

**FEDERAL COMMUNICATIONS
COMMISSION****47 CFR Parts 36, 54, 61, 64, and 69**

[WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; FCC 11-13]

Connect America Fund; Developing a Unified Intercarrier Compensation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes several specific, near-term steps that will accelerate broadband investment in unserved areas and set the Universal Service Fund and Intercarrier Compensation system on a path that is consistent with the principles the Commission has proposed; the Commission then describes alternatives for completing the reform process over the longer term. The Commission intends to monitor the progress of the near-term reforms and adjust course as necessary as the Commission completes the reform process from among the longer-term options.

DATES: Comments are due on or before April 18, 2011 and reply comments are due on or before May 23, 2011. See Supplementary Information section for additional comment dates.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45, by any of the following methods:

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

- *Federal Communications Commission's Web Site:* <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

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

- In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via e-mail to PRA@fcc.gov and to Cathy.Williams@fcc.gov and to Nicholas A. Fraser, Office of Management and Budget, via e-mail to Nicholas_A._Fraser@omb.eop.gov or via fax at 202-395-5167.

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

FOR FURTHER INFORMATION CONTACT:

Patrick Halley, Wireline Competition Bureau, (202) 418-7550 or Jennifer Prime, Wireline Competition Bureau, (202) 418-2403 or TTY: (202) 418-0484. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document contact Cathy Williams on (202) 418-2918.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (NPRM) in WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, and WC Docket No. 03-109, FCC 11-13, adopted February 8, 2011, and released February 9, 2011. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (800) 378-3160 or (202) 863-2893, facsimile (202) 863-2898, or via the Internet at <http://www.bcpweb.com>. It is also available on the Commission's Web site at <http://www.fcc.gov>.

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

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

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

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

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

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

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

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

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

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

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554.

Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY-B402, Washington, D.C. 20554.

Customers may contact BCPI through its Web site: <http://www.bcpweb.com>, by e-mail at fcc@bcpweb.com, by telephone at (202) 488-5300 or (800) 378-3160 (voice), (202) 488-5562 (tty), or by facsimile at (202) 488-5563.

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

To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA web page: <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as shown in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

For further information regarding this proceeding, contact Patrick Halley, Attorney Advisor, Wireline Competition Bureau at (202) 418-7389,

Patrick.Halley@fcc.gov, or Jennifer Prime, Attorney Advisor, Wireline Competition Bureau at (202) 418-2403, jennifer.prime@fcc.gov.

Initial Paperwork Reduction Act of 1995 Analysis: This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due May 2, 2011.

Comments on the proposed information collection requirements should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

OMB Control Number: 3060-0298.

Title: Part 61, Tariffs (Other than Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents and Responses: 630 respondents; 1,210 responses.

Estimated Time per Response: 50 hours.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 1-5, 201-205, 208, 251-271, 403, 502, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 151-155, 201-205, 208, 251-271, 403, 502, and 503.

Frequency of Response: One-time, on occasion and biennial reporting requirements.

Total Annual Burden: 63,000 hours.

Annual Cost Burden: \$986,150.

Privacy Act Impact Assessment: No impacts.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Sections 201, 202, 203, 204 and 205 of the Communications Act of 1934, ("Act") as amended, 47 U.S.C. 201, 202, 203, 204 and 205, require that common carriers establish just and reasonable charges, practices and regulations which must be filed with the Commission which is required to determine whether such

schedules are just, reasonable and not unduly discriminatory.

Part 61 of the Commission's rules, 47 CFR part 61, establishes the procedures for filing tariffs which contain the charges, practices and regulations of the common carriers, supporting economic data and other related documents. The supporting data must also conform to other parts of the Commission's rules such as 47 CFR parts 36 and 69. Part 61 prescribes the framework for the initial establishment of and subsequent revisions to tariffs. Tariffs that do not conform to Part 61 may be required to post their schedules or rates and regulations, 47 CFR 61.72.

In this Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (FCC 11-13), the Commission proposes revised rules that would require incumbent rate-of-return and competitive local exchange carriers to file revised tariffs if they engage in revenue sharing arrangements. We estimate that this could result in a one-time increase in the frequency of response of up to 50 carriers because they would have to make the necessary tariff filing within 45 days of the final rules becoming effective. Any subsequent tariffing requirements should be encompassed in the ongoing estimates for this information collection.

I. Summary

A. Legal Authority To Support Broadband

1. Additional Section 254(b) Principle

1. We propose to adopt the principle, as recommended by the Federal-State Joint Board on Universal Service in November 2010, "that universal service support should be directed where possible to networks that provide advanced services, as well as voice services," pursuant to section 254(b)(7), and seek comment on that proposal. If we adopt the proposed principle, how should we apply it with respect to the other criteria in section 254?

2. Commission Authority To Support Broadband

2. We have express statutory authority to extend universal service support to broadband services that providers offer as telecommunications services. We believe we also have authority to extend universal service support to broadband services offered as information services under section 254, section 706 and/or our ancillary authority. In any event, we believe we have clear authority to condition awards of universal service support on a recipient's commitment to offer broadband service. We seek comment on these issues, as well as any

other approaches that would buttress our legal authority.

a. Section 254

3. We seek comment on whether, read as a whole, section 254 may reasonably be interpreted to authorize the Commission to support broadband service. Could we provide support to information service providers consistent with section 254(e) and 214(e)? If not, under what mechanism could we designate and offer support to information service providers? What role would the states play in designating eligible information service providers? Would disbursement of support to information service providers comport with federal appropriations laws? We seek comment on these and other pertinent issues.

4. In the event we interpret section 254 to authorize support of broadband, we also seek comment on adding broadband to the supported services list. Before modifying the list of supported services, the Commission must “consider the extent to which such telecommunications services—(1) are essential to education, public health, or public safety; (2) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (3) are being deployed in public telecommunications networks by telecommunications carriers; and (4) are consistent with the public interest, convenience, and necessity.”

5. In 2007, the Joint Board also recommended that the Commission revise the definition of supported services to include mobility, concluding that both broadband and mobility satisfied the four part criteria and should be eligible for federal universal service support.

6. The Commission currently requires ETCs to provide all of the supported services. If we were to add broadband and/or mobility to the list of supported services, should we create separate designations for each supported service (voice, broadband, and mobility) so that a provider does not need to offer all of the supported services to be eligible for support, as the Joint Board recommended in 2007? We seek comment on this proposal. We also ask what would be the impact of such an approach on Lifeline providers, who today also are required to offer all supported services.

b. Section 706

7. We seek comment on whether sections 706(a) and (b), alone or in concert with sections 254 and 214(e), grant us authority to provide universal

service support for broadband information services. We believe that providing universal service support for broadband would “remove barriers to infrastructure investment” by supplying financial incentives to invest in areas where it may otherwise be uneconomic to do so. We seek comment on this issue. Would providing support for broadband information services under section 706 be inconsistent with the definition of universal service in section 254(c) or the limitation of support to ETCs in section 254(e)? If we act pursuant to section 706 alone, would we have authority to collect universal service contributions and disburse them to eligible recipients under the current universal service mechanisms, or should we develop a separate mechanism under our section 706 authority? Would the collection and disbursement of funds comport with federal appropriations laws? What criteria should we use to determine who is eligible to receive support? What role should states play? We seek comment on these and other relevant issues.

c. Title I Ancillary Authority

8. We seek comment on whether the Commission could rely on its ancillary authority in Title I to support broadband information services. Would providing support for broadband be reasonably ancillary to the Commission’s statutory responsibilities under section 254(b)? Similarly, would supporting broadband be reasonably ancillary to section 706 as a “specific delegation of legislative authority” to encourage deployment of advanced telecommunications capability to all Americans? We seek comment on whether these provisions or others provide a sufficient statutory basis for exercising ancillary authority. As with other theories described above, we also seek comment on what criteria should be used to designate eligible recipients, and on who should perform the designations. We also seek comment on whether adopting the competitive bidding process in the first phase of the CAF and permanent CAF programs pursuant to our ancillary authority would be consistent with federal appropriations laws. We invite comment on these and any other relevant issues.

d. Conditional Support

9. We believe the Commission also has authority to direct high-cost or CAF support toward broadband-capable networks by conditioning awards of universal service support on a recipient’s commitment to offer broadband service alongside supported

voice services. We see no reason why conditioning the receipt of support on offering broadband is not permissible under the Commission’s general authority to promulgate general rules related to universal service. We invite comment on this approach.

e. Other Approaches

10. *Forbearance.* We seek comment on whether we should exercise our section 10 forbearance authority, alone or in combination with any of the theories described above, to facilitate use of funding to support broadband information services. For example, could we forbear from applying section 254(c)(1), which defines universal service as an evolving level of telecommunications services? Could we likewise forbear from applying sections 254(e) and 214(e), which restrict universal service support to ETCs? Are the statutory criteria for forbearance from these provisions met? Are there any other provisions from which we should forbear? If we grant forbearance, may we adopt rules that are broader than the statutory provisions? We seek comment on these issues.

11. *Classifying Interconnected VoIP.* We also invite comment on whether we should consider classifying interconnected voice over Internet protocol as a telecommunications service or an information service. If the Commission were to classify interconnected VoIP as a telecommunications service, this would enable the Commission to support networks used to provide interconnected VoIP, including broadband networks. We seek comment on this issue. Does interconnected VoIP have characteristics that warrant classifying it as a telecommunications service or an information service? If the Commission classified interconnected VoIP as a telecommunications service, should we forbear from applying any provisions in Title II to the service? We request comment.

12. We invite parties to comment on these and any other legal theories that they believe will provide a sound legal basis for providing universal service support for broadband.

B. Setting American on a Path to Reform

1. National Goals and Priorities for Universal Service

13. We propose the following four priorities for the federal universal service high-cost program: (1) To preserve and advance voice service; (2) to ensure universal deployment of modern networks capable of supporting necessary broadband applications as

well as voice service; (3) to ensure that rates for broadband service are reasonably comparable in all regions of the nation, and rates for voice service are reasonably comparable in all regions of the nation; (4) to limit the contribution burden on households.

14. We ask that commenters consider the reform proposals in light of these reform priorities, and ask commenters to suggest additional or alternative priorities, and how to prioritize them. We ask whether advancing the deployment of mobile networks should be its own independent priority. We seek comment on other priorities, including competitive neutrality and technology neutrality, and whether our proposed reforms are consistent section 254(b)(5) that support “should be specific, predictable, and sufficient.”

2. Encouraging State Action To Advance Universal Service

15. We seek comment generally on the role of the states in preserving and advancing universal service as we transition from the current programs to the Connect America Fund. We welcome the input of the state members of the Joint Board on these and other important questions.

16. We seek comment on what level of financial commitment should be expected from the states and territories to advance broadband, and on how to address the different features of states, and the various state efforts to preserve and advance universal service. We seek comment on how to encourage or require additional commitments to support universal service by states in partnership with the federal government.

3. Eligible Telecommunications Carrier Requirements

17. We seek comment on how the Commission can best interpret existing ETC requirements to achieve our goals for reform. We also seek comment on whether (and if so how) we should modify the ETC requirements. How would we provide incentives for state commissions to apply any Commission-adopted requirements to ETCs designated by states? Alternatively, we seek comment on whether the Commission could or should forbear from requiring that recipients be designated as ETCs at all, and if so, in particular whether the Commission could forbear from applying section 254(e) to entities that are not telecommunications carriers to allow their receipt of universal service support to serve rural, insular and high-cost areas under the Act. If we do forbear from this requirement, what if any

requirements should replace it? How should we transition from existing to any new requirements? How should existing ETCs be treated during such a transition?

4. Public Interest Obligations of Fund Recipients

18. We seek comment on what public interest obligations should apply to ETCs going forward, as we reform and modernize the existing high-cost program to advance broadband. We ask commenters to address whether the public interest obligations proposed below should vary, depending on whether broadband is a supported service, or alternatively, if support is provided to voice recipients conditioned on their deployment of broadband-capable facilities. We propose that public interest obligations apply generally to all funding recipients. We ask commenters to what extent, if any, should the obligations vary for recipients under the current high-cost funding programs, recipients of funding in the first phase of CAF funding, and Long-Term CAF recipients. We ask commenters to consider and explain whether (and if so how) each of the obligations discussed below should apply under what circumstances, recognizing that it may be appropriate to tailor obligations to avoid unfunded mandates. We also ask commenters to address specifically whether the duties and responsibilities of ETCs should differ depending on whether they are also the state-mandated carrier of last resort in a particular area. We seek comment on how best to balance the costs and burdens associated with the monitoring of, enforcement of, and compliance with the proposed public interest obligations with our principles of fiscal responsibility and accountability and our goal of rapidly increasing broadband deployment in unserved areas.

a. Characteristics of Voice Service

19. We propose to simplify how we describe core voice service functionalities into one term: “voice telephony service.” Should we preserve the definition of “voice grade access” to the public switched network in § 54.101 of the Commission’s rules? Parties that support a different definition should provide analysis and data supporting such a definition. Parties should also explain whether such a definition would be technology-neutral and if not, the basis for adopting a definition that is not technology-neutral.

b. Voice Obligations

20. We propose that recipients must provide “voice telephony service” throughout their designated service areas. We propose that recipients be permitted to partner with another voice provider to provide “voice telephony service.” We propose that recipients be required to offer voice telephony service as a standalone service. We propose that recipients continue to be subject to any applicable baseline state or federal requirements for the provision of voice service by ETCs. We seek comment on how to create incentives for states to re-evaluate and harmonize the requirements they impose on the ETCs that they designate to be consistent with any new federal requirements. Should there be any additional obligations imposed on recipients serving areas in which the telephone penetration rate historically has been substantially lower than the national average (e.g., on Tribal lands and in Native communities)? Given that we envision a transition to an integrated voice-broadband network in the future, how should voice universal service public interest obligations change over time? In the future, will there be a need for separate voice and broadband public interest obligations?

c. Characteristics of Broadband Service

21. We propose to adopt metrics for broadband using specific performance characteristics that would apply to the CAF and also to the existing high-cost program, until it is transitioned into the CAF. We seek comment on whether there are reasons to adopt technology-specific minimum standards that would depend on the technology deployed. We seek comment on whether we should characterize broadband by its speed, functional attributes, or in some other way. Commenters should discuss additional ways of measuring broadband services provided to consumers, such as throughput, latency, jitter, or packet loss, for purposes of establishing performance requirements for recipients. We seek comment on the National Broadband Plan recommendation of 4 Mbps actual download/1 Mbps actual upload, or, alternatively, of 3 Mbps of actual download speed/768 kbps of actual upload speed, or a different speed requirement. We seek comment on whether there are other metrics we should consider that are unrelated to speed or service quality, such as mobility.

22. *Measuring the Attributes of Broadband.* We propose that recipients test their broadband networks for compliance with whatever metrics

ultimately are adopted and report the results to USAC on a quarterly basis, and that these results be subject to audit. Alternatively, should we instead require that recipients provide a specific speed (e.g., 4/1 Mbps) at a “reasonable service quality,” and rely on customer complaints regarding the quality of their broadband as a means of enforcing service quality? We propose that the attributes be measured on each broadband provider’s access network from the end-user interface (modem) to the closest peering point between the broadband provider and the public Internet.

23. *Evolution.* We seek comment on how often we should re-evaluate our broadband requirements, and what would be the appropriate procedural vehicle (e.g., the Commission’s annual section 706 inquiry).

d. Broadband Obligations

24. We propose that all existing high-cost funding recipients going forward and all future CAF recipients must offer broadband service that meets or exceeds the minimum metrics prescribed by the Commission, assuming they receive funding for that purpose. We propose that all recipients should be subject to an annual certification regarding compliance with any obligations that we ultimately adopt for the provision of USF-supported broadband services.

(i) Service, Coverage, and Deployment

25. *Service Requirement.* We seek comment on whether to impose a service requirement, which would specify that a recipient must provide service upon request within a reasonable period of time, or a service requirement and a coverage requirement on recipients. We also seek comment on whether to adopt specific requirements to ensure providers are meeting a service requirement.

26. *Coverage Requirement.* We seek comment on whether to adopt a coverage requirement (e.g., recipients must cover 99 percent of all housing units in an area) in addition to a service requirement, and whether to adopt a specific timeframe or specific milestones for a deployment schedule. We propose that recipients be permitted to partner with another broadband provider to provide broadband service in areas where the recipient has not yet built its network, and seek comment on whether we should limit the number of housing units in a given service area that can be served by a partnering arrangement with a satellite provider in order to most efficiently leverage the capacity of satellite throughout the unserved high-cost areas across the

nation. Alternatively, we seek comment on whether support recipients should be allowed to carve out from the coverage requirement a small percentage of housing units that may be served by high-speed Internet access service that may not meet the minimum performance metrics adopted by the Commission. We seek comment on how recipients should demonstrate compliance with a coverage requirement.

(ii) Affordable and Reasonably Comparable Rates

27. We propose that recipients must offer voice and broadband (individually and together) at rates that are affordable and reasonably comparable to rates in urban areas, whether or not broadband is a supported service, and seek comment on how to measure “affordable” and “reasonably comparable.” We seek comment on how the Commission should obtain data on voice and broadband pricing to develop possible rate benchmarks for supported voice and/or broadband service.

(iii) Additional Considerations

28. *Joint Infrastructure Use.* We seek comment on the costs and benefits of applying policies to encourage sharing of infrastructure, including by residential and anchor institution users.

29. We also seek comment on how USF can best achieve synergies with the connectivity objectives for schools, libraries, and rural health care facilities in section 254 of the Act. Where build out is required to connect these particular types of community anchor institutions, should this construction be supported through the CAF, E-rate, or Rural Health Care programs, individually or in combination? Should USF recipients have any obligations to serve anchor institutions in the communities in which they serve residential customers?

30. *Other Public Interest Obligations.* We seek comment on whether any additional public interest obligations should apply to USF recipients, such as marketing of broadband service or providing customers with the option to subscribe to a basic broadband service on a stand-alone basis, or prohibiting term commitments or early termination penalties. We also seek comment on public interest requirements that should apply to carriers providing service on Tribal lands, such as requiring recipients to provide broadband to Tribal and Native community institutions.

31. *Evolution.* We propose that we periodically re-evaluate the broadband public interest obligations, and seek

comment on whether they should be re-evaluated at the same time the Commission re-evaluates its broadband metrics, or less frequently. We seek comment on the effect that changing the obligations would have on program administration and on funding recipients. We propose that the Commission re-examine funding levels each time it re-evaluates the public interest obligations.

32. *Remedies for Non-Compliance.*

We seek comment on remedies for failure to meet any public interest obligations, including but not limited to loss of universal service funding and repayment of funds already disbursed. We propose that USAC recover funds through its normal processes in instances where an audit or investigation finds that a recipient has failed to comply with certain CAF program rules and requirements.

33. *Waiver.* We propose to allow those carriers that are unable to meet an adopted deployment schedule to seek a waiver of the requirement from the Commission, and seek comment on what the criteria should be for such a waiver.

34. *Role of States and Tribal Governments.*

We seek comment on the role of states and Tribal governments in enforcing these federally defined public interest obligations and whether states or Tribal governments may impose additional obligations on funded providers.

C. Near-Term Universal Service Reforms

1. Rationalizing Loop Support, Local Switching Support, and Interstate Common Line Support

35. In October 2010, we issued the *Mobility Fund NPRM*, 75 FR 67060, November 1, 2010, which proposed a Mobility Fund intended to spur build out of advanced mobile wireless networks in areas not served by current-generation mobile networks. We now continue our reform efforts in this proceeding by proposing steps to spur broadband build out, whether fixed or mobile, in unserved areas, which exist in every state as well as the territories. We propose to do this by transitioning funds from less efficient uses to more efficient uses, including through the creation of the CAF. We also seek comment on other measures to reduce inefficiencies, extend broadband, and increase the accountability of companies receiving support.

36. Three components of the high-cost program primarily support smaller carriers regulated under “rate-of-return” rules: High-cost loop support (HCLS), which provided \$1 billion for

incumbents in 2010; local switching support (LSS), which provided \$276 million for incumbents in 2010; and interstate common line support (ICLS), which provided \$1.1 billion for incumbents in 2010. As currently structured, these funding mechanisms provide poor incentives for rate-of-return carriers to operate and invest efficiently. While individual carriers may act in the best interests of their own customers and communities, excessive spending by any one community limits opportunities for consumers in other communities and may not be in the best interests of the nation as a whole. HCLS, for example, creates incentives for companies to outspend their peers in order to receive more funding under the current capped formula. For all three programs, there are few, if any, benchmarks for determining whether network investment is justified or appropriate, allowing a company to spend millions of dollars to build a state-of-the art network that may serve only a few customers. LSS was originally created to help small telephone companies that lack economies of scale to afford large switches, but since then the industry has moved to software-based routers and switches which can be more easily scaled to a company's size and even shared among companies. LSS now provides perverse incentives for companies not to realize efficiencies by combining service areas. We seek comment on a suite of reforms to these components, which will increase accountability and start rate-of-return carriers on the path towards market-driven, incentive-based regulation.

37. Specifically, we seek comment on the following reforms to be implemented beginning in 2012:

38. Modification of HCLS. We propose to reduce the reimbursement rates for rural incumbent LECs to 55% and 65%, from 65% and 75%, in order to encourage more efficient operations and to facilitate more equitable distribution of HCLS under the HCLS cap. We propose to eliminate from the rules, HCLS for rural incumbent LECs with more than 200,000 loops because there are no rural incumbent LECs with more than 200,000 lines receiving support and such incumbent LECs are well below the qualifying threshold. We propose to eliminate the "safety net additive" because it is not working as intended. Many carriers are qualifying because of the loss of lines, not because of significant increased investment.

39. Modification of LSS. We propose to eliminate LSS because LSS was designed when small incumbent LECs had to buy expensive mechanical

switches, however, today's soft switches are more scalable to small operations. Alternatively, we propose to combine HCLS and LSS into one high-cost mechanism that would flow to areas with above-average costs in the same manner as HCLS does now.

40. Modification or Elimination of Corporate Operations Expense Eligibility for Universal Service Support. We propose to reduce or eliminate the eligibility of corporate operations (overhead) expenses for purposes of universal service support. Currently, corporate operations eligibility is limited for HCLS, but no limited for LSS and ICLS. We desire to focus finite universal service funds more directly to investments in network build-out, maintenance, and upgrades—not highly discretionary expenses.

41. Limits on Reimbursable Capital and Operating Costs. We propose to improve incentives for efficient operations by establishing benchmarks for reasonable capital and operating costs for universal service support purposes. The benchmarks would be based on a simplified model taking into account key drivers of cost (such as population density, topography, soil type, etc.). Capital or operating costs above the benchmarks would not be eligible for reimbursement through high-cost universal service mechanisms. We also seek comment regarding whether above-benchmark costs should be reimbursable based on a showing that such costs are justifiable and alternative means of recovering above-benchmark costs from other revenue sources.

42. Limits on Total per Line High-Cost Support. We propose to cap total annual support per line for all companies operating within the continental United States, e.g., \$3,000 per line annually. Eighteen companies currently receive more than \$3,000 per line annually, five receive more than \$10,000 per line annually, and one receives \$20,000 per line annually. We seek comment whether companies receiving more than the cap should be able to make a showing that additional support is in the public interest.

2. Reducing Barriers to Operating Efficiencies

43. Study area waiver process. We propose to streamline the study area waiver process that would deem the waiver granted 60 days after the end of the comment cycle, absent any further action by the Bureau. We propose to eliminate the one-percent standard in evaluating study area waivers and focus evaluation on the number of lines at issue, projected USF support per line, and whether such a grant would result

in consolidation of study areas that facilitates reductions in cost by taking advantage of economies of scale.

44. Revising the "Parent Trap" Rule, § 54.305 of the Commission's rules. We propose to eliminate the parent trap rule five years after grant of the relevant study area waiver and if a certain minimum percentage of the acquired lines, e.g., 30% are unserved by 768 kbps broadband. Section 54.305(b) of the Commission's rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of high-cost universal service support for which the acquired exchanges were eligible prior to their transfer. This proposal is to encourage carriers subject to § 54.305 of the Commission's rules to invest in modern communications networks in unserved areas. We seek comment on revising § 54.305 of the Commission's rules so that rural incumbent LECs, subject to § 54.305 of the Commission's rules, would receive either the lesser of the support pursuant to § 54.305 of the Commission's rules or the support based on their own actual costs. Some rural incumbent LECs currently receive support pursuant to § 54.305 of the Commission's rules, that would not receive any support or would receive lesser support based upon their own costs.

3. Transitioning Interstate Access Support (IAS) to the CAF

45. We propose to phase out IAS for both incumbent price cap carriers and competitive eligible telecommunications carriers (ETCs) over a period of a few years. In 2010, IAS totaled \$545 million. Originally created in 2000 as part of a five-year transitional reform plan, IAS has long outlived its intended lifespan. The comments received in response to the *USF Reform NOI/NPRM*, 75 FR 26906, May 13, 2010, suggest that this fund is not critical to ensuring rural voice service, and we believe the funds could be more productively used to support the deployment of broadband to unserved areas. We seek comment on transitioning IAS to the CAF and the consequences of doing so.

4. Rationalizing Competitive ETC Support Through Elimination of the Identical Support Rule

46. We propose to eliminate the "identical support" rule and to transition available competitive ETC support to the CAF over a several-year period. Under the Commission's identical support rule, competitive ETCs (mostly wireless carriers) receive, subject to an interim cap, the same per-

line high-cost support as incumbent carriers serving the same area regardless of actual costs or needs. As a result, the funding is poorly targeted—in some areas, as many as four or more providers are receiving redundant ETC funding, while other areas lack even a single provider of broadband or mobile voice. Two of the largest ETCs have voluntarily agreed to relinquish their ETC support in the context of transactions, and the *USF Reform NOI/NPRM* record supports the conclusion that current levels of competitive ETC support are unnecessary to ensure fixed or mobile voice service in many areas of the country that receive support today. At the same time, we recognize the importance of mobile voice and mobile broadband coverage in all areas of the country and seek comment on how to balance the desire for universal mobile coverage with other USF priorities. Our proposal in the Mobility Fund proceeding was intended to provide a one-time infusion to expand mobile coverage. We seek comment here on how best to factor the need for mobility into the reforms proposed in this proceeding to achieve our universal service objectives. Specifically, we seek comment on transitioning available competitive ETC support to the CAF, over what schedule such transition should occur, and whether waivers or exceptions should be made, such as for competitive ETCs serving Tribal lands or when immediate transition of support to the CAF would disrupt the availability of wireless service in area.

47. Taken together, the proposed changes to the high-cost program will enable significant funds to be used to support fixed and mobile broadband, as discussed below, and potentially a recovery mechanism associated with ICC reform, where necessary, as summarized below.

5. First Phase of the Connect America Fund

48. In the first phase of the CAF, we propose to award, through a reverse auction process, non-recurring support for broadband areas identified in unserved areas, as determined by the forthcoming National Broadband Map and/or our Form 477 data collection (i.e., areas without broadband advertised as providing download speeds of at least 768 kbps). That targeted funding will supplement, not replace, other support provided through the high-cost program in its current form or as modified as part of the reforms proposed above.

(i) Basic Framework for the Connect America Fund Phase I

49. We seek comment on our authority to establish a program under which non-recurring support would be provided, based on a competitive bidding system, to a single entity to deploy and provide broadband service.

50. We propose to design the first phase of the CAF to use funds efficiently to expand broadband to as many unserved housing units—that would be unlikely to be served soon or at all without public investment—as possible. We propose to fund the first phase of the CAF with savings realized from certain carriers' voluntary relinquishment of USF support along with savings realized from other proposed reforms to existing high-cost mechanisms.

51. We propose to use auctions to determine the entities that will receive support under the first phase of the CAF and the amount of support they will receive. We propose to award a fixed amount of support, paid out in installments, based on the lowest bid amounts submitted in a reverse auction. We seek comment generally on how to design a competitive process to determine recipients and support amounts in light of our goals.

52. We propose to fund no more than one auction winner per unserved area. We propose to exclude satellite providers from bidding in the auction but to permit them to partner with a terrestrial (wireless or wireline) provider. We propose to compare bids across the country, rather than comparing them within certain subsets of otherwise eligible areas.

(ii) Identifying Unserved Areas Eligible for Support

53. We propose to use the National Broadband Map to determine what areas are unserved, and seek comment on how to use the Map for this purpose; alternatively, should we rely on information from an updated Form 477. We propose to identify unserved areas on a census-block basis, but seek comment on whether another unit of geographic area would better serve our goals.

54. We propose to evaluate bids on an "amount per unserved unit" basis. We propose to use unserved housing units to establish a baseline number of unserved units per census block. We seek comment on whether the number of unserved units should be adjusted to reflect community anchor institutions and the like, and, if so, how we would obtain the necessary data to be able to determine with a sufficient level of

accuracy the number of businesses and other institutions in a given area.

55. We seek comment on whether we should limit support—or provide bidding credits—to bidders in states that have taken or are taking measures to reduce intrastate switched access rates. We seek comment on whether we should prioritize support for states that have created state high-cost USF programs. We seek comment on whether we should take into account states' actions relating to municipal broadband—e.g., whether there should be bidding credits for projects in states where municipal broadband is permitted.

56. We seek comment on whether we should reserve funds for Tribal areas, or provide bidding credits for bidders, including Tribally owned bidders, who wish to deploy on Tribal lands. We further seek comment on whether any funds reserved for Tribal lands that remain unawarded should be treated any differently from unreserved funds that remain unawarded after the auction. We further seek comment on how to design the first phase of the CAF to include Tribal governments to ensure efficient operation on Tribal lands. In addition, we seek comment on whether we should reserve funds for insular areas, or provide bidding credits for those who wish to deploy in insular areas.

(iii) Pre-Existing Deployment Plans

57. We seek comment on how to structure the program to avoid outcomes that would be inconsistent with the goal of increasing broadband deployment in unserved rural and high-cost areas, not funding existing facilities or deployment to which a carrier has already committed to federal or state regulators.

(iv) Public Interest Obligations

58. We propose to have a Commission-defined coverage requirement. In the alternative, we could use bidder-defined coverage requirements. We seek comment on both.

59. We propose that recipients build networks of at least 4 Mbps (downstream) and 1 Mbps (upstream). We seek comment on this proposal and whether the speed requirement should evolve.

60. We propose that recipients deploy within 3 years of funding. We propose that obligations last for a specified period of years, such as 5, after completion of buildout. We seek comment on whether to require support recipients to meet interim deployment milestones.

61. Given the ongoing nature of our reform efforts, we seek comment on whether, upon the completion of comprehensive universal service reform, recipients that ultimately receive support should be relieved of their obligations under the first phase of the CAF, with those obligations being replaced by any public interest obligations imposed on ultimate CAF recipients. We seek comment on what should happen to a recipient's obligations in the first phase of the CAF once someone in the area (either the recipient of support in the first phase of the CAF or another carrier) receives long-term CAF support.

(v) Eligibility Requirements for the First Phase of the CAF

62. We propose that recipients in the first phase of the CAF be designated (or have applied for designation) ETCs by a state (or the FCC, as appropriate), as required by the Act; alternatively, we seek comment on whether to forbear from that requirement.

63. We seek comment on permitting carriers to apply for ETC designation on a conditional basis, so that they are not required to satisfy ETC obligations where they don't get any funding.

64. We propose that an applicant must be a terrestrial wireline or wireless service provider and hold, or have access to, any required authorization to provide the required services.

65. We propose to limit participation in the auction to those applicants able to certify that they have submitted all requested broadband deployment data as part of the State Broadband Data and Deployment program. Parties that have not been requested to provide such data would be permitted to certify that they have provided all data requested. We seek comment on this proposal generally, and on whether such a limitation should apply to Tribal areas.

(vi) Auction Process

66. We propose rules for and seek comment on certain elements of the auction process, including the application and bidding process.

67. We propose a two-stage application process similar to the one we use in spectrum license auctions. Based on the eligibility requirements for support in the first phase of the CAF, we would require a pre-auction "short-form" application to establish eligibility to participate in the auction, relying primarily on disclosures as to identity and ownership and applicant certifications, and perform a more extensive, post-auction review of the winning bidders' qualifications based on required "long-form" applications.

68. *Short Form Application.* We propose generally that the short form application will include basic ownership information about the carrier and information about any partnerships the carrier has entered for the first phase of the CAF; identification of areas where the carrier might possibly bid; and certification that the bidder is qualified to participate in the auction.

69. *Auction Design and Bidding Process.* We seek comment on the best auction design to maximize the deployment of broadband to housing units where there is no broadband now. We also seek comment on alternative methods of establishing coverage requirements in areas for which support is received. We seek comment on how to encourage bidders to go beyond their Commission- or bidder-defined coverage requirement.

70. We propose to select winning bidders and award support based on bids that state a price at which the bidder would meet our minimum performance requirements for the number of housing (or other) units covered by the bid, ranking bids by price per unit covered. We seek comment on whether we should use weighted criteria or bidding credits to adjust the bids to account for commitments to exceed our minimum requirements and to account for other benefits, such as higher speed, lower latency, mobility, or a better upgrade path. We could also use such credits/adjustments to allow tradeoffs, such as allowing a provider to bid to provide service that does not meet our speed standard but does offer mobility.

71. We propose that bidders should be able to aggregate census blocks together to bid on a package, and seek comment, generally, on how we should design the auction to accommodate package bidding.

(vii) Post-Auction Process and Administration for the First Phase of the CAF

72. We propose that, following the auction, identified winning bidders submit long form applications within 10 days.

73. We seek comment on the specific information and showings that should be required of winning bidders on the long-form application before they can be certified to receive support and before actual disbursements in the first phase of the CAF can be made to them. We propose that an applicant be required to confirm ownership information provided in its pre-auction short-form application or to update that information, as appropriate. We further seek comment on whether we should

require applicants in the first phase of the CAF to provide any other ownership information.

74. We propose that an applicant provide detailed information about the network it intends to deploy and seek comment on what else we should require.

(viii) Guarantee of Performance

75. We propose that a winning bidder should post financial security, such as a letter of credit, and seek comment on whether there is an alternative that would provide adequate protection; we also seek comment on whether some carriers should be exempt from this requirement.

(ix) Disbursing Support

76. We propose that payments be made over time as milestones are reached; for example, 50 percent paid after winning the bid, then 25 percent paid after 50 percent deployment, and the final 25 percent paid on completion.

77. We propose to disburse money in a manner consistent with the Antideficiency Act, which means that if we auction off support that we do not already have on hand, only the first payment would be guaranteed, the other payments would be made only on a determination by the Commission that payment was appropriate. The Commission's compliance with the Antideficiency Act is currently assured under the terms of an exemption, scheduled to expire December 31, 2011, which permits the Commission to obligate certain universal service funds before they are collected. We seek comment, however, on how to assure compliance in the event the exemption is permitted to lapse.

(x) Liabilities for Failure To Deploy and Ensuring Compliance

78. We seek comment on what kinds of penalties are appropriate if a carrier fails to deploy as promised. We propose to require carriers to agree that support in the first phase of the CAF is contingent upon completion (or substantial completion) of the buildup in accordance with specified performance requirements. We seek comment on, among other things, whether carriers should be subject to additional liabilities and/or security requirements (such as letters of credit or performance bonds) to provide them with incentives to perform and to protect the CAF in case they fail to perform as required.

79. We seek comment on whether bidders that are found to have failed to meet their obligations relating to the CAF should similarly be ineligible for

Commission action until they can demonstrate that they have complied with their obligations or obtained a waiver.

80. We will require recipients of CAF support to comply with audits and record retention requirements. We propose to confirm that deployment is occurring through inspections in the field, and we seek comment on what kinds of verification procedures are appropriate.

(xi) Delegation of Authority

81. We propose to delegate to the Wireline Competition Bureau and the Wireless Telecommunications Bureau the authority to determine, subject to existing legal requirements such as the rules of the Office of Management and Budget, the method and procedures for applicants and recipients to submit appropriate information.

6. Targeting Support

a. Disaggregating Support

82. We propose to target support more directly to the areas of greatest need by requiring rural carriers to disaggregate support within existing study areas beginning in 2012, pursuant to § 54.315 of the Commission's rules, and invite comment on the proposal.

b. Redrawing Study Areas

83. We seek comment on whether we should begin a process in the near term to establish new service areas that would be eligible for ongoing support under the CAF in stage two of our comprehensive reform. We seek comment on whether we should take steps to encourage states to redraw existing study area boundaries to create more narrowly targeted service areas for purposes of the CAF by a specified date, and what actions we may take if states decline to do so. We seek comment on issues related to the geographic scope of ETC obligations and ETC designations.

7. Pending Proceedings and Other Issues

84. We seek comment on proposals in the record and invite parties to update their proposals as appropriate.

85. *Broadband Now Plan.* We seek comment on whether and how the recommendations in the Broadband Now Plan, submitted by a group of mid-sized carriers in 2009, could be operationalized in the context of the reforms proposed in this Notice.

86. *NCTA Petition for Rulemaking.* We seek focused comment on how the presence of unsubsidized competition should be factored into our proposals generally. We seek comment on whether we should eliminate universal service in any study area where there is 100%

coverage by an unsubsidized voice provider, or whether we should create a rebuttable presumption that universal service support is unnecessary in those study areas where at least 95% of the households can get service from an unsubsidized competitor, and on the impact of such a process on the incumbent and the consumers in that area. We also seek comment on whether and how to rationalize funding in circumstances in which a single company operates two or more networks in the same area (e.g., telecommunications and cable plant, or wireline and wireless networks).

87. *Non-regulated Revenues.* We seek comment on how to ensure that universal service is not inappropriately subsidizing non-regulated services or excessively subsidizing carriers that have the ability to recover additional non-regulated revenues as a result of their deployment of subsidized local loops. We seek comment on the proposal to include all revenues (including broadband revenues) when evaluating the rate of return revenue requirement.

88. *Interstate Common Line Support for Price Cap Converts.* We seek comment on Verizon's proposal that we should phase down, on the same schedule as IAS, the ICLS that has been frozen on a per-line basis for the several carriers that converted to price cap regulation since the adoption of the *CALLS Order*.

89. *Freezing ICLS for Rate-of-Return Companies.* We seek comment on whether, in order to restrain the growth of ICLS in the near term while we undertake more comprehensive universal service reform, we should cap ICLS either per line or per study area for rate-of-return companies on an interim basis (e.g., for two years), to take effect in 2012.

90. *Middle Mile Costs.* We seek comment on whether to modify our universal service rules to provide additional support for middle mile costs, which a number of parties have suggested that middle mile costs are a significant component of the costs of serving customers in rural areas. If we were to do so, how could we ensure that support is provided for middle mile circuits that are offered on rates, terms, and conditions that are just and reasonable? What effect would middle mile support have on incentives for small carriers to continue to seek efficiencies from cooperatively developing regional networks to provide lower cost, higher capacity backhaul capability?

91. *Separations.* We seek comment on how our proposed reforms may affect or

be affected by the existing separations process and any future separations reform. We also seek comment on whether the Commission should treat loops used to provide broadband as exclusively interstate.

92. *Accelerated Transition for Rate-of-Return Territories.* Under what circumstances would it be appropriate to accelerate the transition proposed below of rate-of-return territories moving to an incentive regulation framework over the longer term, and adopt such measures in the near term? We also seek comment on whether to allow carriers to opt-in to any of the reforms on an accelerated timeframe. We intend to monitor progress in extending broadband under the near-term reforms discussed above, and we reserve the right to move more quickly to the long-term reforms set forth below.

D. Long-Term Vision for the Connect America Fund

93. In the second stage of our comprehensive reform package, we propose to provide all funding through the Connect American Fund. The CAF would provide ongoing support to maintain and advance broadband across the country in areas that are uneconomic to serve absent such support, with voice service ultimately provided as an application over broadband networks.

1. Supported Providers

94. We seek comment on the National Broadband Plan's recommendation that there should be at most one subsidized provider of broadband service per geographic area. We seek comment on proposals to support both fixed and mobile networks under the CAF, rather than funding only one provider in a given area.

95. To the extent we provide separate, ongoing support for mobility within the CAF, we seek comment on two potential funding options. First, we seek comment on the use of a model to determine high-cost support for wireless carriers. Second, we seek comment on using reverse auctions to determine support for competitive ETCs only.

96. To the extent we create long-term alternatives within CAF for mobile carriers, we propose to limit support one wireless competitive ETC per geographic area. To the extent we were to fund only one mobile wireless provider in a given geographic area, we seek comment on whether it should require that provider to share infrastructure, such as cell towers, with other non-supported wireless providers.

97. We seek comment on whether and how funding only one wireless provider

would impact the Commission's E-rate, Rural Health Care and low-income programs, and whether it should designate "Lifeline Only" ETCs.

98. We seek comment on whether any funding is appropriate in an area if high-quality voice service and broadband Internet access services are provided today by an operator without universal service support.

99. We seek comment on how to address situations where no entity wishes to serve an area, and the relative roles of the Commission and the states in determining which carriers are best able to provide services in unserved areas.

100. To the extent that we ultimately provide ongoing support to only one provider in each geographic area where support is available, we seek comment on whether there should be exceptions, for example, for carriers serving Tribal lands.

2. Sizing the Federal Commitment to Universal Service

101. We seek comment on a proposal to set an overall budget for the CAF such that the sum of the CAF and any existing high-cost programs (however modified in the future) in a given year are equal to the size of the current high-cost program in 2010. Alternatively, if the Commission were to set an overall budget, should it use a different year as the relevant baseline, and under what circumstances (if any) should the Commission adjust the baseline? We also seek comment on whether total funding should be higher or lower. We seek comment on what factors the Commission should consider in sizing the CAF. We seek comment on whether, in determining the size and role of the CAF, it should take into account the cumulative effect of the four support programs, acting together, to achieve the goals of universal service.

3. Alternative Approaches for Targeting and Distribution of CAF Funds

102. We seek comment on alternative approaches for determining ongoing CAF support that ultimately would replace all high-cost funding. In addition we seek comment on whether these proposals would be effective on Tribal lands, given the low telephone and broadband penetration rate and the associated demographic challenges.

a. Competitive Bidding Everywhere

103. We seek comment on using a competitive bidding mechanism to award funding to one provider per geographic area in all areas designated to receive CAF support. This competitive bidding mechanism would

be designed to maximize the number of households passed by broadband networks while ensuring that Americans retain access to voice service, without exceeding any defined budget for the CAF.

104. We seek comment on whether it should use bidding credits for bids to provide service exceeding the minimum requirements for features such as higher speed, latency, mobility, or upgrade potential, or to provide preferences to carriers serving Tribal lands or insular areas. We also seek comment on how competitive bidding processes may properly involve Tribal governments and what impact these processes will have on the provision of CAF-supported services on Tribal lands.

105. We also seek comment on alternative competitive bidding mechanisms to maximize the number of households passed by broadband networks while ensuring that voice service remains available everywhere without exceeding any defined budget for the CAF.

106. We seek comment on defining areas for bidding that are aggregations of census blocks.

107. We seek comment on the role of satellite in serving housing units that are most expensive to reach via terrestrial technologies, and whether we could designate ETCs to provide service on a nationwide or multi-state basis. We seek comment on methods for effectively using funding for satellite, and on which approaches might be best suited to making the best use of satellite capacity with competitive bidding. While recognizing that currently unserved areas may be more economically served by satellite, we seek comment on how to ensure that consumers currently served by terrestrial broadband or voice services do not lose access to their terrestrial service.

108. We seek comment on whether we should implement a competitive bidding process for ongoing CAF support on a phased basis, beginning with price cap service areas.

b. Right of First Refusal Everywhere, Followed by Competitive Bidding Where Necessary

109. In the alternative, we seek comment on an approach under which, in each area designated to receive CAF support, the Commission would offer the current COLR for voice services (*i.e.*, most likely a wireline incumbent LEC) model-determined support through a "right of first refusal" (ROFR) to provide both voice and broadband to customers in the area for a specific amount of ongoing support. We also seek comment

on alternative ways to conduct the ROFR. For example, should we request that the COLR make an offer of the support level it believes it needs, which we will accept or reject?

110. We would determine the amount of CAF support to be offered to the current COLR using a cost model developed in an open, deliberative, and transparent process with ample opportunity for interested parties to participate and verify model results. We seek comment on using a model that would estimate the costs of providing service over a wireline network or, alternatively, a model that would estimate the costs of using the lowest-cost technology capable of providing the required minimum level of voice and broadband service for each area, which may be wireless in some areas and wireline in others. If it uses a wireline-only model, we seek comment on how it should define forward-looking economic costs of a wireline broadband network and what types of costs it should include. We seek comment on the trade-offs of an engineering cost model approach relative to a regression-based model.

111. We previously sought comment on considering revenues, as well as costs, in determining CAF support. Despite the advantages of including demand-side metrics in the determination of which areas are truly uneconomic to serve, we recognize that there could be difficulties in accurately estimating and modeling revenues, and seek comment on these issues.

112. If the COLR refuses the ROFR, a competitive bidding mechanism could be used to provide ongoing CAF support to at most one provider in any given area. Such a competitive bidding mechanism would simultaneously select the providers of both broadband and voice, or if necessary, voice-only providers that would receive CAF support, and, as with the auction approach above, would seek to maximize the number of households passed by broadband networks while ensuring that consumers retain access to voice service. We also seek comment on using alternative competitive bidding mechanisms and specifically ask whether there is a sequential approach that would first determine the least-cost method for ensuring that voice service remains available everywhere and then maximizes broadband coverage subject to a budget constraint. We seek comment on what factors we should consider when defining the geographic areas for the auction.

113. We seek comment on how support under the existing programs would be transitioned to the CAF under

the ROFR option, and whether a transition is necessary or appropriate in all circumstances.

114. We seek comment on whether it should implement a ROFR followed by competitive bidding on a phased basis, beginning with price cap service areas.

C. Continued Rate-of-Return Reform for Certain Carriers

115. We sought comment above on a package of proposals intended to improve the incentives for rational investment and operation by small companies operating in rural areas. If we find that the near term reforms have adequately improved the incentives for investment and operation by small, rural companies, we could determine that support for these carriers should remain based on reasonable actual investment, rather than a cost model or auction.

116. Accordingly, we seek comment on the need for possible changes to the current rate-of-return system beyond those discussed in the previous section. We seek comment on capping ICLS and whether this would be consistent with rate-of-return regulation or whether we would need to adopt some form of incentive regulation to accomplish the objective of limiting the size of the Fund. We also seek comment on whether the same incentive regulation framework described below in the intercarrier compensation context could also be used to replace the ICLS mechanism. We seek comment on whether more detailed, industry-wide clarifications regarding what should be deemed "used and useful" would be helpful to ensure that excess costs are not recovered through universal service (or carriers' rates). In addition, we seek comment whether it should initiate a proceeding to rescribe the authorized rate of return.

E. Increasing Accountability and Measuring Progress To Ensure Investments Deliver Intended Results

117. *Reporting Requirements.* We propose to require all high-cost funding recipients and CAF recipients to report to USAC on deployment, adoption, and pricing for both their voice and broadband offerings. We propose to require recipients to file with the Commission each year annual reports of their financial condition and operations. We propose that all recipients report intercarrier compensation revenues and expenses.

118. *Internal Controls.* We seek comment on measures to strengthen internal controls in the areas identified for improvement in the GAO high-cost report. We seek comment on the

December 2010 USAC Audit Report. We seek comment on whether high-cost and CAF recipients should be subject to additional audit requirements beyond current compliance audits and IPIA audits. We seek comment on how to improve the certification process to make it more meaningful (e.g., requiring additional information from recipients concerning how funds were used and specifically what information should be submitted). We seek comment on how to improve the data validation process to correct weaknesses identified in the GAO high-cost report.

119. *Additional Monitoring Procedures.* We seek comment on what types of procedures we should put in place to ensure that recipients provide services they have committed to provide. We propose to affirmatively confirm, in the field, that recipients have complied with their deployment obligations. We seek comment on whether either state commissions or RUS could play a role in confirming deployment. What information-sharing mechanisms between the Commission and RUS would facilitate our ability to confirm deployment? Should we verify that each and every recipient has fulfilled its obligations, or should we conduct random audits?

120. *Record Retention Requirements.* We seek comment on whether any additional measures are necessary to ensure program participants retain relevant documentation and provide the relevant and complete documentation to auditors upon request.

F. Establishing Clear Performance Goals and Measures for Universal Service

121. We propose that funding of recipients be tied to the following four specific performance goals for the current high-cost program and CAF: (1) To preserve and advance voice service; (2) To increase deployment of modern networks capable of supporting necessary broadband applications as well as voice service; (3) To ensure that rates for broadband service are reasonably comparable in all regions of the nation, and that rates for voice service are reasonably comparable in all regions of the nation; and (4) To limit universal service contribution burden on households. We seek comment on the appropriate output measure and efficiency measure for each goal. We also propose to review annually whether the program is meeting its goals based on the results of the performance measures.

G. Intercarrier Compensation for a Broadband America

122. Intercarrier compensation (ICC) is a system of payments between carriers to compensate each other for the origination, transport and termination of telecommunications traffic. Under the present system, the amounts service providers charge each other for completing such calls can vary considerably depending not on the service provided but on whether a call starts and finishes in the same state, or whether it crosses state lines. To complicate matters further, these charges also can vary based on what technology (e.g., wireline, wireless) is used to make a call. Industry wide, these charges add up to a significant amount of money.

123. The Commission proposes to take action in the near term to reduce inefficiency and waste in the intercarrier compensation system while providing a framework for long-term reform. The same proposed principles that guide universal service reform also inform our intercarrier compensation reform efforts. Specifically, the changes to the intercarrier compensation rules discussed below will: (1) Modernize our rules to advance broadband for all Americans by creating the proper incentives to invest in new technologies and reduce waste and inefficiency by taking steps to curb arbitrage; (2) promote fiscal responsibility; (3) require accountability; and (4) implement market-driven and incentive-based policies.

124. There are four fundamental problems with the current system: (1) The system is based on outdated concepts and a per-minute rate structure from the 1980s that no longer matches industry realities; (2) rates vary based on the type of provider and where a call originates and terminates, even though the function of originating or terminating a call does not change; (3) because most intercarrier compensation rates are set above incremental cost, they create incentives to retain old voice technologies and engage in regulatory arbitrage for profit; and (4) technological advances, including the rise of new modes of communications such as texting, e-mail, and wireless substitution have caused local exchange carriers' compensable minutes to decline, resulting in additional pressures on the system and uncertainty for carriers.

125. Consistent with the Commission's vision to reform universal service and intercarrier compensation, it is important that intercarrier compensation rules create the proper

incentives for carriers to invest in new broadband technologies so that consumers have the opportunity to take full advantage of the new capabilities of this broadband world. The Commission therefore seeks to comprehensively reform the current system to realign incentives and promote investment and innovation in IP networks.

H. Legal Authority To Accomplish Comprehensive Reform

126. The Commission seeks comment on its legal authority to reform intercarrier compensation, and specifically proposes two different transition paths for consideration. The Commission believes it has the authority to adopt either of these transition paths, and implement a transition away from per-minute intercarrier compensation. The Commission concludes that reducing interstate access charges falls well within its general authority to regulate interstate access under sections 201 and 251(g), 47 U.S.C. 201, 251(g).

127. The Commission could apply section 251(b)(5), 47 U.S.C. 251(b)(5), to all telecommunications traffic exchanged with local exchange carriers (LECs), including intrastate and interstate access traffic. Thus, the Commission could bring all telecommunications traffic (intrastate, interstate, reciprocal compensation, and wireless) within the reciprocal compensation framework of section 251(b)(5), 47 U.S.C. 251(b)(5), and determine a methodology that states would use to establish the rate for such traffic. Or, the Commission could maintain the separate regimes of access charges and reciprocal compensation, and set a different methodology for traffic subject to reciprocal compensation. If the Commission moves all traffic within the section 251(b)(5), 47 U.S.C. 251(b)(5), reciprocal compensation framework, the Commission seeks comment on the impact of section 251(f)(2), 47 U.S.C. section 251(f)(2), which permits states to suspend or modify the reciprocal compensation obligations for carriers with less than two percent of the nation's subscriber lines. Doing so could undermine the proposed reforms, particularly if the Commission moves all traffic within the reciprocal compensation framework. The Commission seeks comment on whether it should adopt rules addressing the implications of suspension or modification under section 251(f)(2), 47 U.S.C. 251(f)(2).

128. The Commission also asks about its authority to take action to reduce intercarrier compensation charges paid

by or to commercial mobile radio service (CMRS) or wireless providers, including intrastate and interstate access charges (which are referred to collectively as "wireless termination charges"). The Commission seeks comment on its authority under sections 201 and 332, 47 U.S.C. 201, 332, to regulate charges with respect to interstate traffic involving a wireless provider, as well as charges imposed by wireless providers regarding intrastate traffic. In addition, there is support for the proposition that section 332 of the Act, 47 U.S.C. 332, also gives the Commission authority to regulate the intercarrier compensation rates paid by wireless carriers for intrastate traffic—including charges that otherwise would be subject to intrastate access charges.

129. Alternatively, the Commission could adopt a new methodology that would reduce reciprocal compensation charges, but would leave the categories of telecommunications traffic that are currently subject to the reciprocal compensation obligation under section 251(b)(5), 47 U.S.C. 251(b)(5), unchanged. Doing so would leave intrastate and interstate access charges under their current regulatory structures and could permit separate glide paths for different types of traffic.

130. In addition to the Commission's authority to reform interstate access charges, wireless termination charges, and reciprocal compensation to eliminate per-minute rates, the Commission also believes it has authority to establish a transition plan for moving toward that ultimate objective in a manner that will minimize market disruptions. Section 251(g), 47 U.S.C. 251, supports the view that the Commission has authority to adopt a transitional scheme with regard to access charges. The Commission seeks comment on this interpretation of section 251(g).

I. Principles To Guide Intercarrier Compensation Reform

131. The Commission seeks comment on the ultimate end-point once the transition away from per-minute intercarrier compensation rates is completed as well as concepts to guide sustainable reform. These key concepts include: addressing arbitrage and marketplace distortions; cost causation; providing appropriate price signals; and consistency with all-IP broadband networks. The Commission also seeks comment on any additional concepts that should guide the Commission's evaluation of the appropriate end-point for comprehensive intercarrier compensation reform.

132. The Commission seeks comment on possible intercarrier compensation methodologies that it might adopt as an end-point for comprehensive reform. The Commission seeks comment on the merits of a bill-and-keep methodology, including the scope of functions provided by a carrier that should be encompassed by the bill-and-keep framework, and how any bill-and-keep methodology could be crafted in a way that is sufficiently flexible to accommodate evolving network architectures. The Commission also seeks comment on its legal authority to adopt a bill-and-keep methodology either for particular traffic, or for all traffic generally. In addition, the Commission seeks comment on flat intercarrier charge proposals and asks whether they would make policy sense, and be administrable, in the present context as customers transition to broadband? Would such changes facilitate, or hinder, the transition from circuit-switched to IP networks? The Commission also seeks comment on its legal authority to implement a particular flat charge proposal. Finally, the Commission seeks comment on any alternative methodologies consistent with the guiding concepts for long-term reform.

J. Selecting the Path To Modernize Existing Rules and Advance IP Networks

133. The Commission seeks comment on how to begin the transition away from the current per-minute intercarrier compensation rates to facilitate carriers' movement to IP networks. There are multiple the dimensions of the intercarrier compensation reform transition, each of which can be calibrated in a variety of ways. The Commission proposes to work in partnership with the states to reform intercarrier compensation, and seeks comment on two general options for addressing the various elements of the transition.

134. The first approach relies on the Commission and states to act within their existing roles in regulating intercarrier compensation, such that states would remain responsible for reforming intrastate access charges. The Commission would reduce interstate access charges, and adopt a methodology that states would implement to reduce reciprocal compensation rates; but the categories of traffic under the reciprocal compensation framework would remain unchanged. Under this option, the Commission would exercise its broad authority to determine the transition, stages, and future state for reforming the

current interstate access charge rules to eliminate per-minute rates, including any necessary cost or revenue recovery that might be provided through the CAF. Likewise, the Commission would create a new methodology for reciprocal compensation, although the scope of traffic encompassed by the reciprocal compensation framework would not change. In addition to interstate access and reciprocal compensation, there is support for the proposition that section 332, 47 U.S.C. 332, of the Act gives the Commission authority to regulate wireless termination charges—that is, intercarrier compensation charges paid to wireless carriers, or paid by wireless carriers—including charges that otherwise would be subject to intrastate access charges. The Commission also seeks comment on whether the transition for wireless termination charges, if reduced separately, should be subject to distinct transition timing. The Commission seeks comment on the steps it should take to encourage states to reduce intrastate intercarrier compensation rates and how to do so without penalizing states that have already begun the difficult process of reforming intrastate rates or rewarding states that have not yet engaged in reform. For example, should the Commission decline to provide cost recovery for intrastate rate reductions or otherwise limit access to the CAF for states that have not begun intrastate access reform by a specific date? The Commission also seeks comment on how this option can work for states that lack jurisdiction over intrastate access rates. The Commission seeks comment on whether, after initially relying on states to act pursuant to their historical role, it should bring traffic within the reciprocal compensation framework if states fail to act within a specified period of time, such as four years.

135. Under the second approach, the Commission would use the tools provided by sections 251 and 252, 47 U.S.C. 251, 252, to unify all intercarrier rates, including those for intrastate calls, under the reciprocal compensation framework. Under this framework, the Commission would establish a methodology for intercarrier rates, which states then work with the Commission to implement. Under this alternative, the Commission would bring all traffic within the reciprocal compensation framework of section 251(b)(5), 47 U.S.C. 251(b)(5), at the initiation of the transition, and set a glide path to gradually reduce all intercarrier compensation rates to eliminate per-minute charges (including any necessary cost or revenue recovery

that might be provided through the CAF). The Commission would adopt a pricing methodology to govern these charges, which ultimately would be implemented by the states. The Commission seeks comment on the relative advantages and disadvantages of this alternative, as well as any implementation considerations, including what revisions would be needed to our interstate access rules applicable to price cap and rate-of-return carriers. The Commission has not previously used the federal universal service fund to offset reforms to intrastate access charges; rather, states have addressed intrastate recovery on a case-by-case basis. The Commission asks whether it has any legal obligation to offset reductions to intrastate revenues, particularly given its commitment to control the size of USF. Even so, the Commission seeks comment on whether it should offset such reductions as a policy matter.

136. Within these approaches, the Commission identifies and develops a specific set of options for commenters to consider regarding the sequencing of reductions in specific rates. The Commission also seeks comment on the appropriate timing of the overall transition and proposes to complete the transition away from per-minute rates before implementing the long-term vision for the CAF, which will ultimately make explicit all subsidies necessary to serve an area (including subsidies that are currently provided implicitly through the intercarrier compensation system). In particular, the Commission seeks comment on whether it should adopt distinct transition timing for price cap versus rate-of-return carriers, and on whether it should cap interstate access rates during the transition. In discussing or proposing particular alternatives, the Commission asks commenters to discuss how particular approaches balance several potentially competing considerations: (a) Harmonizing rates and otherwise reducing arbitrage opportunities; (b) minimizing disruption to service providers, including litigation and revenue uncertainty; and (c) minimizing the impact on consumers and on the Commission's ability to control the size of the universal service fund.

K. Developing a Recovery Mechanism

137. The Commission seeks comment on how to structure any necessary recovery mechanism for providers, including threshold questions of whether its evaluation should be based on a provider's cost of originating, transporting, and terminating a call (*i.e.*, cost recovery) or whether the

Commission should focus recovery on replacing reduced intercarrier compensation revenues (*i.e.*, revenue recovery), or some combination thereof. The Commission seeks comment on the objectives for any recovery mechanism and, relatedly, any Commission obligations with regard to recovery from both a legal and policy perspective.

138. In adopting a recovery mechanism the Commission asks, as a threshold matter, whether it should be evaluating carrier costs, carrier revenues, or some combination thereof. What cost standard or cost components should be considered when determining what recovery should be allowed? If the Commission uses a revenue approach for recovery, what should the baseline criteria be for determining whether a carrier qualifies for revenue recovery? With regard to revenue recovery, the Commission recognizes that existing intercarrier compensation revenues may be a significant source of free cash flow and regulated revenues for some carriers, and the Commission requests data to help quantify the impact of intercarrier compensation reform on the industry and consumers. The Commission requests data to analyze existing revenues, assess the magnitude of the revenue reductions resulting from the proposed reforms, and determine the appropriate size and scope of a recovery mechanism.

139. The Commission does not believe that recovery needs to be revenue neutral given that carriers have a variety of regulated (*e.g.*, not only switched but also special access) and non-regulated revenues. The Commission asks whether an adequate opportunity for recovery already exists given the variety of regulated and non-regulated services provided over multi-purpose networks.

140. In evaluating the criteria for recovery, the Commission seeks comment on doing so through reasonable end-user charges and the CAF. The Commission seeks comment on a rate benchmark that would impute benchmark revenues to carriers before becoming eligible for additional revenue recovery. The Commission seeks comment on what elements should be included in a rate benchmark, the appropriate dollar amount for such a benchmark, and whether, and how, it should change over time. The Commission's prior reforms of interstate access charges often allowed carriers to recover at least part of their costs through an increased interstate subscriber line charge or SLC, which is a flat-rated charge that recovers some or all of the interstate portion of the local loop from an end user. The Commission

seeks comment on the role that interstate SLCs should play in intercarrier compensation reform and whether and how the SLC could be used for recovery purposes, including intrastate revenue recovery, either by modifying how the SLC operates or increasing the caps on SLCs.

141. The Commission also recognizes that some high-cost, insular, and Tribal areas may need explicit support to maintain service because there may be no private business case to serve such areas. The Commission seeks comment on how to reform intercarrier compensation and universal service in tandem so that such areas receive any ongoing support necessary to ensure that they continue to receive quality and affordable services, and to ensure that providers serving those areas can continue to advance connectivity where it lags far behind the rest of the nation. As noted above, one of the proposed principles guiding universal service reform is controlling the size of the universal service fund and reducing waste and inefficiency. This proposed principle likewise informs the Commission's intercarrier compensation reforms, and the Commission asks commenters how best to calibrate any intercarrier compensation recovery to be consistent with this principle. The Commission proposes that a provider first seek recovery through reasonable end-user charges, if adopted, before receiving support under the CAF. The Commission seeks comment on what obligations should apply to any universal service funding a carrier receives as part of intercarrier compensation reform. To the extent such funding is provided outside of the CAF, should there be specific public interest conditions and/or reporting tied to receipt of such universal service funds, such as broadband build-out requirements, and if so, what conditions would further the Commission's goals? The Commission also asks whether there is an objective and auditable metric that balances the policy goal of a gradual migration away from the current intercarrier compensation system while not putting undue pressure on a provider's ability to repay debt and make investment in IP facilities that were made in reliance on these revenue flows. To minimize such concerns, the Commission seeks comment on whether it should apply any criteria at the outset, before reform begins, to determine which providers are eligible to receive recovery from the CAF and which providers are not.

142. The Commission also seeks comment on whether any cost or revenue recovery mechanism could

provide rate-of-return carriers greater incentives for efficient operation. In light of the relative strengths and weaknesses of rate-of-return regulation and incentive regulation, and given the direction of proposed universal service reforms, we believe that it may be possible to adopt a recovery framework that provides incentives for carriers to operate efficiently, while still providing reasonable certainty and stability. The Commission therefore seeks comment on an alternative framework for determining such recovery, as well as any alternative proposals that commenters would recommend. Specifically, the Commission seeks comment on a possible revenue recovery framework for rate-of-return carriers that departs from traditional rate-of-return principles. The Commission also seeks comment on whether recovery mechanisms under consideration may affect and be affected by the existing separations process and any future separations reform.

L. Reducing Inefficiencies and Waste by Curbing Arbitrage Opportunities

143. The Commission seeks comment on proposals to address the National Broadband Plan recommendation that the Commission adopt interim rules to reduce arbitrage and specifically seeks comment on the applicability of intercarrier compensation to voice over Internet protocol (VoIP), and measures to address phantom traffic and access stimulation.

144. The Commission believes that its proposals to address the treatment of VoIP traffic for purposes of intercarrier compensation and to adopt rules to address phantom traffic and access stimulation will reduce inefficient use of resources and promote investment and innovation. Service providers will benefit from increased certainty and predictability regarding future revenues and reduced billing disputes and litigation, enabling companies to direct capital resources toward broadband investment.

145. The Commission seeks comment on the appropriate intercarrier compensation framework for VoIP traffic. The Commission has never addressed whether interconnected VoIP is subject to intercarrier compensation rules and, if so, the applicable rate for such traffic. Consistent with the National Broadband Plan recommendation, the Commission seeks comment on the appropriate treatment of interconnected VoIP traffic for purposes of intercarrier compensation. The Commission seeks comment on a range of approaches, including how to define the precise nature and timing of

particular intercarrier compensation payment obligations. The Commission seeks comment on whether particular reform options would have retroactive effect, and whether such retroactivity would be counterproductive. Under one alternative, the Commission could adopt bill-and-keep for interconnected VoIP traffic. Alternatively, the Commission could determine that interconnected VoIP traffic is subject to intercarrier compensation charges under a regime unique to interconnected VoIP traffic. Further, the Commission could determine that interconnected VoIP traffic is subject to intercarrier compensation—whether standard rates or VoIP-specific rates—but only as of some future date. Another option would be for the Commission to determine that interconnected VoIP traffic is subject to the same intercarrier compensation charges—intrastate access, interstate access, and reciprocal compensation—as other voice telephone service traffic both today, and during any intercarrier compensation reform transition. The Commission also seeks comment on other approaches that have been proposed for addressing the intercarrier compensation obligations associated with VoIP traffic.

146. In addition, the Commission proposes to amend its rules to help ensure that service providers receive sufficient information associated with each call terminated on their networks to identify the originating provider for the call. The Commission's proposal balances a desire to facilitate resolution of billing disputes with a reluctance to regulate in areas where industry resolution has, in many cases, proven effective. The Commission proposes modifying its rules to require that the calling party's telephone number be provided by the originating service provider and to prohibit stripping or altering call signaling information. The proposed modifications would also require all providers involved in transmitting a call from the originating to the terminating provider to transmit, unaltered, information identifying the calling party to the subsequent provider in a call path unless industry standards permit or require altering the information. For service providers using SS7 to pass information about traffic, the proposed rules require originating providers to populate the SS7 calling party number (CPN) field. The Commission recognizes that some service providers do not use SS7 signaling, and instead rely on MF signaling. To the extent that the Commission proposes expanding its rules beyond SS7, it likewise proposes

amending the rules to require service providers using MF signaling to pass CPN information, or the charge number (CN) if it differs from the CPN, in the Multi Frequency Automatic Number Identification (MF ANI) field. Further, the proposed rules would clarify, consistent with industry practice, that populating the SS7 CN field with information other than the charge number to be billed for a call is prohibited. In addition, the proposed rules would prohibit altering or stripping signaling information in the CN as well as CPN field. The proposed rules would apply to all forms of traffic on the PSTN, including jurisdictionally intrastate traffic, as well as traffic originated or transferred using IP protocols.

147. The Commission also seeks comment on specific revisions to its interstate access rules to address access stimulation. In broad terms, access stimulation is an arbitrage scheme employed to take advantage of intercarrier compensation rates by generating elevated traffic volumes to maximize revenues. Access stimulation occurs when, for example, a LEC enters into an arrangement with a provider of high call volume operations such as chat lines, adult entertainment calls, and “free” conference calls. Access stimulation imposes undue costs on consumers, inefficiently diverting the flow of capital away from more productive uses such as broadband deployment, and harms competition.

148. To address access stimulation, the Commission proposes to adopt a trigger based on the existence of access revenue sharing arrangements. Once a particular LEC meets the trigger, it would be subject to modified access charge rules that would vary depending upon the nature of the carrier at issue. To address the possibility of access stimulation activity by a National Exchange Carrier Association (NECA) tariff participant, under the proposed rules, a carrier would lose eligibility to participate in the NECA tariffs 45 days after meeting the trigger, or 45 days after the effective date of this rule if it currently meets the trigger. Such a carrier leaving the NECA tariff would have to file its own tariff(s) for interstate switched access, pursuant to the rules set forth for carriers subject to § 61.38, 47 CFR 61.38. A carrier filing interstate exchange access tariffs pursuant to § 61.38, 47 CFR 61.38, of the Commission’s rules would be required to file a new tariff within 45 days of meeting the proposed trigger if the costs and demand arising from the new revenue sharing arrangement had not been reflected in its most recent tariff

filings. LECs filing access tariffs pursuant to § 61.39, 47 CFR 61.39, of the Commission’s rules currently base their rates on historical costs and demand. Once such a carrier meets the relevant trigger under the proposed rules, it would lose the eligibility to file tariffs based on historical costs under that section. Instead, it would be required to file revised interstate access tariffs using the procedures set forth for carriers subject to § 61.38, 47 CFR 61.38, of the Commission’s rules, establishing its rates based on projected costs and demand. The Commission proposes that when competitive LECs meet the trigger, they would be required to benchmark to the rate of the BOC in the state in which the competitive LEC operates, or the independent incumbent LEC with the largest number of access lines in the state if there is no BOC in the state, if they are not already doing so. The competitive LEC would have to file a revised tariff within 45 days of meeting the relevant trigger, or within 45 days of the effective date of the rule if it currently meets the trigger.

149. The Commission further proposes to require LECs that meet the trigger to file tariffs on a notice period other than the statutory seven or fifteen days that would result in deemed lawful treatment. Both competitive LECs and incumbent LECs would be required to file on not less than 16 days’ notice. The Commission seeks comment on this analysis of the deemed lawful provision of section 204(a)(3), 47 U.S.C. 204(a)(3), and its proposed filing requirements. Finally, if a LEC failed to comply with the proposed tariffing requirements, the Commission would find such a practice to be an effort to conceal its noncompliance with the substantive rules proposed above that would disqualify the tariff from deemed lawful status. Such incumbent LECs would be subject to refund liability for earnings over the maximum allowable rate-of-return, and competitive LECs would be subject to refund liability for the difference between the rates charged and the rate that would have been charged if the carrier had used the prevailing BOC rate, or the rate of the independent LEC with the largest number of access lines in the state if there is no BOC.

150. The record contains other alternatives for addressing access stimulation, on which the Commission seeks comment, including trigger-based proposals, categorical approaches and other potential actions. The Commission invites parties to quantify the extent of traffic stimulation involving reciprocal compensation rates between CMRS providers and competitive LECs, and

the steps that could be taken to address such stimulation activity. The Commission invites parties to comment on these proposals as well as on other regulatory and policy implications of access stimulation.

151. Finally, the Commission seeks comment on whether the actions it proposes in this Notice should encourage incumbent LECs to move to IP-to-IP interconnection. The Commission seeks comment on several issues related to intercarrier compensation reform, including other steps we can take to promote IP-to-IP interconnection, network edges and points of interconnection, transiting, and disputes that have arisen over other technical issues in intercarrier compensation rules and carrier practices. For each of these issues, the Commission asks whether it should address the issue as part of comprehensive intercarrier compensation reform, and if so, at what stage of reform it should be addressed, and what actions the Commission should take. The Commission invites parties to refresh the record in this proceeding regarding: (1) Interpretation of the intraMTA rule; (2) disputes regarding rating and routing of traffic; and (3) the appropriate intercarrier compensation regime applicable to virtual central office code calls to distant ISPs. The Commission also seeks comment on whether there are any other outstanding technical issues related to intercarrier compensation reform that the Commission should address, and, if so, when and how the Commission should address them.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

Initial Regulatory Flexibility Analysis

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

1. Need for, and Objectives of, the Proposed Rules

153. The NPRM seeks comment on a variety of issues relating to comprehensive reform of universal service and intercarrier compensation. As discussed in the NPRM, the Commission believes that such reform will eliminate waste and inefficiency while modernizing and reorienting these programs on a fiscally responsible path to extending the benefits of broadband throughout America. Bringing robust, affordable broadband to all Americans is the infrastructure challenge of the 21st century. To meet this challenge, the NPRM proposes to fundamentally modernize the Commission's Universal Service Fund (USF) and intercarrier compensation system, eliminating waste and inefficiency.

154. Millions of Americans live in areas where they cannot enjoy the economic, social and civic benefits of broadband. Meanwhile, fundamental inefficiencies and waste affect both USF and intercarrier compensation. In many areas of the country, USF does not target funding, subsidizes a competitor to a voice and broadband provider that offers service without government assistance, or supports several voice networks in a single area. Similarly, inefficient intercarrier compensation rules have led to wasteful arbitrage opportunities like phantom traffic and access stimulation. We face these problems because our universal service rules and our intercarrier compensation system, designed for 20th century networks and market dynamics, have not been comprehensively reassessed in more than a decade, even though the communications landscape has changed dramatically. Due to the interrelationship between USF and intercarrier compensation, and the importance of both to the nation's broadband goals, reform of the two programs must be tackled together.

155. In the NPRM, the Commission proposes to transform the existing high-cost program—the component of USF directed toward high-cost, rural, and insular areas—into a new, more efficient, broadband-focused Connect America Fund (CAF).

156. In the first stage of reform, beginning in 2012, the Commission proposes to update the public interest obligations that pertain to current and future recipients. The Commission also proposes to transition funds from less efficient uses to more efficient uses. Over a period of a few years, the Commission proposes to phase out Interstate Access Support (IAS) and

funding for competitive eligible telecommunications carriers (ETCs), subject to possible exceptions. In addition, the Commission seeks comment on a set of proposals to eliminate waste and inefficiency, improve incentives for rational investment and operation by companies operating in rural areas, and set rate-of-return companies on the path to incentive-based regulation. Specifically, the Commission seeks comment on: (a) Establishing benchmarks for reimbursable capital and operating costs; (b) modifying high-cost loop support reimbursement percentages and eliminate loop support known as "safety net"; (c) eliminating local switching support as a separate funding mechanism; (d) eliminating the reimbursement of corporate operations expenses; and (e) capping total high-cost support at \$3,000 per line per year for carriers operating in the continental United States.

157. The Commission also proposes to create a CAF program that would immediately make available support for broadband in unserved areas and to test the use of a competitive funding process. The Commission seeks comment on this proposal, including proposed CAF eligibility requirements, the proposed framework for a CAF auction, and post-auction process, administration, and management and oversight of the CAF program.

158. In the second stage, the Commission proposes to transition all remaining high-cost programs to the CAF, which would provide ongoing support to maintain and advance broadband across the country in areas that are uneconomic to serve absent such support, with voice service ultimately provided as an application over broadband networks. The Commission seeks comment on options for determining support levels under the CAF, including the use of a model and/or competitive bidding. The

Commission also seeks comment on an alternative that would limit the full transition to a subset of geographic areas, such as those served by price cap companies, while continuing to provide ongoing support based on reasonable actual investment to smaller, rate-of-return companies. The Commission also seeks comment on whether USF should support mobile voice and/or mobile broadband service in all areas of the country.

159. The Commission further proposes a variety of measures, including establishing performance goals and improving reporting requirements to increase accountability

and better track performance of the Fund as a whole.

160. The NPRM also seeks comment on proposals to comprehensively reform intercarrier compensation in order to bring the benefits of broadband to all Americans. The current intercarrier compensation system's distorted incentives and wasted resources are a roadblock to a world-leading broadband ecosystem. Reform of the current morass of regulatory distinctions and access charges will help to modernize the Commission's rules to advance broadband, reduce waste and inefficiency, increase accountability, and lead to market-driven outcomes that promote investment.

161. At the outset, the NPRM seeks comment on the Commission's authority to pursue intercarrier compensation reform, identifies certain goals of intercarrier compensation reform, and seeks comment on how possible intercarrier compensation rate methodologies would advance those goals. The NPRM also seeks comment on the appropriate transition away from the current per-minute intercarrier compensation rates, including two possible approaches. One approach relies on the Commission and states to act within their existing roles in regulating intercarrier compensation, and the other follows the federal and state roles established for reciprocal compensation under the 1996 Act. Within these approaches, the NPRM identifies a range of possible outcomes for the sequencing of reductions for specific rates and seeks comment on other implementation details, including the timing of any transition. In addition, the NPRM seeks comment on how the Commission could provide a recovery mechanism as part of any comprehensive reform and how to structure recovery with the appropriate incentives to accelerate the migration to IP broadband networks.

162. The NPRM also seeks comment on rules intended to reduce incentives for wasteful arbitrage. First, to address existing uncertainty, the NPRM invites comment on the appropriate intercarrier compensation framework for VoIP traffic. Second, the NPRM seeks comment on: (1) Amendments to the Commission's call signaling rules to address phantom traffic; and (2) amendments to the Commission's interstate access rules to address access stimulation and to ensure that rates remain just and reasonable. Finally, the NPRM seeks comment on other issues related to intercarrier compensation reform including network edges and points of interconnection, transiting, and disputes that have arisen over

technical issues in intercarrier compensation rules and carrier practices.

2. Legal Basis

163. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 201 through 206, 214, 218 through 220, 251, 252, 254, 256, 303(r), 332, 403, and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201 through 206, 214, 218 through 220, 251, 252, 254, 256 303(r), 332, 403 and 706 and §§ 1.1 and 1.1421 of the Commission's rules, 47 CFR 1.1, 1.421.

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

164. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act. A small-business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

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

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

167. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local

exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.

Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM.

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

Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the NPRM.

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

170. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442

carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

171. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.

Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

172. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

173. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are

engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

174. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

175. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

176. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers

assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

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

178. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has

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

179. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services ("AWS") licenses. This auction, which was designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands ("AWS-1"). The AWS-1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded \$15 million and did not exceed \$40 million for the preceding three years ("small business") received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years ("very small business") received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than \$500 million and combined gross revenues of less than \$125 million in each of the last two years qualified

for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

180. Narrowband Personal

Communications Services. In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, “small businesses” were entities with average gross revenues for the prior three calendar years of \$40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. A “small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$40 million. A “very small business” is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than \$15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

181. Paging (Private and Common Carrier). In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more

than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won.

182. 220 MHz Radio Service—Phase I Licensees. The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA’s small business size standard that may be affected by rules adopted pursuant to the NPRM.

183. 220 MHz Radio Service—Phase II Licensees. The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, 62 FR 15978, April 3, 1997, we adopted a small business size standard for “small” and “very small” businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. A “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed \$3 million for the preceding three years. The SBA has approved these small business size standards.

Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were

sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

184. Specialized Mobile Radio. The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

185. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

186. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these

providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

187. Broadband Radio Service and Educational Broadband Service. Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and “wireless cable,” transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than \$40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission’s rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed \$3 million and do not exceed \$15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder

with attributed average annual gross revenues that do not exceed \$3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

188. In addition, the SBA’s Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the NPRM.

189. 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a “small business” as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. A “very small business” is defined

as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (“MSA/RSA”) licenses, identified as “entrepreneur” and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

190. In 2007, the Commission adopted the *700 MHz Second Report and Order*, 72 FR 48814, August 24, 2007, which revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. In 2008, the Commission conducted Auction 73 which offered all available, commercial 700 MHz Band licenses (1,099 licenses) for bidding using the Commission’s standard simultaneous multiple-round (SMR) auction format for the A, B, D, and E Block licenses and an SMR auction design with hierarchical package bidding (HPB) for the C Block licenses. For Auction 73, a bidder with attributed average annual gross revenues that did not exceed \$15 million for the preceding three years (very small business) qualified for a 25 percent

discount on its winning bids. A bidder with attributed average annual gross revenues that exceeded \$15 million, but did not exceed \$40 million for the preceding three years, qualified for a 15 percent discount on its winning bids. At the conclusion of Auction 73, 36 winning bidders identifying themselves as very small businesses won 330 of the 1,090 licenses, and 20 winning bidders identifying themselves as a small business won 49 of the 1,090 licenses. The provisionally winning bids for the A, B, C, and E Block licenses exceeded the aggregate reserve prices for those blocks. However, the provisionally winning bid for the D Block license did not meet the applicable reserve price and thus did not become a winning bid.

191. 700 MHz Guard Band Licensees. In the *700 MHz Guard Band Order*, 65 FR 17594, April 4, 2000, we adopted a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

192. Cellular Radiotelephone Service. Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling \$25,002.

193. Private Land Mobile Radio (“PLMR”). PLMR systems serve an essential role in a range of industrial,

business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee’s primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

194. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

195. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, we will use the SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

196. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA’s small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.*, an entity employing no more than 1,500 persons. There are

approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the NPRM.

197. Aviation and Marine Radio Services. Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a “small” business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$15 million dollars. In addition, a “very small” business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed \$3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as “small” businesses under the above special small business size standards and may be affected by rules adopted pursuant to the NPRM.

198. Fixed Microwave Services. Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business

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

199. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for Cellular and Other Wireless Telecommunications services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

200. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of \$40 million or less in the three previous calendar years. An additional size standard for "very small business" is: An entity that, together with affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the NPRM.

201. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the

986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than \$40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

202. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a \$6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than \$2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, 64 FR 59656, November 3, 1999, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed \$15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed \$3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

203. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of \$15

million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

204. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a "small business" as an entity with attributable average annual gross revenues of not more than \$40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a "very small business" as an entity with attributable average annual gross revenues of not more than \$15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

205. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order*, 70 FR 24712, May 11, 2005, that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

206. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. We believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity.

Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

207. 24 GHz—Future Licensees. With respect to new applicants in the 24 GHz band, the size standard for “small business” is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of \$15 million. “Very small business” in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding \$3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

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

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

210. The second category of Other Telecommunications “primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes

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

211. Cable and Other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the NPRM.

212. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission’s rules, a “small system” is

a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

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

214. Open Video Services. The open video system (OVS) framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is “Wired Telecommunications Carriers.” The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (BSPs) are currently the only significant holders of OVS certifications

or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

215. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks.

Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

216. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that "primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals.)"

The SBA has developed a small business size standard for this category, which is: All such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

217. *Data Processing, Hosting, and Related Services.* Entities in this category "primarily * * * provide infrastructure for hosting or data processing services." The SBA has developed a small business size standard for this category; that size standard is \$25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under \$24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

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

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

219. In this NPRM, the Commission seeks public comment on comprehensive universal service and intercarrier compensation reform. The transition to reformed universal service programs and new intercarrier compensation rules could affect all

carriers, including small entities, and may include new administrative processes. In proposing these reforms, the Commission seeks comment on various reporting, recordkeeping, and other compliance requirements that may apply to all carriers, including small entities. We seek comment on any costs and burdens on small entities associated with the proposed rule, including data quantifying the extent of those costs or burdens.

220. In this NPRM, the Commission proposes annual data collection from high-cost and, ultimately, CAF recipients. The Commission also proposes to require all such recipients to report on deployment, adoption and pricing for their voice and broadband offerings.

221. The Commission also proposes to require recipients to file an annual report of their financial condition and operations, which is audited and certified by an independent certified public accountant, and accompanied by a report of such audit. The report shall include, at a minimum, balance sheets, income statements, statements of cash flow, and notes to the financial statements, if available. The Commission further proposes that the information included in these disclosures be made available to the public to promote increased transparency and efficiency. To minimize the cost and reporting burden on carriers, the Commission proposes to allow those carriers that are required to file financial reports with the Securities and Exchange Commission or the Rural Utilities Service to satisfy this requirement by providing electronic copies of the annual reports filed with those agencies to the Commission so long as the reports meet the minimum information requirements imposed by the Commission's rules and are filed with the Commission by the deadline imposed in accordance with this requirement. The Commission also proposes that recipients must test their broadband networks for specific metrics on a periodic basis and report the results to USAC. The results would be subject to an audit.

222. The Commission further seeks comment on any additional reporting requirements that should be required of high-cost or CAF recipients. For example, should there be additional reporting requirements for providers serving Tribal lands and Native communities? The Commission also seeks comment on how to transition from the current reporting requirements to more comprehensive reporting requirements that would apply to all high-cost and CAF recipients.

223. The Commission seeks comment on ways to target support more directly to areas that are uneconomic to serve, including by targeting support through disaggregation within study areas. We propose two options for disaggregation that may require recordkeeping or reporting: either a carrier may disaggregate in accordance with a plan approved by the appropriate regulatory authority, or by self-certifying to the appropriate regulatory authority a disaggregation plan.

224. The Commission also proposes the creation of a CAF program, which includes the establishment of performance coverage requirements and possible requirements applicable to parties receiving support to demonstrate coverage and compliance with other possible metrics. The Commission proposes that all recipients of CAF funding comply with audit and recordkeeping requirements. The Commission proposes that parties seeking to participate in a CAF auction and receive support to meet a variety of eligibility criteria, which may involve reporting, recordkeeping or other compliance requirements. Further, as part of a CAF auction, we propose an auction process that would require the completion of a pre-auction "short-form" application by all bidders and a post-auction "long-form application" by winning bidders. Finally, in the NPRM we seek comment on other potential requirements, including requirements designed to ensure guarantee of performance for winning bidders as well as certification requirements necessary to receive CAF support.

225. Further, the Commission proposes to improve internal control mechanisms to apply to the high-cost program and, ultimately, to the CAF. We seek comment on improvements that can be made the section 254(e) certification process. We also seek comment on whether high-cost universal support recipients should be subject to additional audit requirements and data validation processes. We seek comment on whether to modify or adopt additional record retention documents as well as performance coverage requirements.

226. In the NPRM, the Commission seeks comment and data on issues that must be addressed to comprehensively reform intercarrier compensation. These issues include the appropriate path or transition to modernize the existing rules, the ultimate end point for intercarrier compensation reform, if and how carriers should be allowed to recover costs or revenues that might be reduced by any intercarrier compensation reforms, and data to

analyze the effects of proposed reforms and need for revenue recovery.

227. Compliance with a transition to a new intercarrier compensation system may impact some small entities and may include new or reduced administrative processes. For carriers that may be affected, obligations may include certain reporting and recordkeeping requirements to determine and establish their eligibility to receive recovery from other sources as intercarrier compensation rates are reduced. Additionally, these carriers may need to modify some administrative processes relating to the billing and collection of intercarrier compensation in order to comply with any new or revised rules the Commission adopts as a result of the NPRM.

228. Proposed modifications to the rules to address arbitrage opportunities also will affect certain carriers, potentially including small entities. To the extent that the Commission addresses the intercarrier compensation framework applicable to interconnected VoIP providers might be required to modify or adopt administrative, recordkeeping, or other processes to implement that framework. Moreover, the NPRM considers possible rule modifications to require that call signaling information is passed completely and accurately to terminating service providers, which may require service providers to modify some administrative processes. Further, possible rule modifications to address access stimulation, if adopted, may affect certain carriers. For example, carriers that meet the revenue sharing trigger or other thresholds proposed in the NPRM may be subject to revised tariff filing or other requirements.

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

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

230. The NPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the NPRM.

231. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding.

232. In the NPRM, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Specifically, the Commission seeks comment on whether certain public interest obligations should be different for small entities. The Commission also seeks comment on whether there should be an exception to the proposed phase out of support for competitive ETCs, which could be based, in whole or in part, on the size of the provider. And the Commission seeks comment on whether to provide different transition periods or different reform path for particular classes of carriers.

233. The Commission also seeks comment on the appropriate sequence and timing of intercarrier rate reductions and alternative intercarrier compensation methodologies that might be adopted as an end-point for reform, including bill-and-keep, flat-rated intercarrier charges, or other proposals. The Commission seeks comment on the impact to small entities of reduced intercarrier rates under intercarrier compensation reform transition options, including whether a different transition period might be appropriate for particular classes of carriers.

234. The NPRM also seeks comment on the appropriate standard for recovery and on whether reductions in intercarrier compensation rates would impact all carriers in a similar manner. The Commission asks if the recovery approach adopted should be different depending on the type of carrier or regulation. The Commission also invites comment on specific recovery considerations for rate-of-return carriers and whether any cost or revenue recovery mechanism could provide rate-of-return carriers with greater incentives for efficient operation.

235. Finally, the Commission seeks comment on whether separate consideration for small entities is necessary or appropriate for each of the following issues discussed in the NPRM: The potential impact of rules governing interconnected VoIP traffic; the potential impact of rules related to

call signaling; the potential impact of rules relating to access stimulation, including revised tariff-filing requirements; the potential impact of rules relating to interconnection and related issues.

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

236. None.

B. Paperwork Reduction Act Analysis

237. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

C. Ex Parte Presentations

238. This NPRM will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under § 1.1206(b) of the Commission’s rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission’s rules.

D. Filing Requirements

239. *Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments. Comments on the proposed rules are due on or before April 18, 2011 and reply comments are due on or before May 23, 2011. Joint Board comments are due on or before May 2, 2011. Comments on Section XV are due on or

before April 1, 2011 and reply comments on Section XV are due on or before April 18, 2011. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 2, 2011. All filings should refer to CC Docket No 01-92, WC Docket Nos. 10-90, 07-135, and 05-337 and GN Docket No. 09-51. Comments may be filed using: (1) The Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform systems of accounts.

47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications, Telephone. Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 36, 54, 61, 64, and 69 to read as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. Secs. 151, 154 (i) and (j), 205, 221(c), 254, 403 and 410.

2. Amend § 36.605 by revising paragraph (b) to read as follows:

§ 36.605 Calculation of safety net additive.

* * * * *

(b) *Calculation of safety net additive support:* Until December 31, 2011, safety net additive support is equal to the amount of capped support calculated pursuant to this subpart F 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). For calendar year 2012 payments, the safety net additive shall be 75% of the amount calculated pursuant to this section. For calendar year 2013 payments, the safety net additive shall be 50% of the amount calculated pursuant to this section. For calendar year 2014 payments, the safety net additive shall be 25% of the amount calculated pursuant to this section. Beginning January 1, 2015, no carrier shall receive the safety net additive.

* * * * *

3. Amend § 36.621 by revising the last sentence of paragraph (a)(4) introductory text and adding three additional sentences at the end of paragraph (a)(4) introductory text to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) * * *

(4) * * * Total Corporate Operations Expense, for purposes of calculating universal service support payments beginning July 1, 2001 and ending December 31, 2011, shall be limited to the lesser of § 36.621(a)(4)(i) or (ii). For purposes of calculating universal service support payments in calendar year 2012, total corporate operations expense shall be limited to the lesser of § 36.621(a)(4)(i) or (ii) then multiplied by 67%. For purposes of calculating universal service support payments in calendar year 2013, total corporate operations expense shall be limited to the lesser of § 36.621(a)(4)(i) or (ii) then multiplied by 33%. Beginning January 1, 2014, Corporate Operations Expense shall no longer be eligible for purposes of calculating universal service payments.

* * * * *

4. Amend § 36.631 by revising paragraphs (c)(1) and (2) and by removing and reserving paragraph (d) to read as follows:

§ 36.631 Expense adjustment.

* * * *

(c) * * *

(1) Until December 31, 2011, sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(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 § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area. Beginning January 1, 2012, fifty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(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 § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area; and

(2) Until December 31, 2011, seventy-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area. Beginning January 1, 2012, sixty-five percent of the study area average unseparated loop cost per working loop as calculated pursuant to § 36.622(b) in excess of 150 percent of the national average for this cost as calculated pursuant to § 36.622(a) multiplied by the number of working loops reported in § 36.611(h) for the study area.

* * * * *

PART 54—UNIVERSAL SERVICE

5. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

6. Amend § 54.301 by adding two sentences at the end of paragraph (a)(1) and by adding three sentences to the beginning of paragraph (c)(5) to read as follows:

§ 54.301 Local switching support.

(a) * * *

(1) * * * Subject to specified exceptions, for calendar year 2012 payments, local switching support shall be 67% of the amount calculated pursuant to this section and for calendar year 2013 payments, local switching support shall be 33% of the amount calculated pursuant to this section. Beginning January 1, 2014, no carrier

shall receive local switching support, subject to specified exceptions.

* * * *

(c) * * *

(5) For calendar year 2012, for purposes of calculating local switching support, the amount of corporate operations expense allocated by this factor shall be multiplied by 67%. For calendar year 2013, for purposes of calculating local switching support, the amount of corporate operations expense allocated by this factor shall be multiplied by 33%. Beginning January 1, 2014, corporate operations expense shall no longer be eligible for purposes of calculating local switching support.

* * * *

* * * *

7. Add § 54.302 to subpart D to read as follows:

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

Subject to specified exceptions, beginning January 1, 2012, each study area in the continental United States shall be limited to \$3,000 per-line annually in universal service support. For purposes of this section, universal service support is defined as the sum of the amounts calculated pursuant to §§ 36.605, 36.631 of this chapter and §§ 54.301, 54.305, 54.309, 54.800 through 808 and 54.901 through 904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 36.611(h) of this chapter. The fund administrator, in order to limit support to \$3,000 for affected carriers, shall reduce safety net additive support, high-cost loop support, local switching support, safety valve support, forward-looking support, interstate access support, and interstate common line support in proportion to the relative amounts of each support mechanism to total support the study area would receive absent such limitation.

8. Amend § 54.305 by adding a sentence at the end of paragraph (a) to read as follows:

§ 54.305 Sale or transfer of exchanges.

(a) * * * Five years after approval of the relevant study area waiver for the sale or transfer of exchanges, the provisions of this section are no longer applicable to acquired exchanges, if the acquired exchanges have more than 30% of housing units unserved by broadband, as indicated on the National Telecommunications and Information Administration's broadband map and/or the Commission's Form 477 data collection.

* * * *

9. Amend § 54.307 by revising paragraph (a) to read as follows:

§ 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. Subject to specified exceptions beginning January 1, 2016, no competitive eligible telecommunications carrier shall be eligible to receive universal service support on the basis of this section. On or after January 1, 2012, competitive eligible telecommunications carriers shall be eligible to receive universal service support pursuant to subpart L and subpart M of this part.

* * * *

10. Amend § 54.315 by adding a sentence at the end of paragraph (a) to read as follows:

§ 54.315 Disaggregation and targeting of high-cost support.

(a) * * * On or before [60 days from effective date of adoption of order], all rural incumbent local exchange carriers and rate-of-return carriers for which high-cost universal service support pursuant to §§ 54.301, 54.303, and/or 54.305, subpart K, and/or subpart F of Part 36 is available, that previously selected the disaggregation path as described in paragraph (b) of this section, must select a disaggregation path as described in paragraph (c) or (d) of this section.

* * * *

11. Amend § 54.807 by revising paragraph (a) to read as follows:

§ 54.807 Interstate access universal service support.

(a) Each Eligible Telecommunications Carrier (ETC) that provides supported service within the study area of a price cap local exchange carrier shall receive Interstate Access Universal Service Support for each line that it serves within that study area. Subject to specified exceptions, eligible telecommunications carriers shall be eligible to receive Interstate Access Support as follows:

(1) During the 2012 calendar year, the interstate access support available to incumbent local exchange carriers and competitive eligible telecommunications carriers shall be capped at 50 percent of the amount paid in 2011, excluding amounts paid during

2011 for true-ups or revisions for years prior to 2011. Interstate access support payments shall be reduced, if necessary, by multiplying each incumbent local exchange carrier's or competitive eligible telecommunications carrier's support by the percentage factor necessary to reduce the aggregate interstate access support to the capped amounts.

(2) Interstate access support shall be eliminated beginning January 1, 2013, and no eligible telecommunications carrier shall receive interstate access support, except as for true-ups and revisions related to prior periods.

* * * * *

12. Amend § 54.901 by adding paragraph (c) to read as follows:

§ 54.901 Calculation of Interstate Common Line Support.

* * * * *

(c) For calendar year 2012, for purposes of calculating Interstate Common Line Support, corporate operations expense allocated to the Common Line Revenue Requirement, pursuant to § 69.409 of this chapter, shall be reduced by multiplying the corporate operations expense allocated by 67%. For calendar year 2013, for purposes of calculating Interstate Common Line Support, corporate operations expense allocated to the Common Line Revenue Requirement, pursuant to § 69.409 of this chapter, shall be reduced by multiplying the corporate operations expense allocated by 33%. Beginning January 1, 2014, corporate operations expense shall no longer be eligible for purposes of calculating Interstate Common Line Support.

13. Add subpart M to Part 54 to read as follows:

Subpart M—Competitive Bidding Program

Sec.

54.1001 Purpose.

54.1002 Areas eligible for support.

54.1003 Provider eligibility.

54.1004 Short-form applications for participation in competitive bidding to apply for support.

54.1005 Competitive bidding process.

54.1006 Communications prohibited during the competitive bidding process.

54.1007 Long-form application process for winning bidders.

54.1008 Default.

54.1009 Public interest obligations.

54.1010 Disbursements.

54.1011 Oversight.

Subpart M—Competitive Bidding Program

§ 54.1001 Purpose.

This subpart sets forth procedures for competitive bidding to determine the

recipients of universal service support available through the first phase of the Connect America Fund and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

§ 54.1002 Areas eligible for support.

(a) Support may be made available for specific unserved areas identified by the Commission.

(b) The Commission may assign relative coverage units to each identified geographic area in connection with conducting competitive bidding and disbursing support.

§ 54.1003 Provider eligibility.

(a) A party applying for support must be designated an Eligible Telecommunications Carrier, or have applied for a designation as an Eligible Telecommunications Carrier, for an area that includes unserved area(s) with respect to which it applies for support.

(b) A party applying for support must, if specified and required by the Commission, hold any necessary authority or conditional authorization to provide voice service in the unserved area with respect to which it applies for support.

§ 54.1004 Short-form applications for participation in competitive bidding to apply for support.

(a) *Public notice of the application process.* When conducting competitive bidding pursuant to this subpart, the Commission shall by Public Notice announce the dates and procedures for submitting applications to participate in related competitive bidding.

(b) *Application contents.* All parties submitting applications to participate in competitive bidding pursuant to this subpart must provide the following information in their application in a form acceptable to the Commission.

(1) The identity of the applicant, *i.e.*, the party seeking support, including any information that the Commission may require regarding parties that have an ownership or other interest in the applicant.

(2) The identities of up to three individuals designated to bid on behalf of the applicant.

(3) The identities of all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding.

(4) Certification that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding.

(5) Certification that the applicant, any party capable of controlling the

applicant, and any related party with information regarding the applicant's planned or actual participation in the competitive bidding will not communicate any information regarding the applicant's planned or actual participation in the competitive bidding to any other party with an interest in any other applicant until after the post-auction deadline for winning bidders to submit long-form applications for support, unless the Commission by Public Notice announces a different deadline.

(6) Certification that the applicant is in compliance with any and all statutory or regulatory requirements for receiving universal service support. The Commission may elect to accept as sufficient the applicant's demonstration in its application that the applicant will be in compliance at a point in time designated by the Commission.

(7) Such additional information as the Commission may require, including but not limited to applicants certifying its qualifications to receive support, providing its eligible telecommunications carrier designation status and information regarding its authorization to provide service, and specifying the unserved area applicant seeks to provide service to.

(c) *Demonstration of financial qualification.* The Commission may require as a prerequisite to participating in competitive bidding pursuant to this subpart that applicants demonstrate their financial qualifications or commitment to provide required services by depositing funds, posting performance bonds, or any other means the Commission considers appropriate.

(d) *Application processing.* (1) Commission staff shall review any application submitted during the period for submission and before the deadline for submission for completeness and compliance with the Commission's rules. No applications submitted at any other time shall be reviewed or considered.

(2) The Commission shall not permit any applicant to participate in competitive bidding pursuant to this subpart to do so if, as of the deadline for submitting applications, the application does not adequately identify the applicant or does not include required certifications.

(3) The Commission shall not permit any applicant to participate in competitive bidding pursuant to this subpart to do so if, as of the applicable deadline, the applicant has not provided any required demonstration of financial qualifications that the Commission has required.

(4) The Commission shall not permit applicants to make any major modifications to their applications after the deadline for submitting applications. The Commission shall not permit applicants to participate in the competitive bidding if their applications require major modifications to be made after deadline for submitting applications. Major modifications include but are not limited to any changes to the identity of the applicant or to the certifications required in the application.

(5) The Commission may permit applicants to make minor modifications to their applications after the deadline for submitting applications. The Commission may establish deadlines for making some or all permissible modifications to applications and may permit some or all permissible modifications to be made at any time. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(6) After receipt and review of the applications, the Commission shall by Public Notice identify all applicants that may participate in an auction conducted pursuant to this subpart.

§ 54.1005 Competitive bidding process.

(a) *Public notice of competitive bidding procedures.* The Commission shall by public notice establish detailed competitive bidding procedures any time it conducts competitive bidding pursuant to this subpart.

(b) *Competitive bidding procedures.* The Commission may conduct competitive bidding pursuant to this subpart using any of the procedures described below.

(1) The Commission may establish procedures for limiting the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process. The Commission may by Public Notice establish procedures for parties to report the receipt of non-public information regarding applicants, applications, and bids during any time the Commission has limited the public availability of the information during the competitive bidding process.

(2) The Commission may sequence or group multiple items subject to bidding, such as multiple or overlapping self-defined geographic areas eligible for support, and may conduct bidding either sequentially or simultaneously.

(3) The Commission may establish procedures for bidding on individual

items and/or for combinations or packages of items.

(4) The Commission may establish reserve prices, and/or lowest or maximum acceptable per-unit bid amounts, either for discrete items or combinations or packages of items, which may be made public or kept non-public during a period of time covering the competitive bidding process.

(5) The Commission may prescribe the form and time for submitting bids and may require that bids be submitted remotely, by telephonic or electronic transmission, or in person.

(6) The Commission may prescribe the number of rounds during which bids may be submitted, whether one or more, and may establish procedures for determining when no more bids will be accepted.

(7) The Commission may require a minimum level of bidding activity.

(8) The Commission may establish acceptable bid amounts at the opening of and over the course of bidding.

(9) The Commission may establish procedures for ranking and comparing bids and specific performance requirements, if any, and comparing and determining the winning bidders that may become recipients of universal service support and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

(10) The Commission may identify winning bidder(s) for any remaining amounts of support by considering bids in order of per-unit bid amount. The Commission may skip bids that would require more support than is available, or at its discretion, not identify winning bidder(s) for the remaining funds and instead offer such funds in a subsequent auction.

(11) The Commission may permit bidders the limited opportunity to withdraw bids and, if so, establish procedures for doing so.

(12) The Commission may delay, suspend or cancel bidding before or after bidding begins for any reason that affects the fair and efficient conduct of the bidding, including natural disasters, technical failures, administrative necessity or any other reason.

(c) *Apportioning package bids.* If the Commission elects to accept bids for combinations or packages of items, the Commission may provide a methodology for apportioning such bids to discrete items within the combination or package when a discrete bid on an item is required to implement any Commission rule.

(d) *Public notice of competitive bidding results.* After the conclusion of competitive bidding, the Commission

shall by public notice identify the winning bidders that may become recipients of universal service support and the amount(s) of support that they may receive, subject to post-auction procedures established by the Commission.

§ 54.1006 Communications prohibited during the competitive bidding process.

(a) *Prohibited communications.* Each applicant, each party capable of controlling an applicant, and each party related to an applicant with information regarding an applicant's planned or actual participation in the competitive bidding is prohibited from communicating any information regarding the applicant's planned or actual participation in the competitive bidding to any other party with an interest in any other applicant to participate in the competitive bidding from the deadline for submitting applications to participate in the competitive bidding until after the post-auction deadline for winning bidders to submit long-form applications for support, unless the Commission by Public Notice announces a different deadline.

(b) *Duty to report potentially prohibited communications.* Any applicant or related party receiving communications that may be prohibited under this rule shall report the receipt of such communications to the Commission.

(c) *Procedures for reporting potentially prohibited communications.* The Commission may by Public Notice establish procedures for parties to report the receipt of communications that may be prohibited under this rule.

§ 54.1007 Long-form application process for winning bidders.

(a) *Application deadline.* Unless otherwise provided by public notice, winning bidders for support must file a long-form application for support within 10 business days of the public notice identifying them as eligible to apply.

(b) *Application contents.* (1) Identification of the party seeking the support.

(2) Information the Commission may require to demonstrate that the applicant is legally, technically and financially qualified to receive support, including but not limited to proof of its designation as an Eligible Telecommunications Carrier for an area that includes the area with respect to which support is requested.

(3) Disclosure of all parties with a controlling interest in the applicant and any party with a greater than ten percent

ownership interest in the applicant, whether held directly or indirectly.

(4) A detailed project description that identifies the unserved area applicant seeks to serve, describes how the applicant will meet public interest obligations and performance requirements, describes the anticipated network, identifies the proposed technology or technologies, demonstrates that the project is technically feasible, and describes each specific development phase of the project, *e.g.*, network design phase, construction period, deployment and maintenance period.

(5) A detailed project schedule that identifies the following project milestones: start and end date for network design; start and end date for drafting and posting requests for proposal; start and end date for selecting vendors and negotiating contracts; start date for commencing construction; end date for completing construction; and dates by which it will meet applicable requirements to receive the installments of support for which it subsequently qualifies.

(6) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received and that the applicant will comply with all program requirements.

(7) Any guarantee of performance that the Commission may require by Public Notice or other proceedings, including but not limited to, letters of credit, performance bonds, or demonstration of financial resources.

(c) *Application processing.* (1) No application will be considered unless it has been submitted during the period specified by Public Notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(2) The Commission shall deny any application that, as of the submission deadline, either does not adequately identify the party seeking support or does not include required certifications.

(3) After reviewing applications submitted, the Commission may afford an opportunity for parties to make minor modifications to amend applications or correct defects noted by the applicant, the Commission, or other parties. Minor modifications include changing the individuals authorized to bid for the applicant, correcting typographical errors in the application, and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(4) The Commission shall deny all applications to which major modifications are made after the

deadline for submitting applications. Major modifications include any changes to the identity of the applicant or to the certifications required in the application.

(5) After receipt and review of the applications, the Commission shall release a Public Notice identifying all applications that have been granted and the parties that are eligible to receive support.

§ 54.1008 Default.

Winning bidders that fail to substantially comply with the requirements for filing the post-auction long-form application by the applicable deadline shall be in default on their bids and subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding pursuant to this subpart.

§ 54.1009 Public interest obligations.

(a) Applicants receiving support under this section must perform the following under their public interest obligations:

(1) *Speed.* Applicants must provide broadband speeds of 4 Mbps downstream (actual) and 1 Mbps upstream (actual), subject to specified exceptions.

(2) *Coverage requirement.* Applicants must comply with the coverage requirement established by the Commission and must comply with all reasonable requests for service from end users in its coverage area.

(3) *Deployment and duration of obligation.* Applicants must complete deployment within three years after receiving support and must fulfill provider obligations under this section for five years upon completion of deployment.

§ 54.1010 Disbursements.

(a) Support shall be disbursed to recipients in three stages, as follows:

(1) One-half of the total possible support, if coverage were to be extended to 100 percent of the units in the portion of the geographic area deemed unserved, when a recipient's long-form application for support with respect to a specific area is deemed granted.

(2) One-quarter of the total possible support with respect to a specific geographic area when a recipient files a report demonstrating coverage of 50 percent of the units in the portion of that area previously deemed unserved.

(3) The remainder of the total possible support when a recipient files a report demonstrating coverage of 100 percent of the units in the portion of that area previously deemed unserved.

(b) If the Commission concludes for any reason that coverage of 100 percent of the units in the portion of a specific geographic area previously deemed unserved will not be achieved, the Commission instead may provide support based on the final total units covered in that area. In such circumstances, the final disbursement will be the difference between the total amount of support based on the final units covered in that area and any support previously received with respect to that area. Parties accepting a final disbursement for a specific geographic area based on coverage of less than 100 percent of the units in the portions of that area previously deemed uncovered waive any claim for the remainder of support for which they previously were eligible with respect to that area.

§ 54.1011 Oversight.

(a) Parties receiving support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.

(b) Parties receiving support shall submit to the Commission annual reports for eight years after they qualify for support. The annual reports shall include:

(1) Electronic coverage maps illustrating the area reached by new services at a minimum scale of 1:240,000;

(2) A list of relevant census blocks previously deemed unserved, with total resident population and resident population residing in areas reached by new services (based on 2010 Census Bureau data and estimates);

(3) A report regarding the services advertised to the population in those areas; and

(4) Data received or used from speed tests analyzing network performance for new broadband services in the area for which support was received.

(c) No later than two months after providing service or two years after receiving support, parties receiving support shall submit to the Commission data from broadband speed tests for areas in which support was received demonstrating broadband performance data to and from the network meeting or exceeding the 4 Mbps downstream (actual) and 1 Mbps upstream (actual).

(d) Parties receiving support and their agents are required to retain any documentation prepared for or in connection with the recipient's support for a period of not less than eight years. All such documents shall be made available upon request to the Commission's Office of Managing

Director, Wireless Telecommunications Bureau, Wireline Competition Bureau, Office of Inspector General, and the Universal Service Fund Administrator, and their auditors.

PART 61—TARIFFS

14. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

15. Amend § 61.3 by adding paragraph (aaa) to read as follows:

§ 61.3 Definitions.

* * * * *

(aaa) *Access revenue sharing.* Access revenue sharing occurs when a rate-of-return ILEC or a CLEC enters into an access revenue sharing agreement that will result in a net payment to the other party (including affiliates) to the access revenue sharing agreement, over the course of the agreement. A rate-of-return ILEC or a CLEC meeting this trigger is subject to revised interstate switched access charge rules.

16. Amend § 61.26 by revising paragraphs (b), (d) and (e) and adding paragraph (g) to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

* * * * *

(b) Except as provided in paragraphs (c), (e), and (g) of this section, a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of:

(1) The rate charged for such services by the competing ILEC or

(2) The lower of:

(i) The benchmark rate described in paragraph (c) of this section or

(ii) The lowest rate that the CLEC has tariffed for its interstate exchange access services, within the six months preceding June 20, 2001.

* * * * *

(d) Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) and (c) of this section, in the event that, after June 20, 2001, a CLEC begins serving end users in a metropolitan statistical area (MSA) where it has not previously served end users, the CLEC shall not file a tariff for its interstate exchange access services in that MSA that prices those services above the rate charged for such services by the competing ILEC.

(e) Rural exemption. Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) through (d) of this

section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge.

* * * * *

(g) Notwithstanding paragraphs (b) through (e) of this section, a CLEC engaged in access revenue sharing, as that term is defined in § 61.3(aaa) shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the access tariff of the RBOC in the state, or, if there is no RBOC in the state, the incumbent LEC with the largest number of access lines in the state.

(1) A CLEC engaging in access revenue sharing, as that term is defined in § 61.3(aaa) shall file revised interstate switched access tariffs within forty-five (45) days of commencing access revenue sharing as that term is defined in § 61.3(aaa) or within forty-five (45) days of [the effective date of the Order] if the CLEC on that date is engaged in access revenue sharing, as that term is defined in § 61.3(aaa).

(2) A CLEC shall file the revised interstate access tariffs required by paragraph (g)(1) of this section on at least sixteen (16) days' notice.

17. Amend § 61.39 by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a) Scope. Except as provided in paragraph (g) of this section, this section provides for an optional method of filing for any local exchange carrier that is described as a subset 3 carrier in § 69.602 of this chapter, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of local exchange carriers subject to price cap regulation.

* * * * *

(g) A local exchange carrier otherwise eligible to file a tariff pursuant to this section may not do so if it is engaged in access revenue sharing, as that term is defined in § 61.3(aaa). A carrier so engaged must file interstate access tariffs in accordance with § 61.38 and § 69.3(e)(12)(1) of this chapter.

18. Amend § 61.58 by revising paragraph (a)(2)(i) and adding paragraph (a)(2)(iv) to read as follows:

§ 61.58 Notice requirements.

(a)* * *

(2)(i) Except as provided in paragraph (a)(2)(iv) of this section, local exchange carriers may file tariffs pursuant to the streamlined tariff filing provisions of section 204(a)(3) of the Communications Act. Such a tariff may be filed on 7 days' notice if it proposes only rate decreases. Any other tariff filed pursuant to section 204(a)(3) of the Communications Act, including those that propose a rate increase or any change in terms and conditions, shall be filed on 15 days' notice. Any tariff filing made pursuant to section 204(a)(3) of the Communications Act must comply with the applicable cost support requirements specified in this part.

* * * * *

(iv) A local exchange carrier engaging in access revenue sharing, as that term is defined in § 61.3(aaa), that is filing pursuant to the provisions of § 69.3(e)(12)(i) of this chapter shall file revised tariffs on at least 16 days' notice.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

19. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

20. Amend § 64.1601 by revising paragraph (a) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

(a) *Delivery.* Except as provided in paragraphs (d) and (e) of this section:

(1) Telecommunications providers and entities providing interconnected voice over Internet protocol services who originate interstate or intrastate traffic on the public switched telephone network, or originate interstate or intrastate traffic that is destined for the public switched telephone network, are required to transmit the telephone number received from, or assigned to or otherwise associated with the calling party to the next provider in the path

from the originating provider to the terminating provider, where such transmission is feasible with network technology deployed at the time a call is originated. The scope of this provision includes, but is not limited to, circuit-switched and packetized transmission, such as Internet protocol and any successor technologies. Entities subject to this provision who use Signaling System 7 are required to transmit the calling party number (CPN) associated with every interstate or intrastate call in the SS7 CPN field to interconnecting providers, and are required to transmit the calling party's charge number (CN) in the SS7 CN field to interconnecting providers for any call where CN differs from CPN. Entities subject to this provision who are not capable of using SS7 but who use multifrequency (MF) signaling are required to transmit CPN, or CN if it differs from CPN, associated with every interstate or intrastate call, in the MF signaling automatic numbering information (ANI) field.

(2) Telecommunications providers and entities providing interconnected voice over Internet protocol services who are intermediate providers in an interstate or intrastate call path must pass, unaltered, to subsequent carriers in the call path, all signaling information identifying the telephone number of the calling party, and, if different, of the financially responsible party that is received with a call, unless published industry standards permit or require altering signaling information. This requirement applies to all SS7 information including, but not limited to CPN and CN, and also applies to MF signaling information or other signaling information intermediate providers receive with a call. This requirement also applies to Internet protocol signaling messages, such as calling party identifiers contained in Session Initiation Protocol (SIP) header fields,

and to equivalent identifying information as used in successor technologies.

* * * * *

PART 69—ACCESS CHARGES

21. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

22. Section 69.3 is amended by revising paragraphs (e)(6) and (e)(9) and adding paragraph (e)(12) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(6) Except as provided in paragraph (e)(12) of this section, a telephone company or companies that elect to file such a tariff shall notify the association not later than March 1 of the year the tariff becomes effective, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

* * * * *

(9) Except as provided in paragraph (e)(12) of this section, a telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the year the tariff becomes effective that it will no longer participate in the association tariff. A telephone company or group of

affiliated telephone companies that elects to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff(s) for all of its study areas.

* * * * *

(12)(i) A local exchange carrier, or a group of affiliated carriers in which at least one carrier, is engaging in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, shall file its own access tariffs within forty-five (45) days of commencing access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, or within forty-five (45) days of [the effective date of the Order] if the local exchange carrier on that date is engaged in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter.

(ii) Notwithstanding paragraphs (e)(6) and (9) of this section, a local exchange carrier, or a group of affiliated carriers in which at least one carrier, is engaging in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, must withdraw from all interstate access tariffs issued by the association within forty-five (45) days of commencing access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, or within forty-five (45) days of [the effective date of the Order] if the local exchange carrier on that date is engaged in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter.

(iii) Any such carrier(s) shall notify the association when it begins access revenue sharing, or on [the effective date of the order] if it is engaged in access revenue sharing, as that term is defined in § 61.3(aaa) of this chapter, on that date, of its intent to leave the association tariffs within forty-five (45) days.

* * * * *

[FR Doc. 2011-4399 Filed 3-1-11; 8:45 am]

BILLING CODE 6712-01-P