivity Program Transparency Data Collection.

(a) *Definitions.* For purposes of the Affordable Connectivity Program Transparency Data Collection:

Actual Speed. The term ''actual speed'' means the typical upload and download speeds period for a particular speed tier, either based on Measuring Broadband America (MBA) methodology, or other relevant testing data.

Advertised Speed. The term ''advertised speed'' means the maximum advertised upload and download speeds for fixed broadband plans, and the minimum advertised upload and download speeds for mobile broadband plans.

Base monthly price. The term ''base monthly price'' means the monthly price for a broadband internet service offering that would be paid by a household enrolled in the Affordable Connectivity Program, absent the affordable connectivity benefit. The base monthly price does not include the price of any recurring monthly fees (such as fees providers impose at their discretion, or equipment rental fees), government taxes or fees, or one-time charges (such as installation charges, equipment purchase fee, etc.).

Bundle. The term ''bundle'' means a combination of broadband internet access service with any non-broadband internet access service offerings, including but not limited to video, voice, and text.

Data Cap. The term ''data cap'' means data usage restrictions on both pre-paid and post-paid plans, including ''soft caps'' where a user's internet traffic is throttled or deprioritized, and ''hard caps'' where a user's access to the internet is discontinued.

Latency. The term ''latency'' means the length of time for a signal to be sent between two defined end points and the time it takes for an acknowledgement of the receipt of the signal to be received.

Legacy plan. The term ''legacy plan'' means an internet service offering in which an ACP subscriber is enrolled that a participating provider is not accepting new enrollment.

Personally identifiable information. The term ''personally identifiable information'' means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.

Plan. The term ''plan'' means ''internet service offering'' as defined in § 54.1800(n).

Unique identifier. The term ''unique identifier'' means a machine-readable string of characters uniquely identifying a broadband plan, not containing any special characters. Where a broadband plan is associated with a broadband label under 47 CFR 8.1(a), the unique identifier must be the same as that in the broadband label. Unique identifiers cannot be reused or refer to multiple plans. A provider must develop a new plan identifier, when a plan's components change.

(b) *Information to be collected.* (1) For each plan that a household enrolled in the Affordable Connectivity Program is subscribed to, all participating providers shall submit, in an electronic format as directed by the Commission at the ZIP code level, by the deadline described in paragraph (c) of this section,

(i) The unique identifier with the following plan characteristics:

(A) Base monthly price,

(B) Whether the base monthly price is introductory, and if so, the term of the introductory price and the post-introductory price,

(C) Itemized provider-imposed recurring monthly fees,

(D) Itemized one-time fees,

(E) Speed (actual and advertised speeds),

(F) Latency,

(G) Data caps (including deprioritization and throttling), any charges for additional data usages along with the relevant increment (*e.g.*, 1 GB, 500 MB),

(H) Whether the service is bundled, the high-level components of the bundle, and voice minutes or number of text messages included as part of the bundle if applicable,

(I) Whether any associated equipment is required, whether any required associated equipment is included in the advertised cost, and the one-time fee or rental cost for required associated equipment;

(ii) The number of ACP households subscribed;

(iii) The number of ACP households that have reached a data cap during month prior to the snapshot date;

(iv) The average amount by which ACP households have exceeded the data cap for the month prior to the snapshot date;

(v) The average overage amount paid by ACP households exceeding a data cap for the month prior to the snapshot date;

(vi) The number of ACP households receiving the ACP Tribal enhanced benefit;

(vii) The number of ACP households receiving the ACP high-cost enhanced benefit;

(viii) The number of ACP households who are also enrolled in Lifeline for that plan;

(2) *Legacy plans*. For each legacy plan that a household enrolled in the Affordable Connectivity Program is subscribed to, all participating providers are required to submit all of the characteristics identified in paragraph (b)(1) of this section except: speed (actual and advertised), latency, introductory monthly charge, the length of the introductory period, and any one-time fees.

(c) *Timing of collection*. No later than November 9, 2023, and annually thereafter, participating providers must submit to the Commission the information in paragraph (b) of this section for all plans in which an Affordable Connectivity Program household is subscribed. The information must be current as of an annual snapshot date established and announced by the Bureau.

(d) *Certifications*. As part of the data collection required by paragraph (b) of the section, an officer of the participating provider shall certify, under penalty of perjury, that:

(1) The officer is authorized to submit the data collection on behalf of the participating provider; and

(2) The data and information provided in the data collection is true, complete, and accurate to the best of the officer's knowledge, information, and belief, and is based on information known to the officer or provided to the officer by employees responsible for the information being submitted.

(e) *Publication of data*—(1) *Obligation to publish data*. The Commission will make aggregated, non-provider-specific data relating to broadband internet access service information collected in paragraph (b) of this section available to the public in a commonly used electronic format without risking the disclosure of personally identifiable information, as defined in paragraph (a)(8) of this section, or proprietary information.

(2) *Requests for withholding from public inspection*. When submitting information to the Commission under paragraph (c) of this section, a participating provider may submit a request that information be withheld from public inspection under § 0.459 of this chapter.

(f) *Enforcement*. A violation of the collection requirement occurs where a provider fails to submit ACP Transparency Data Collection information by the compliance date for a state in which the provider has ACP-enrolled subscribers. A base forfeiture amount for each state is the lesser of $22,000 or the latest monthly claim amount, for each state for which a provider has failed to submit complete information.

[88 FR 2267, Jan. 13, 2023, as amended at 88 FR 2267, Jan. 13, 2023; 88 FR 57364, Aug. 23, 2023]

§ 54.1814 High-cost area benefit.

(a) *Definitions*—(1) *Audited income statement*. For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, an ''audited income statement'' is an income statement that has been audited by an independent Certified Public Accountant (CPA).

(2) *Component-level income statement*. For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, a ''component-level income statement'' is an income statement that shows financial results for the subsidiary or business component that is operating and/or offering retail broadband internet access service for sale in the designated high-cost areas as defined by 47 U.S.C. 1702(a)(2)(G).

(3) *Consolidated income statement.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, a ''consolidated income statement'' is an income statement that shows aggregated financial results for multiple entities or subsidiaries connected with a single parent company.

(4) *High-cost area.* For purposes of the administration of the Affordable Connectivity Program high-cost area benefit, the term ''high-cost area'' means an area as defined by 47 U.S.C. 1702(a)(2)(G) as determined by the National Telecommunications and Information Administration.

(5) *Particularized economic hardship.* A provider has a ''particularized economic hardship'' in a high-cost area only if:

(i) It is not possible for that provider to offer service in the high-cost area while covering the costs of maintaining the operation of all or part of its broadband network in that area at the standard up to $30 a month discount; and

(ii) The up to $75 a month high-cost area benefit would materially improve the provider's ability to offer service through the ACP and maintain and operate its broadband network in that area.

(b) *High-cost area benefit approval process.* A facilities-based ACP participating provider in a high-cost area (as defined in paragraph (a) of this section) may provide an affordable connectivity benefit in an amount up to $75.00 for a broadband internet access service offering in a high-cost area upon a showing that the applicability of the standard up to $30.00 benefit under § 54.1803(a) by the provider would cause particularized economic hardship to the provider such that the provider may not be able to maintain the operation of part or all of its broadband network in that high-cost area.

(1) A participating provider seeking approval to provide the high-cost area benefit must first electronically file a request with the Universal Service Administrative Company by the deadline established by the Wireline Competition Bureau.

(i) The electronic request shall require the participating provider to specify whether it has previously applied for Federal financial assistance, as defined in 2 CFR 25.406, in the three fiscal years prior to the provider's application. Upon request, the participating provider must submit to the Administrator or the Commission applications for loans submitted to the U.S. Department of Agriculture Rural Utility Service (RUS), approvals or denials of such loans, the provider's RUS Operating Report for Telecommunications Borrowers filed with the RUS, and any financial reports filed with a state Public Utility Commission, as applicable.

(ii) [Reserved]

(2) The participating provider's request shall include the documentation required to demonstrate particularized economic hardship. The request shall include an income statement, a supporting affidavit, any applicable Federal tax filings and/or returns, and any other relevant documentation as determined by the Bureau and OEA.

(i) The income statement(s) must:

(A) Be produced in the ordinary course of business;

(B) Include both consolidated and component-level income statements;

(C) Be audited by an independent public accountant, where such statements are produced in the ordinary course of business or are required by 17 U.S.C. 78m, 78o(d); and

(D) Include detailed information on the provider's net income, operating revenue, and operating expenses, including, but not necessarily limited to, cost of goods sold or services, selling, general and administrative expenses and depreciation or amortization expenses.

(ii) The supporting affidavit, must include revenue and cost allocations and a description of the methodology, demonstrating that the provider was operating at a loss related to providing broadband internet access service in the relevant high-cost area(s) for the last fiscal year or in at least four of the last six fiscal quarters, or other acceptable documentation determined by the Wireline Competition Bureau in consultation with the Office of Economics and Analytics.

(iii) The participating provider must first attempt to directly assign or attribute costs to broadband internet access services, and if that is not possible, must use a cost-causative mechanism to the extent possible. If neither is possible, the participating provider must employ a reasonable cost-allocation with a justification for its methodology.

(iv) The tax filing should include Form 1120, Form 1120–S or other applicable Federal Income Tax returns as required by 26 CFR part 1.

(2) The participating provider's application must also include certifications from a company officer with knowledge of the provider's cost and revenues under penalty of perjury that:

(i) All information submitted is true and correct to the best of the filer's knowledge;

(ii) The provider will comply with all applicable statutes and the Commission's rules and orders; and

(iii) The provider will use any reimbursed funds received for its intended purpose of providing discounted broadband internet access services to eligible low-income households.

(iv) The provider is a facilities-based provider as defined by 47 CFR 1.7001(a)(2)(i) through (v).

(v) The provider used cost allocation methodology consistent with the rules.

(c) *Review process.* The Administrator, under oversight of the Wireline Competition Bureau and the Office of Economics and Analytics, shall review each participating provider's request to offer the high-cost area benefit and determine whether the provider has demonstrated a particularized economic hardship in the high-cost areas for which it is requesting to offer the high-cost area benefit. If the Administrator finds the particularized economic hardship showing is satisfied in accordance with the Commission's rules and orders, and any guidance from the Wireline Competition Bureau and the Office of Economics and Analytics, then the Administrator will approve the request and notify the participating provider. Otherwise, the Administrator will deny the request and provide the participating provider a written explanation of the basis for the denial.

(1) The Administrator will review applications within a timeline to be determined by the Bureau.

(2) Providers may appeal the Administrator's determination as set forth in subpart I in this part of the Commission's rules.

(3) Providers may only submit claims for up to the $30.00 standard benefit amount while an appeal of an Administrator's determination is underway. Following a successful appeal, providers approved to offer the high-cost area benefit may submit revised claims for eligible households in the approved high-cost areas as set forth in § 54.1808. The provider many submit revised claims for up to $75.00 only from the start of the approval period indicated in the appeal determination letter.

(d) *Annual renewal process.* A participating provider that has been approved to provide the high-cost area benefit must request approval annually thereafter to continue to provide the enhanced benefit to eligible households in a subsequent year. The participating provider will need to demonstrate particularized economic hardship in the renewal submission, through the documentation specified by the Wireline Competition Bureau. The deadline for submitting the renewal request shall be determined by the Wireline Competition Bureau.

(e) *Notice to eligible households.* (1) Participating providers approved to offer the high-cost area benefit shall provide Affordable Connectivity Program subscribers written notice when the provider begins applying the high-cost area benefit to the subscriber's bill. The written notice must state:

(i) That the subscriber is receiving a high-cost area benefit and the difference between the standard benefit amount and the enhanced high-cost benefit being applied to the subscriber's supported service;

(ii) That the receipt of the high-cost area benefit is contingent on the provider's annual continued eligibility to offer the enhanced high-cost area benefit;

(iii) That the provider is required to provide the subscriber advance notice if the provider is no longer deemed eligible to offer the high-cost area benefit; and

(iv) That the provider is required to provide the subscriber advance notice of any changes to the subscriber's supported service rate or service plan stemming from any loss of the provider's eligibility to offer the high-cost area benefit.

(2) If a participating provider fails to timely submit the renewal submission by the deadline or no longer qualifies to offer the high-cost area benefit based on its annual resubmission, then the participating provider shall provide written notice to its Affordable Connectivity Program customers receiving the high-cost area benefit at least 30 days and at least 15 days before the expiration of its approval to offer the high-cost area benefit. Such subscriber notices shall include:

(i) A statement that the provider will no longer be offering the high-cost area benefit in the relevant high-cost area;

(ii) The effective date of the end of the high-cost area benefit;

(iii) A statement that upon the effective date of the loss of the high-cost area benefit, the Affordable Connectivity Program supported service purchased by the household will no longer be discounted at the higher subsidy amount; and

(iv) The amount the household will be expected to pay if it continues purchasing the service from the provider after the high-cost area benefit is no longer available.

(3) If a participating provider is no longer authorized to offer the high-cost area benefit, the provider may transition an eligible household to a lower-priced ACP service plan once the high-cost area benefit is no longer available, upon advance notice to the household and an opportunity for the household to opt out of the change and remain on its current service plan or select another service plan. Participating providers must include the advance transition notice in the required written notice about the end of the provider's approval to offer the high-cost area benefit. The advanced notice must:

(i) Provide details about the new plan and monthly price;

(ii) State that the subscriber may remain on its current plan or choose another plan;

(iii) Provide instructions on how the subscriber can opt out of the transition or change its service plan;

(iv) Provide the deadline for the subscriber to notify the provider that the subscriber would like to remain on its current plan or choose another plan.

[88 FR 60355, Sept. 1, 2023]

Subpart S—Affordable Connectivity Outreach Grant Program

SOURCE: 87 FR 54328, Sept. 6, 2022 unless otherwise noted.

§ 54.1900 Applicability of Uniform Administrative Requirements for grants and cooperative agreements to non-Federal entities.

Federal awards to non-Federal entities are subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200, as adopted at 2 CFR 6000.1.

§ 54.1901 Neutrality requirement.

Outreach conducted by Grantees, Pass-through Entities, and Subrecipients, as defined in 2 CFR part 200, through the Commission's Affordable Connectivity Outreach Grant Program shall be neutral with respect to a particular participating provider (as defined in § 54.1800(r)(1) through (4)) or among a specific group of participating providers (including, but not limited to, broadband industry groups, such as trade associations).

§ 54.1902 Prohibited activities and costs.

In addition to any prohibited activities or costs, or other restrictions on grantee activities and costs under 2 CFR part 200, as adopted at 2 CFR 6000.1, or any other Federal statutes and regulations governing Federal grants, the following prohibitions apply to Grantees, Pass-through Entities, and Subrecipients for the Affordable Connectivity Outreach Grant Program.

(a) *Prohibition against steering consumers to particular ACP participating providers.* Grantees, Pass-through Entities, and Subrecipients (as defined in 2

CFR 200.1) shall not direct, steer, incentivize, or otherwise encourage consumers to enroll with a particular participating provider (as defined in § 54.1800(r)(1) through (4)) or among a specific group of participating providers (including, but not limited to, broadband industry groups, such as trade associations) when conducting grant-funded outreach activities. Grantees, Pass-through Entities, and Subrecipients shall also make clear that eligible households may enroll with the participating provider of their choice.

(b) *Prohibition against use of ACP participating provider-branded items.* Grantees, Pass-through Entities, and Subrecipients shall not use participating-provider (as defined in § 54.1800(r)(1) through (4)) branded items such as outreach materials, gifts, or incentives when conducting grant-funded outreach activities.

(c) *Prohibition against ACP participating provider gifts, incentives, and funding.* Grantees, Pass-through Entities, and Subrecipients shall not:

(1) Offer or provide consumers gifts or incentives provided by or funded by a participating provider (as defined in § 54.1800(r)(1) through (4)) or a specific group of participating providers (including, but not limited to, broadband industry groups, such as trade associations) to encourage consumers to learn about, apply for, or enroll in the Affordable Connectivity Program (ACP) when conducting grant-funded outreach activities; or

(2) Otherwise accept funding in any form, including in-kind contributions, from a participating provider or a specific group of participating providers for the purpose of conducting grant-funded outreach activities.

(d) *Prohibition against using grant funds for gifts and incentives.* Grantees, Pass-through Entities, and Subrecipients may not use grant funds to obtain or support gifts or incentives to offer or provide to consumers to encourage consumers to learn about, apply for, or enroll in the Affordable Connectivity Program or otherwise engage with the Grantee, Pass-through Entity, or Subrecipient concerning the Affordable Connectivity Program when conducting grant-funded outreach activities.

(e) *Prohibition of certain compensation for individuals engaged in outreach.* Grantees, Pass-through Entities, and Subrecipients shall not offer or provide any form of compensation that is based on the number of consumers or households that learn about, apply for, or enroll in the Affordable Connectivity Program to individuals conducting grant-funded outreach activities, including but not limited to their personnel, their representatives, their contractors, or others acting on behalf of the entity to conduct grant-funded outreach.

§ 54.1903 Ineligible entities.

(a) In addition to any participant restrictions in 2 CFR part 200, as adopted at 2 CFR 6000.1, the following entities may not receive awards, either as Grantees, Pass-through Entities, or Subrecipients under the Outreach Grant Program:

(1) Broadband providers (including municipal broadband providers), their affiliates, subsidiaries, contractors, agents, or representatives; and

(2) Broadband industry groups and trade associations that represent broadband providers.

(b) For municipal broadband providers, the exclusion of broadband providers and their affiliates, subsidiaries, or representatives from eligibility does not extend to separate arms of the municipality that do not maintain, manage, or operate the municipal broadband network.

§ 54.1904 Recordkeeping and audits.

Participants in the Affordable Connectivity Outreach Grant Program must maintain records to document compliance with the rules and requirements for the Outreach Grant Program in accordance with 2 CFR 200.334, 200.335, 200.336, and 200.338, as adopted at 2 CFR 6000.1, and shall provide that documentation to the Office of the Managing Director or any other FCC Bureau or Office, or their assigns, upon request in accordance with 2 CFR 200.337, as adopted at 2 CFR 6000.1.