

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 54

[WC Docket No. 10–90, WT Docket No. 10–208; FCC 17–11]

### Connect America Fund; Universal Service Reform—Mobility Fund

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) adopts the framework to allocate funds to assist in the deployment of 4G LTE to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. This framework redirects funding from legacy subsidies and distributes them through the Mobility Fund Phase II and Tribal Mobility Fund Phase II, using market-based, multi-round reverse auctions, and contains defined, concrete compliance requirements to help ensure rural consumers will be adequately served by mobile carriers receiving universal support.

**DATES:** Effective April 27, 2017 except for additions of §§ 54.1013, 54.1014, 54.1015(a) through (e), 54.1016(a) and (b), 54.1017, 54.1019, 54.1020, and 54.1021, which contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those additions.

#### FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auction and Spectrum Access Division, Mark Montano, at (202) 418–0660. For further information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918, or via the Internet at [PRA@fcc.gov](mailto:PRA@fcc.gov).

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Report and Order and Further Notice of Proposed Rulemaking (*MF–II Order*), WC Docket No. 10–90, WT Docket No. 10–208, FCC 17–11, adopted on February 23, 2017 and released on March 7, 2017. The complete text of this document is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m.

ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text is also available on the Commission's Web site at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0309/FCC-17-11A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0309/FCC-17-11A1.pdf). Alternative formats are available to persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

### Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules adopted in this document. The FRFA is set forth in an appendix to the *MF–II Order*, and is summarized below. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *MF–II Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

### Paperwork Reduction Act

The *MF–II Order* contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new and modified information collection requirements contained in this proceeding.

### Congressional Review Act

The Commission will send a copy of this *MF–II Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A).

### I. Introduction

1. In the *MF–II Order*, the Commission adopts the framework for moving forward with the Mobility Fund Phase II (MF–II) and Tribal Mobility Fund Phase II (Tribal MF–II), which will allocate up to \$4.53 billion over the next decade to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. The funding for this effort will come from the redirection of legacy

subsidies and distributed using a market-based, multi-round reverse auction and will come with defined, concrete compliance requirements so that rural consumers will be adequately served by the mobile carriers receiving universal service support.

2. The Commission expects to release a list of presumptively eligible areas shortly, to finalize the challenge process in the coming months, and to conclude the challenge process by January 31, 2018. The Commission expects to commence the auction shortly thereafter. The phase-down of legacy support is scheduled to commence in the first month following the close of the MF–II auction.

### II. Background

3. In the *USF/ICC Transformation Order*, 76 FR 73829, November 29, 2011, the Commission sought to achieve the universal availability of “mobile networks capable of delivering mobile broadband and voice service in areas where Americans live, work, or travel.” This goal was “designed to help ensure that all Americans in all parts of the nation, including those in rural, insular, and high-cost areas, have access to affordable technologies that will empower them to learn, work, create, and innovate.” At the same time, the Commission recognized the importance of minimizing the universal service contribution burden on consumers and businesses. The Commission sought to balance the objective of “providing support that is sufficient but not excessive so as to not impose an excessive burden on consumers and businesses who ultimately pay to support the Fund.”

4. Applying those goals, the Commission targeted funding to expand mobile coverage, while ensuring that the funding is “cost-effective and targeted to areas that require public funding to receive the benefits of mobility.” As a result, the Commission eliminated the “identical support rule,” which previously had set the level of support for competitive eligible telecommunications carriers (CETCs), including those providing mobile services, at the level received by the incumbent local exchange carrier, and had limited CETC support to those areas where wireline providers received support because of their high costs. The Commission concluded that “[t]he support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile voice service in a particular geography,” and established the Mobility Fund to assure that universal service support for mobile service would be targeted in a more cost

effective manner. The Mobility Fund included two phases. For Mobility Fund Phase I (MF–I), the Commission provided up to \$300 million in one-time support payments, to be awarded through a reverse auction. The Commission also provided an additional \$50 million in one-time support dedicated to Tribal lands. For MF–II, the Commission decided it would provide up to \$500 million per year in ongoing support—including support to Tribal lands—and sought comment in the *USF/ICC Transformation FNPRM*, 76 FR 78383, December 16, 2011, on the structure and operational details of that fund.

5. To minimize “shocks to service providers that may result in service disruptions for consumers,” the *USF/ICC Transformation Order* provided for a five-year transition period during which legacy support going to CETCs would phase down 20 percent per year beginning July 1, 2012. The Commission noted that, during the transition period, mobile carriers would have the opportunity to seek one-time MF–I support to expand 3G or better service to areas where such service was unavailable while also receiving phase-down legacy support. The Commission also provided that if MF–II were not operational by July 1, 2014, the phase down of legacy support for CETCs would pause at the 60 percent level in effect on that date. The Commission also provided that the phase-down of legacy support for CETCs serving Tribal lands would pause at that time if Phase II of the Tribal Mobility Fund were not implemented.

6. Following the comments filed in response to the *USF/ICC Transformation Order FNPRM* accompanying the *USF/ICC Transformation Order*, the Wireless Telecommunications Bureau and the Wireline Competition Bureau (the Bureaus) issued a Public Notice in November 2012, 77 FR 73586, December 11, 2012, seeking to develop a more comprehensive, robust record on certain issues related to the award of ongoing support for advanced mobile services. The Bureaus sought to build upon their experience in implementing a reverse auction to distribute universal service support and the experiences of carriers that participated in MF–I. In particular, among other things, the Bureaus sought further feedback on issues pertaining to the method for identifying the geographic areas that are eligible for MF–II support and establishing the base unit for bidding and measuring coverage, performance obligations, and the term of support.

7. In April 2014, the Commission in the *2014 CAF Further Notice*, 79 FR 39195, July 9, 2014, again took the opportunity to expand upon what it had learned from its efforts to modernize universal service as well as the considerable developments in the marketplace for mobile wireless services that had occurred since adoption of the *USF/ICC Transformation Order*. Given the significant commercial deployment of 4G LTE, the Commission proposed to retarget the focus of MF–II to address those areas of the country where LTE would not be available absent support and existing mobile voice and broadband service would not be preserved without support.

8. In September 2016, the Wireless Telecommunications Bureau released its analysis of mobile broadband providers’ December 2015 Form 477 submissions in order to identify and quantify the areas in the country that may require support on an ongoing basis in order to have 4G LTE coverage. In addition to identifying the specific areas of the country without 4G LTE coverage, Wireless Telecommunications Bureau staff examined the current distribution of high-cost support to assess the efficacy of that support. That analysis reveals that 4G LTE is absent from or only provided with support in one-fifth of the area of the United States excluding Alaska and that a conservative estimate is that three-quarters of support currently distributed to mobile providers is being directed to areas where it is not needed. In other words, carriers are receiving approximately \$300 million or more each year in subsidies to provide service even though such subsidies are unnecessary and may deter investment by unsubsidized competitors from increasing competition in those areas.

### III. Goals of the Mobility Fund Phase II

9. The Commission reaffirms the following goals for Phase II of the Mobility Fund.

10. First, the Commission reaffirms that universal service funding for the preservation and advancement of high-speed advanced services such as 4G LTE is an appropriate and necessary use of universal service funds. Because they are unmoored from a fixed point, mobile devices empower Americans to make calls and access the web and web-based applications while on the go.

11. Second, the Commission reaffirms that it should target universal service funding to support the deployment of the highest level of mobile service available today—4G LTE. In the *2014 CAF Further Notice*, the Commission observed that two major wireless

providers had widely deployed 4G LTE throughout the country. Since that time, consumers increasingly demand 4G LTE service in order to take advantage of the significantly better performance characteristics, including faster data transfer speeds that 4G LTE provides while using the web or web-based applications. Targeting MF–II support to expand and preserve 4G LTE coverage will ensure that the Commission does not relegate rural areas to substandard service.

12. Third, the Commission reaffirms that it should target universal service funding to coverage gaps, not areas already built out by private capital. Despite a surge in private investment in mobile deployment, recent analysis shows that at least 575,000 square miles (approximately 750,000 road miles and 3 million people) either lack 4G LTE service or are being served only by subsidized 4G LTE providers. Virtually all commenters agree that proceeding with MF–II is critically important to supporting mobile voice and broadband coverage. Thus, by proceeding to MF–II, the Commission seeks to assure that 4G LTE service is preserved and advanced to those areas of the country where there is no unsubsidized service, all consonant with the Commission’s goal of “ubiquitous availability of mobile services.”

13. Fourth, the Commission reaffirms that it is committed to minimizing the overall burden of universal service contributions on consumers and businesses by expending the finite funds it has available in the most efficient and cost effective manner. The Wireless Telecommunications Bureau’s latest analysis indicates that a substantial majority of current ongoing legacy CETC support is allocated to census blocks that already have complete 4G LTE coverage from one or more unsubsidized competitors.

### IV. Framework for Mobility Fund Phase II

14. The Commission adopts a reverse auction to distribute high-cost support for mobile services to areas that lack unsubsidized 4G LTE service, while completing the phase-down of legacy support going to mobile CETCs, thereby eliminating duplicative and unnecessary CETC support, and better managing its finite financial resources. Utilizing an annual budget of \$453 million for a term of ten years, the Commission will provide ongoing support for provision of service in areas that would lack mobile voice and broadband coverage absent government subsidies. Likewise, consistent with the Commission’s decision in the *USF/ICC*

*Transformation Order* to abandon the identical support rule and to depart from duplicative investments in multiple CETCs in the same geographic area, the Commission will award support to one provider per eligible geographic area. This section describes this basic framework for MF–II and its conclusions on these issues. The Commission intends before the commencement of the MF–II auction to supplement the performance goals and measures for the program.

#### *A. Reverse Auction To Award Mobility Fund Phase II Support*

15. The Commission adopts a nationwide, multi-round reverse auction with competition within and across geographic areas to award MF–II support. Utilizing an auction mechanism will allow the Commission to distribute support consistent with its policy goals and priorities in a transparent, speedy, and efficient manner. An auction provides a straightforward means of identifying those providers that are willing to provide 4G LTE service at the lowest cost to the budget, targeting support to prioritized areas, and determining support levels that awardees are willing to accept in exchange for the obligations the Commission imposes. Moreover, a reverse auction is consistent with the Commission's decision to provide support to at most one provider per area. While auction alternatives suggested by commenters may address some of these objectives—for example, a cost model could theoretically determine appropriate support amounts for an area—the Commission is not persuaded that there is an alternative approach that would achieve all its core policy objectives that could be implemented in a timely manner. Furthermore, the Commission's experience in administering Auction 901 for MF–I funding was a new endeavor in 2012, and it can apply the lessons learned to the MF–II auction.

16. The Commission finds that those parties advocating for use of a model do not acknowledge or resolve the myriad policy goals that are addressed by the Commission's reverse auction proposal, and therefore do not offer a realistic alternative—consistent with its decisions—to the proposed auction mechanism. This determination is substantiated by the fact that the Commission has not received a fully developed cost model for ongoing support since it first sought comment on the issue in 2011. The Commission received a developed model regarding Alaska, but it recently adopted a different approach for mobile carriers

there. The Alaska Mobile Plan is a consensus plan among the mobile providers in remote areas of Alaska that provides predictable, stable high-cost support to those providers, frozen at 2014 levels for a term of ten years. Because the Commission adopted the Alaska Plan for mobile carriers as an Alaska-specific comprehensive substitute mechanism for mobile high-cost support, the Commission decided that no support provided under MF–II or Tribal MF–II will be provided for mobile service within Alaska. In the absence of a workable, nationwide model to award ongoing support that addresses all of the Commission's core policy objectives, the Commission adopts its proposal to use a reverse auction mechanism to distribute MF–II support.

17. The Commission declines to adopt a federal-state broadband mobile grant program in lieu of an auction as proposed earlier this year by one commenter. This proposal would impose significant responsibilities on the states that choose to participate, including an obligation to contribute funds (that the Commission would match), review service providers' applications and subsequently award grants, and verify providers' compliance with the Commission's performance requirements. It would require significant Commission coordination and oversight to implement such a proposal, which is inconsistent with the Commission's desire to act quickly so that providers can expand to those areas lacking 4G LTE coverage and the Commission can take fiscally responsible measures to redistribute current support from those areas with unsubsidized 4G LTE. Based on the record before the Commission, as well as its experience in MF–I, the Commission is not convinced that this approach would be a more efficient or effective means of awarding MF–II support than using a reverse auction.

#### *B. Mobility Fund Phase II Budget*

18. The Commission adopts a budget of \$4.53 billion for MF–II over ten years—the amount of legacy support mobile carriers outside Alaska would receive over the next decade less the funding needed to phase-down support in census blocks fully built with private capital. Current legacy high-cost support received by wireless providers is approximately \$483 million per year, excluding Alaska, and around \$300 million of that amount is being provided to census blocks fully covered with unsubsidized 4G LTE. In the *MF–II Order*, the Commission is phasing down the support it pays for those areas over

two years, with these phase-down payments totaling one year's support, *i.e.*, approximately \$300 million. In keeping with its obligation to be fiscally responsible, the Commission arrives at an annual MF–II budget by taking \$483 million (representing current CETC support), minus \$30 million (representing the estimated \$300 million phase-down payments for those areas, evenly apportioned over the ten-year term), for a total each year of \$453 million. Given the need to preserve and advance 4G LTE service revealed by its staff analysis, the Commission concludes that retargeting existing funds is appropriate.

19. The cost of universal service programs is ultimately borne by the consumers and businesses that pay to fund these programs, and the Commission has a corresponding obligation to exercise fiscal responsibility by avoiding excessive subsidization and overburdening communications consumers. The courts have recognized that over-subsidizing universal service programs can actually undermine the statutory principles set forth in section 254(b) of the Communications Act of 1934, as amended (Communications Act), 47 U.S.C. 254. The Commission adopts an MF–II budget to balance the various competing objectives in section 254 of the Communications Act, including the objective of providing support that is sufficient, but not so excessive so as to impose an undue burden on consumers and businesses. The Commission further notes that MF–II is only one component of its broader reform efforts, and the MF–II annual budget also reflects a careful analysis of the respective needs and objectives of all aspects of the universal service program.

20. The Commission finds that this level of support over the next ten years will allow MF–II to achieve its objectives in a fiscally responsible manner. The Commission recognizes that the currently unserved areas are likely the most expensive areas in the country to serve; however, its budget—when distributed cost-effectively—should make meaningful progress in eliminating the lingering coverage gaps. The Commission also remains free, after the auction has concluded, to assess its results and determine whether additional funding is needed to advance the deployment of advanced mobile services throughout rural America.

21. The Commission declines to adopt the proposal in the *2014 CAF Further Notice* to significantly reduce the budget for MF–II. The proposal to reduce the budget in the *2014 CAF Further Notice* was made in the context of awarding

support for service based on uncovered population, rather than land areas where mobile broadband is absent. Because the Commission has decided to award support to cover square miles, its projected funding requirements in 2014 are inapplicable.

22. The Commission declines to adopt two separate budgets—one to fund operating expenses for preservation of service and one to fund capital expenses for expansion of service—as proposed by one commenter. This proposal would require two separate auctions to award support from two funds, which would be administratively less efficient and risk duplicative funding to eligible areas. Moreover, two funds would require the Commission to decide in advance the levels of support for each, and would require the Commission to monitor and enforce restrictions on the purposes for which these two types of support can be used. By contrast, a single fund allows reverse auction bidders to make their own efficiency tradeoffs between operating and capital expenses.

23. In establishing the MF–II annual budget, the Commission affirms its commitment to fiscal responsibility, and takes steps herein to ensure that the support awarded is not excessive. The Commission makes clear that there is discretion to set reserve prices as part of the procedures for the reverse auction, which will provide a backstop in the event there is insufficient competition to act as a restraint on the price of the support to be provided in particular cases. To safeguard the monies dedicated to this budget, the Commission adopts requirements to ensure that MF–II support recipients are meeting the service obligations and conditions associated with the ongoing award of such annual support. The Commission retains the discretion to distribute less than the total amount authorized in a given year if support recipients fail to meet performance or other program obligations.

24. The Commission denies the Petition for Declaratory Ruling filed by United States Cellular Corporation, requesting that the Commission award to “next-in-line” bidders in Auction 901 more than \$68 million of undisbursed MF–I support on which the winning bidders in that auction defaulted. The Commission will not award the unclaimed MF–I support to the next-in-line bidders in Auction 901. As the petitioner recognizes, the Commission addressed undisbursed support payments in the *USF/ICC Transformation Order*. Among the goals and purposes of the Universal Service program is the goal to award support in

a fiscally responsible manner, thereby minimizing the universal service contribution burden on consumers and businesses. In its decision, the Commission adopts ongoing support with an annual budget of \$453 million for MF–II and target support to areas where it is most needed, *i.e.*, areas that lack 4G LTE service and areas where service only exists due to a subsidy. The Commission finds this is a better use of universal service funds than allocating funds to the next-in-line bidders in Auction 901, based on the outdated standards for eligible areas used in 2012 for MF–I.

### C. Tribal Mobility Fund Phase II

25. The Commission reserves support to Tribal lands (excluding Alaska) as part of the overall MF–II budget. The Commission will calculate this budget by applying the ratio of square miles in eligible Tribal lands to square miles of all eligible areas (adjusting for a terrain factor) to the total budget it has chosen for MF–II. The Commission expects that Tribal lands likely will be more expensive to serve than non-Tribal lands due to their lower population density and income levels, as well as the lack of power or roads in some parts of Indian country and the need for federal approval (such as from the Bureau of Indian Affairs) before broadband can be deployed there. The Commission concludes that reserving this support within MF–II is a fair means and reasonable metric to ensure that Tribal lands are not left behind in the auction. Current estimates are that this ratio would be about 7%, so the Commission expects to reserve at least \$340 million from the MF–II budget as support for Tribal Lands. The definitive budget will be set when the final set of eligible areas is determined after the challenge process.

26. The Commission concludes that it is appropriate to freshly consider the size of the Tribal MF–II budget rather than seek to simplistically follow earlier Commission decisions pre-dating several important developments. The Commission originally proposed to set aside up to \$100 million annually for Tribal lands, but then later dedicated \$96 million annually to Tribal lands in remote areas of Alaska. Subtracting the latter from the former would leave a Tribal MF–II budget of only \$4 million. If the Commission looked to the Tribal Mobility Fund Phase I auction as a way of apportioning the Commission’s initial estimate, it would see that the vast majority of those funds (81 percent) were won by Alaskan bidders. Subtracting that proportion for the Commission’s initial \$100 million

proposal would leave mainland Tribal lands with only \$19 million. The Commission believes that premising the Tribal MF–II budget on the Commission’s earlier actions is likely insufficient to reflect the need for funding to advance 4G LTE services on Tribal lands in 2017 and beyond. Rather, the Commission finds that the methodology described in the *MF–II Order* will better serve the public interest.

27. Providers of service to eligible areas within Tribal lands will also be able to bid for general support in MF–II—so, with sufficient auction participation, the funds reserved as part of the Tribal Mobility Fund will be a floor, not a ceiling, on support for Tribal lands.

28. The Commission adopts the proposal to award MF–II support for Tribal lands subject to the same terms and conditions as are applicable to all eligible areas in MF–II. The Commission declines to adopt the rules proposed in the *USF/ICC Transformation FNPRM* regarding special ETC designation treatment for Tribal MF–II participants because the Commission is revising the timing of its ETC designation requirement for all MF–II participants. The Commission declines to adopt separate coverage units for Tribal MF–II. The Commission declines to pursue the suggestion of one commenter that carriers serving Tribal lands be allowed to participate in an opt-in funding plan similar to the Alaska Plan. The unique basis for the Commission’s adoption of the Alaska plan was not the existence of Tribal lands in Alaska, but rather its concerns about the need for support to be flexible enough to accommodate Alaska’s unique conditions, including its “remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season.” The Alaska Plan is limited to addressing these unique challenges.

29. The Commission will establish procedures for MF–II in consultation and coordination with the Commission’s Office of Native Affairs and Policy. This will allow funds reserved for Tribal lands to be included as part of the MF–II auction. The Commission believes this path of conducting Tribal MF–II as a component of MF–II is best for quickly initiating support for mobile networks on tribal areas.

30. The Commission declines to adopt a formal Tribal engagement obligation or a bidding credit preference for Tribally-

owned-and-controlled entities. The Commission agrees with commenters that a tribal engagement obligation is not necessary because it could create an excessive administrative burden, without a material countervailing benefit, when many carriers already have established relationships with Tribes. In addition, adopting formal Tribal engagement requirements could deter participation in Tribal lands and would likely divert providers' resources, thus potentially delaying their deployment of service to Tribal lands. The Commission expects carriers participating in the Tribal MF–II to work with Tribes to facilitate the deployment of the highest quality service to the people living on Tribal lands. The Commission finds that a bidding credit preference for Tribally-owned-and-controlled entities is unnecessary for the MF–II auction. Although several commenters assert that a bidding credit preference would create an incentive for bids and increase the likelihood of service to Tribal lands, the Commission finds that setting aside funds specifically to serve Tribal lands is likely to accomplish the Commission's goal of ensuring greater coverage on Tribal lands. The Commission also finds that layering an additional bidding credit for Tribal carriers on top of the funding exclusively available for service to Tribal lands could deter other entities from bidding to serve Tribal lands, reducing both the competitiveness of the auction and the potential reach of the Commission's finite funds for MF–II. Furthermore, commenters fail to demonstrate that the benefits of a bidding credit preference outweigh the costs of potentially depriving other eligible areas of MF–II support.

#### *D. Identifying Geographic Areas Eligible for Support*

##### **1. Geographic Area as the Metric for Assessing Mobile Coverage**

31. The Commission will use geographic area expressed in square miles as the metric for measuring coverage, comparing bids, and assessing compliance with the corresponding coverage requirement for winning bids in MF–II. The Commission will only award support for those geographic areas without 4G LTE from an unsubsidized provider. The Commission will be making eligible for support only the unserved geographic areas within a census block, rather than the entire area within the block.

32. Requiring coverage of a geographic area most closely reflects the Commission's goal to have mobile

services available everywhere people live, work, and travel. A geographic area is a broad measure that encompasses all the alternative metrics proposed in the record, such as roads, population, farm land, and areas remote from roads or significant population centers. Targeting support for mobile broadband service based solely on where people may live or where roads of certain sizes may be located is not enough. Those narrower approaches would not direct support everywhere consumers need and use a mobile service. Basing the award of MF–II support on a bid for square miles takes into account many of the other areas where mobile service is important but for which standardized data are less available—such as business locations, recreation areas, work sites, and agricultural spaces. For example, precision agriculture relies on mobile networks for connectivity, so the value of having coverage in farmland is not directly related to the number of people or number of roads there.

33. Using geographic areas as the metric for MF–II will be relatively simple to administer. The Commission will examine the areas that do not appear in the coverage shapefiles from providers' Form 477 data. There will be no need to obtain and validate the accuracy of another data source (e.g., road maps or population data) and then overlay those data on the shapefiles. Although the Commission utilized road miles for MF–I, there were drawbacks to that approach. In particular, the Commission found that roads may not be consistently categorized by states into TIGER categories for which support is provided and that there are different opinions regarding the specific TIGER categories of roads that should be included. With respect to population, standardized data are available regarding total population per census block, but not with respect to where population is located within a census block. The difficulties in measuring compliance based on population stem from the fact that, while the Commission knows how many people are in a given census block, it does not know where in that census block they are located. While this challenge could be overcome by a 100 percent coverage requirement, commenters generally oppose such a coverage requirement.

##### **2. Minimum Geographic Area for Bidding and Support**

34. The Commission concludes that the minimum geographic area for bidding should be census block groups or census tracts containing one or more census blocks with eligible areas for bidding and support for MF–II. The

Commission expressed its intent to employ this same approach in the *Connect America Phase II Auction Order*, 81 FR 44413, July 7, 2016. The full Commission will make the final decision on minimum geographic area in the pre-auction process. The Commission refers generally to the “pre-auction process” in the *MF–II Order*, which is the process through which final auction procedures will be implemented and the final list of eligible areas will be determined. The Commission may seek comment on, and/or resolve, certain final auction procedures in separate public notices if doing so better conduces to the proper dispatch of business. Any such public notices will be released during the pre-auction process and well in advance of the auction.

35. Although the Commission continues to recognize that using census blocks allows it to target support to specific areas thereby providing bidders the ability to tailor their bids to their business plans, its experience with the MF–I auction demonstrates the need to limit the number of discrete biddable units. The Commission concludes it is best to set performance requirements based on an area larger than a census block. The Commission adopts a broader, more manageable approach that will combine one or more census blocks containing eligible areas into census block groups or census tracts.

##### **3. Identifying Areas That Need Mobility Fund Phase II Support**

36. The Commission reaffirms its goals and now seeks to promote the deployment of 4G LTE in all areas where it would not be offered by the private sector in the absence of universal service support. The Communications Act directs the Commission to fund “reasonably comparable” services in rural areas to those commonly available in urban areas. Looking to the mobile speeds generally reported by nationwide carriers on their Form 477 submissions, the Commission finds that such carriers are generally reporting the deployment of 4G LTE reported at minimum advertised download speeds of at least 5 Mbps. The Commission will use this speed benchmark to identify areas eligible for MF–II. The Commission rejects requests to use the same 10/1 Mbps thresholds for determining area eligibility that it requires of MF–II support recipients for determining compliance with performance requirements.

37. The Commission concludes that any census block that is not fully covered by unsubsidized 4G LTE will

contain areas that are eligible for support in the MF–II auction. This sub-census block approach to eligibility addresses long-standing concerns that current methods used to estimate network coverage may classify whole census blocks as served notwithstanding that they contain significant areas that remain unserved.

#### 4. Source of Coverage and Subsidy Data

38. The Commission concludes that Form 477 data is the most reliable data currently available for the purpose of determining the coverage levels of existing mobile services, including unserved areas, and areas served by the various technologies that provide 2G, 3G, 4G, and 4G LTE services. The Commission will use Form 477 mobile wireless coverage data and high-cost disbursement data available from the Universal Service Administrative Company (USAC) to determine coverage levels in individual census blocks and whether high-cost support is being awarded. Prior to an MF–II auction, the Commission will compile the list of potentially eligible areas from the data submissions that are most recently available for this purpose.

39. In the *477 Report and Order*, 78 FR 49126, August 13, 2013, the Commission made clear that the enhanced deployment data collection requirements it adopted were “needed to fulfill [its] universal service mandate.” The *477 Report and Order* significantly enhanced the reliability of the data the Commission collects by requiring the submission of deployment shapefiles that depict “the coverage boundaries where, according to providers, users should expect the minimum advertised upload and download data speeds associated with [a] network technology,” such as LTE. Specifically, for each mobile broadband network technology (e.g., EV–DO, WCDMA, HSPA+, LTE, WiMAX) deployed in each frequency band (e.g., 700 MHz, Cellular, AWS, PCS, BRS/EBS), every facilities-based mobile broadband provider must submit polygons representing its nationwide coverage area (including U.S. territories) of that technology. While these coverage data provide the most accurate depiction the Commission has on the deployment of mobile networks, they do not indicate the extent to which providers affirmatively offer service to residents in the covered areas. By requiring a single, uniform filing format for the shapefiles, the Commission reduces the potential for distortion or misleading comparisons of the data. The Commission requires all facilities-based broadband providers to file Form 477

twice a year, and the Commission requires that the providers certify as to the accuracy of the data submitted. As Wireless Telecommunications Bureau staff has demonstrated, Form 477 data along with USAC CETC support data can provide sufficiently granular information to identify those areas of the country that lack 4G LTE service or where such service is only provided by a subsidized provider.

40. The Commission has recently concluded that “data from the Form 477 . . . help [it] better analyze mobile broadband deployment than in years past.” The Wireless Telecommunications Bureau determined that the Form 477 coverage data “provide the most accurate depiction the Commission has on the deployment of mobile networks,” and none of the commenters criticizing the Form 477 data has identified a better data source for moving forward expeditiously to implement MF–II. Recognizing that no data source—including Form 477—will be perfectly accurate, the Commission will utilize a challenge process to improve the accuracy of the coverage analysis underlying eligibility determinations reached in reliance on Form 477 data.

41. Finally, one public service commission urges the Commission to seek input from states that have instituted programs to identify areas lacking coverage. The Commission recognizes that some state commissions have acquired detailed information about coverage within their states, and encourage states to submit information that is probative for determining eligibility during the challenge process. However, because individual state and territory information may not be uniform throughout the nation, the Commission declines to rely on such data to the exclusion of other sources and will continue to rely primarily on Form 477 data certified by providers. Nonetheless, the Commission will consider coverage data from states and other sources in its challenge process.

#### 5. Applying Coverage and Subsidy Data to Census Blocks

42. The Commission concludes that it will apply an actual coverage analysis to determine presumptive eligible areas for MF–II support, in lieu of the centroid method employed in MF–I. In the time that has passed since the Commission first proposed using the centroid method in MF–II, the Commission has been able to gather much more robust information about service coverage areas from the certified Form 477 data that providers are required to submit twice a year. The Commission can now more

reliably identify those areas within census blocks that do not today have unsubsidized 4G LTE coverage; use high-cost support data to determine where 4G LTE is provided without subsidy; and by overlaying the coverage and the support data, identify the areas presumptively lacking unsubsidized 4G LTE. The resulting analysis presents the most accurate data currently available on which areas should be eligible for MF–II. The Wireless Telecommunications Bureau staff released its analysis using providers’ Form 477 data last fall and will publish a preliminary list of eligible areas as part of the pre-auction process. The data released on eligible square miles will be grouped by census blocks, which in turn will be grouped by census block group or census tract as the minimum geographic area for bidding, and include the total eligible square miles in each census block and the location of each eligible area. As explained in the *MF–II Order*, these groupings will be announced by public notice as part of the pre-auction process. The location of each presumptively eligible area will be necessary to define the service areas being auctioned and to define coverage obligations.

43. In response to the *USF/ICC Transformation FNPRM* and *Further Inquiry Public Notice*, 77 FR 73586, December 11, 2012, some carriers express concern that the centroid method may not accurately reflect coverage. Some rural commenters note, for example, that in some cases the centroid of a block may be covered, but large areas outside the centroid are not and that such blocks may be unfairly excluded from support. Many of those commenters support the proportional method, which determines eligibility for support based on whether each census block’s coverage percentage is below a certain threshold, as an alternative. Like the proportional method, the approach the Commission adopts in the *MF–II Order* examines coverage at the sub-census block level, thereby remedying the chief concern with the centroid method. Because it can identify specific areas within each census block where 4G LTE coverage is absent, the actual area coverage approach is a significant improvement over the centroid method in reaching the Commission’s universal service goals. It is a far more precise way to target the MF–II budget.

#### 6. Challenge Process

44. Consistent with the general approach adopted for MF–I and more recently, for Connect America Fund Phase II (CAF–II), the Commission concludes that it will provide a robust

process for interested parties to challenge the list of presumptively eligible areas for MF–II support. The challenge process will address challenges to coverage determinations only and will not address challenges to the allocation of legacy CETC support within study area geographies. To provide interested parties the opportunity to review the coverage analysis on which eligible areas are identified, the Commission directs the Bureaus to make an initial determination of eligible areas by census block as part of the pre-auction process. Subsequently, the Bureaus shall implement a process consistent with the decisions the Commission will make after review of the record received in response to the Further Notice of Proposed Rulemaking adopted along with the *MF–II Order*. The Commission defers making further decisions regarding the challenge process in the *MF–II Order* because, while commenters generally support a challenge process, they have different views with respect to how such a process should work, and the Commission finds that seeking further comment will be helpful in reaching decisions.

45. The Commission expects that the challenge process will conclude by the end of January 2018. At the conclusion of the challenge process, the Commission directs the Bureaus to make a final determination of areas eligible for MF–II support.

#### *E. Transition of CETC Support to MF–II Support and Preservation of Service*

46. The Commission amends its rules for the phase-down of identical support in order to smoothly transition to the Commission's provision of MF–II support, as well as to provide continuing support to those eligible areas that do not receive MF–II support. The Commission's phase-down rules have been designed so as not to be inconsistent with the provisions in 47 CFR 54.307(e)(5)–(6) (2015), unless and until the restrictions in Consolidated Appropriations Act, 2016, Public Law 114–113, Div. E, Title VI, section 631, 129 Stat. 2242, 2470 (2015), are no longer in effect. The Commission adopts differing phase-down schedules for CETC support in ineligible and eligible areas.

47. First, as part of the pre-auction process, the Commission directs the Bureaus to disaggregate each CETC's legacy support among the census blocks it serves using that support. Currently, legacy support is provided to a CETC's entire study area (SAC), with no attribution to particular sub-areas within the SAC. That creates a problem

for comparing support among CETCs to serve a given area and for determining how much support is being used to compete with private capital. The Commission faced a similar problem when it decided to disaggregate support for legacy rate-of-return carriers last year and retarget that support to areas unserved by unsubsidized competitors.

48. In choosing a disaggregation method, the Commission is persuaded that it should account for the relative costs of deploying a coverage-based network given the differing terrain throughout the United States. Specifically, the Commission declines to adopt a disaggregation method that assumes that support is allocated uniformly throughout a provider's SAC—doing so would specifically ignore the additional costs that wireless providers incur to deploy service in more difficult terrain. Instead, the Bureaus shall apply a more-refined methodology that uses a terrain factor as a proxy for determining higher cost areas. For example, more mountainous terrains with greater variations in slope are areas that tend to be more costly to serve than level plains. The terrain factor would be used to weight the area of a block such that eligible areas in more mountainous areas would be allocated a greater amount of a CETC's total legacy support to reflect the higher costs of serving such areas.

49. Second, the Commission establishes the following schedule for the phase-down of legacy support and commencement of auction payments. In census blocks determined (after the completion of the challenge process) not to be eligible for MF–II support, legacy support will be phased down starting the first day of the month following release of a public notice announcing the close of the MF–II auction. On that same date, legacy support for current recipients in eligible census blocks shall either be converted to MF–II support (for the winning bidder), maintained (for one CETC in areas without a winning bidder), or subject to phase down (for all other CETCs). The Commission concludes that this schedule is fully consonant with its rules, which require that CETCs continue to receive support at current levels until MF–II and Tribal MF–II are implemented. MF–II and Tribal MF–II will be implemented when the public notice announcing the close of the MF–II auction and identifying the winning bidders has been released. This schedule will apply only to the recipients of legacy support. A different schedule will apply to winning bidders that do not receive legacy support in the areas of their winning bids.

50. More specifically, in census blocks determined (after the completion of the challenge process) not to be eligible for MF–II, legacy support will be phased down starting the first day of the month following the close of the MF–II auction. For the first 12 months thereafter, phase-down support shall be  $\frac{2}{3}$  of the legacy support for each CETC associated with that area. For the next 12 months, phase-down support shall be  $\frac{1}{3}$  of the legacy support for each CETC associated with that area. All legacy support shall end thereafter.

51. For a winning bidder that is a CETC receiving legacy bidder support in the area of its bid, MF–II support shall commence on the first day of the month after the auction concludes. To ensure a smooth transition to MF–II support, and to the extent the Commission authorizes a winning bidder to receive MF–II support after that date, a winning bidder will receive support payments at the current legacy support level until such Commission action. A winning bidder that is also entitled to legacy support for an area subject to its winning bid will not be entitled to receive MF–II support until the Commission issues a public notice authorizing support to that bidder. In the public notice, the Commission will direct and authorize USAC to disburse monthly MF–II payments to the winning bidder and to cease paying it at the legacy support level. Furthermore, to ensure that the winning bidder receives the appropriate amount of MF–II support, the Commission will direct USAC to adjust, on a going-forward basis, the amount of the monthly MF–II payments for a limited period of time to account for the difference between the payments at the legacy support level and the MF–II payments in the amounts to which the winning bidder has committed at auction, for the period between the close of the auction and the issuance of the public notice.

52. If the Commission does not authorize the bidder to receive MF–II support, it will direct USAC to adjust the amount of the bidder's preservation-of-service or phase-down support under the MF–II rules, on a going-forward basis, to account for the difference between the payments at the legacy support level and the preservation-of-service or phase-down payments for the period between the close of the auction and the Commission's denial of authorization. As an additional mechanism to prevent perverse incentives, however, the Commission finds that, in applying these rules, a winning bidder committing an auction default will be considered as having received support in the amount of its



winning MF–II bid if that bid is less than its level of CETC support for this area. In light of the Commission’s experience with the MF–I auctions, it also adopts a contingency plan to address the possibility that such a winning bidder might default on its bid prior to the authorization of support or be denied such authorization. Under this contingency plan, no MF–II support will be awarded for the area. In that event, the Commission will, however, to the extent applicable, provide legacy support to CETCs under the preservation-of-service rule and the phase-down rule. The Commission concludes that this schedule is fully consonant with its rules, which mandate that a winning bidder “cease to be eligible for phase-down support in the first month for which it receives Mobility Fund Phase II support.”

53. The Commission adopts a different schedule for winning bidders that are not CETCs in the areas of their winning bids. Because non-CETC winning bidders must meet the same construction deadlines as CETC winning bidders, the Commission will provide an initial balloon payment of MF–II support to non-CETC winning bidders to place non-CETC winning bidders on approximately the same footing as other winning bidders. The balloon payment will consist of the non-CETC winning bidder’s monthly MF–II payment amount multiplied by the number of whole months between the first day of the month after the close of the auction and the issuance of the public notice authorizing support. Unlike other winning bidders, a non-CETC winning bidder will not receive MF–II support for the area of its winning bid on the first day of the month after the auction concludes because it would not necessarily be designated as an ETC in that area. A non-CETC winning bidder instead will receive MF–II support once the Commission issues a public notice authorizing MF–II support to the bidder. Based on this schedule, there is no need to adjust payments to account for the continued payments at the legacy support level. The remainder of the discussion in this section concerns the phase down of legacy support for mobile CETCs.

54. In eligible areas where there is no winning bidder in MF–II, the CETC receiving the minimum level of sustainable support will continue to receive such support until further Commission action, but for no more than five years from the first day of the month following the close of the MF–II auction. The Commission defines the minimum level of sustainable support to

be the lowest amount of legacy support among CETCs that have deployed the highest technology for that area. The Commission concludes maintaining such support is necessary to preserve service for consumers in such areas pending further Commission action.

55. For CETCs receiving support in areas eligible for MF–II that do not either win MF–II support or receive the minimum level of sustainable support, the phase-down of support shall commence on the first day of the month after the auction concludes. For the first 12 months, phase-down support shall be  $\frac{2}{3}$  of the legacy support for each CETC associated with that area. For the next 12 months thereafter, phase-down support shall be  $\frac{1}{3}$  of the legacy support for each CETC associated with that area. All legacy support shall end thereafter. The Commission concludes that this two-year phase-down schedule will ensure that the affected CETCs will have a smooth transition in areas that are too costly to serve absent universal service subsidies.

56. The Commission adopts this phase-down schedule to fund new service obligations undertaken by new MF–II auction winners, protect customers of current support recipients from a potential loss of service, and minimize the disruption to legacy support providers from a loss of funding. The Commission balances the concerns recipients of legacy support express regarding a rapid termination of legacy support with its need to preserve its finite universal service funds and begin funding service under the terms and amounts established by winning bids in its MF–II reverse auction. Accordingly, in the Commission’s implementation of MF–II support, it now establishes a certain path toward no longer paying such legacy support, except to preserve service where it exists on a subsidized basis in eligible areas where there is no winning bidder in the MF–II auction.

57. Finally, in light of the phase down schedules the Commission is adopting, it sees no need to treat differently the phase down of support going to any mobile CETC for which high-cost support represents one percent or less of its wireless revenues. As a result, legacy CETC support to these providers will proceed on the same phase-down schedule as for other providers.

#### *F. One Provider per Eligible Area*

58. The Commission limits support to a single provider for a given geographic area going forward. The Commission has a statutory obligation to ensure access to advanced telecommunications and information service in all regions of

the country at reasonably comparable rates, and a related obligation to ensure that public funding is used effectively and efficiently in furtherance of the Commission’s statutory mandate. It is therefore incumbent upon the Commission to adopt a structure for awarding universal service support that ensures the finite public funds available are directed in a way that sustains and expands the availability of mobile services to maximize consumer benefits.

#### **V. Public Interest Obligations**

59. Having established the framework of MF–II, the Commission now addresses the public interest obligations that must be met by recipients of MF–II support, including performance metrics for minimum data speeds, maximum latency measurements, and minimum usage allowances, consistent with the provision of 4G LTE service. These performance requirements will be used to measure compliance with established benchmarks during the ten-year term of support.

##### *A. Performance Metrics*

60. The Commission will require recipients of MF–II support to deploy 4G LTE. Around 84 percent of the nation’s square miles (excluding Alaska) are covered by 4G LTE networks, as of December 2015. As the transition to 4G LTE service and the transition of voice to voice over LTE technology become widespread, the Commission anticipates that older devices will be retired and future devices will be LTE capable. With the nearly universal deployment of 4G LTE comes a broad record consensus that the network technology for any new deployment the Commission funds in MF–II should be 4G LTE. Targeting MF–II support to 4G LTE will ensure that the Commission does not relegate rural areas to substandard service that is not comparable to urban LTE service, and that the supported service is technologically capable of supporting roaming on the industry LTE standard, including the networks of the four nationwide mobile wireless service providers. The Commission’s standards for supported service should ensure that its finite universal service funds are used efficiently to provide consumers access to robust mobile broadband service that is comparable to the 4G LTE service being offered today in urban areas. By requiring the deployment of 4G LTE with on-going MF–II support, the Commission can better utilize universal service support to reach the approximately 575,000 square miles that either lack 4G LTE coverage or only have coverage because of subsidized service.



61. The Commission requires recipients of MF-II support to offer voice service, and it adopts minimum requirements for network performance and an offered service plan that, together with the 4G LTE requirement, will define the baseline 4G LTE performance standard for MF-II recipients. Recipients of MF-II funding will be required to meet minimum baseline performance requirements for data speeds, data latency, and data allowances in areas that receive support for at least one plan that they offer. The median data speed of the network for the supported area must be 10 Mbps download speed or greater and 1 Mbps upload speed or greater, with at least 90 percent of the required download speed measurements being not less than a certain threshold speed. For latency, at least 90 percent of the required measurements must have a data latency of 100 milliseconds or less round trip. Support recipients must offer at least one service plan that includes a data allowance comparable to mid-level service plans offered by nationwide providers. Currently, mid-level plans offer a data allowance of at least 2 GB of data per month. Because industry and consumer practices may evolve over time, the Commission will consider, after an opportunity for comment, whether to require a larger data allowance, initially or during the term of support, based on then-available mid-level plans and/or the average per subscriber data usage. The Commission will conduct the initial consideration of these issues, with subsequent consideration occurring by the Bureaus on delegated authority. A support recipient's service plan with the required data allowance must be offered to consumers at a rate that is within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas. These conditions will be defined more precisely in the pre-auction process. The Commission will retain its authority to look behind recipients' performance certifications and take action to address any violations that develop.

#### B. Term of Support

62. The Commission adopts a ten-year term for MF-II support, which will begin on the first day of the month after the MF-II auction concludes. As the Commission approaches the end of the ten-year term, it can reassess the marketplace and determine whether a mechanism to provide future support for mobile services is needed. In addition, the Commission declines to

adopt a renewal expectancy for winning bidders.

63. A ten-year term of support is consistent with the term adopted by the Commission for Connect America Phase II support. As the Commission recognized in the *2014 CAF Order*, 79 FR 39163, July 9, 2014 providing support for a period of ten years is appropriate as it may stimulate greater interest in the competitive bidding process. Consequently, that "[i]ncreased participation in the competitive bidding process will help ensure that funding is targeted efficiently to expand broadband-capable infrastructure throughout the country." The Commission is mindful of using the lessons learned from CAF in its implementation of MF-II.

64. The Commission further agrees with commenters that a ten-year term of support is appropriate in light of the significant capital and effort needed to deploy and upgrade broadband networks and is consistent with the timeframe used by rural carriers to plan and schedule network upgrades. The certainty provided by a term of this length will help encourage more bidders—particularly smaller wireless carriers—to participate in the auction.

65. Although the Commission does expect the marketplace to evolve over the next ten years, it will not adopt performance metrics that increase over the term of support. The Commission concludes that the disincentives to auction participation potentially created by evolving performance standards and the administrative complexity of establishing such standards outweigh the performance benefits to consumers during the latter portion of the support period. Winning bidders are required under section 254(e) of the Communications Act to use their support throughout their term for "the provision, maintenance, and upgrading of facilities and services," and the Commission expects winning bidders, to the extent possible, to upgrade their networks to increase capacity and offer better services over time.

66. The Commission declines to adopt any renewal expectancy or similar preference for winning bidders after their ten-year term of support expires. Although a few parties support a renewal that is based on whether a carrier has met its deployment and service obligations, a renewal expectancy might undermine the Commission's ability to satisfy fiscal management principles, such as the Anti-Deficiency Act. The Commission therefore declines to adopt a renewal expectancy, because to do so may undermine its ability to target future

universal service support where it is most needed.

#### C. Construction Requirements/Benchmarks

67. Consistent with the approach the Commission adopted in the *Connect America Phase II Auction Order*, the Commission adopts interim benchmarks as well as a final benchmark for deployment of service that meets the performance metrics detailed in the *MF-II Order*. Specifically, the Commission defines the starting point for the interim benchmarks as six months from the first day of the month that follows the month in which the MF-II auction closes. The Commission requires a winning bidder to demonstrate coverage of at least 40 percent by three years after the starting point, 60 percent by four years after the starting point, 80 percent by five years after the starting point, and 85 percent by six years after the starting point across all areas for which it receives MF-II support in a state.

68. The Commission concludes that the benchmarks serve as an appropriate construction schedule for MF-II recipients. Interim milestones ensure that sufficient progress is being made with the finite funds it has available. Aligning the MF-II deployment requirements with the CAF-II requirements not only strikes an appropriate balance among carriers' competing concerns, but also increases efficiency and eases administration by leveraging the knowledge and experience the Commission gained during the CAF-II process. The Commission finds that by setting these benchmarks, it will ensure that support recipients make consistent progress towards providing 4G LTE service to unserved areas of our nation, while still allowing winning bidders flexibility to address unforeseen problems or delays in reaching their overall coverage obligations. The Commission observes that while several commenters sought only a 75 percent coverage requirement with the expectation of providing 4G LTE mobile broadband within three years, the Commission concludes that its 85 percent coverage requirement is more consistent with its policy objective of ubiquitous mobile coverage.

69. Recipients that fail to meet and maintain these performance obligations within the time provided to submit their representative data and to certify to coverage requirements will be subject to defined measures, and must cure these failures to meet the deployment requirements or they will be in performance default.

70. Consistent with the Commission's CAF-II framework, support recipients

must meet their required benchmarks across all areas for which they receive MF–II in a state. For the final benchmark, every census block group or census tract in a state (depending on minimum bidding unit) must also be at least 75 percent covered. This requirement will help ensure that the Commission's coverage requirements are meaningful for all consumers in supported areas.

71. In accordance with the data the Commission will ultimately require for a successful challenge of the eligibility of an area, it will require parties awarded MF–II support to submit data sufficient to demonstrate compliance with its coverage requirements. Parties' demonstrations shall be consistent with the evidence the Commission determines to be necessary to be submitted in the challenge process. Concurrent with their submissions of data, recipients of support will have to certify that they have met the Commission's deployment benchmarks. The Commission directs the Bureaus to precisely define these requirements in the pre-auction process. This is consistent with the *USF/ICC Transformation Order* in which the Commission directed the Bureaus and the Office of Engineering and Technology to refine the methodology for broadband performance testing. The Commission is entrusted with distributing significant amounts of universal service contributions from consumers and businesses, and it must ensure that there is actual coverage for consumers in areas where it is paying support recipients.

#### *D. Collocation and Voice and Data Roaming*

72. The Commission adopts the same collocation and voice and data roaming obligations for MF–II winning bidders as the Commission adopted for MF–I, with certain minor, non-substantive changes. With respect to collocation obligations, the Commission requires that recipients of MF–II support allow for reasonable collocation by other providers on all towers that they own or manage in the areas for which they receive support. The Commission also requires that support recipients comply with its voice and data roaming requirements on networks that receive MF–II support. Specifically, consistent with the approach adopted for MF–I, the Commission requires that recipients of MF–II support provide roaming pursuant to 47 CFR 20.12 and comply with any modifications of the roaming rules that it makes during the period MF–II support is provided throughout networks that receive MF–II support.

73. The Commission declines to expand the data roaming obligations as some commenters suggest, as the Commission's experience in MF–I indicates that the rules it adopted there provide sufficient safeguards. Violations of these obligations by support recipients could result in the withholding of monthly universal service support, a finding of performance default, and losing eligibility for future Mobility Fund or USF participation. The Commission's general enforcement tools are also available to redress any violation of its rules.

#### *E. Reasonably Comparable Rates*

74. To implement the statutory principle for MF–II, the Commission adopts the proposed rules and will require recipients to certify in their long-form applications and annually that in areas where they receive support they offer service at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas. Recipients' service offerings will be subject to this requirement until the end of the term of support.

75. The Commission adopts a presumption that if a given provider is offering the same rates, terms and conditions (including usage allowances, if any, for a specified rate) to both urban and rural customers, then that is sufficient to meet the statutory requirement that services be reasonably comparable.

76. The Commission further concludes that a recipient can demonstrate compliance with the required certification if its stand-alone voice plan and one service plan that offers data services is substantially similar to a service plan offered by that provider, if the provider has urban service areas, or by at least one mobile wireless provider in an urban area and is offered for the same or lower rate than the matching urban service plan. During the pre-auction process, the Commission may define more precisely the circumstances under which a provider can demonstrate compliance with this certification. The Bureaus will conduct any subsequent consideration of possible revisions regarding compliance with this requirement. The Commission retains its authority to look behind recipients' certifications and take action to address any violations that develop.

#### **VI. Provider Eligibility Requirements**

77. The requirements the Commission adopts are essentially the same as those adopted for MF–I, with the limited

exception that for MF–II, an applicant seeking to participate in the auction will be permitted to be designated as an ETC after it is announced as a winning bidder for a particular area in accordance with procedures it implements. Consistent with the eligibility requirements for MF–I, a qualified MF–II applicant must demonstrate access to spectrum capable of the appropriate level of service in the geographic areas to be served, and certify as to its financial and technical capability to provide service within the specified timeframe. The Commission concludes that it will not impose any additional eligibility requirements to participate in MF–II.

#### *A. Designation as an ETC*

78. The Commission will permit a winning bidder in the MF–II auction to obtain its ETC designation after the close of the auction, provided it submits proof of its ETC designation within 180 days of the public notice identifying winning bidders. Before MF–II support is disbursed to a winning bidder, it must demonstrate that it has been designated an ETC covering each of the geographic areas for which it seeks to be authorized for support and that its ETC designation allows it to fully comply with the Commission's coverage requirements. The Commission declines to disturb the current system of state jurisdiction over ETC designations, even as the Commission permits winning bidders to obtain ETC status after being announced as winners in the MF–II auction.

79. Although the Commission initially proposed to follow the approach it adopted for MF–I and require all applicants to demonstrate ETC designations prior to the auction, its experience after Auction 901 and Auction 902, and its most recent conclusions regarding ETC designations in the CAF–II context, weigh in favor of a more flexible approach for MF–II.

80. As the Commission concluded in the CAF–II context, permitting post-auction ETC designations for MF–II may improve applicant participation in the auction. It will also conserve participants' resources by avoiding obligations for auction participants who do not win any coverage areas in the auction, as well as safeguarding potential bidding strategies of applicants seeking ETC designation before an auction. The Commission will not provide any support until a winning bidder has obtained and demonstrated ETC designation for its entire winning bid area, and is not persuaded by the concerns raised by one commenter, which argues that allowing applicants to seek ETC designation after winning

would encourage speculation by carriers seeking to obtain federal funding to serve areas that are unfamiliar to them.

81. Similar to the process adopted for CAF–II support, the Commission requires winning bidders of MF–II support to submit proof of their ETC designations within 180 days of the public notice announcing them as winning bidders. Failure to obtain ETC status and submit the required documentation by the deadline will be considered an auction default, though the Commission will consider applications for waiver of the 180-day deadline from entities who are diligently pursuing ETC designation.

82. Based on what the Commission observed in the rural broadband experiments, when considering waivers of the 180-day timeframe for obtaining ETC designation, the Commission will presume that an entity will have acted in good faith if the entity files its ETC application within 30 days of the release of the public notice announcing that it is a winning bidder. Consistent with the rural broadband experiments, where the Commission delegated authority to the Wireline Competition Bureau to act on waivers, here, the Commission directs the Wireless Telecommunications Bureau to act on any such waivers.

83. Any circumstances where a state will need more time due to procedural requirements or resource issues can be dealt with through the waiver process. Accordingly, to preserve the primary role that Congress gave the states in designating ETCs, the Commission reaffirms that it will act on an ETC designation petition pursuant to 47 U.S.C. 214(e)(6) “only in those situations where the carrier can provide the Commission with an affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”

#### *B. Forbearance From Service Area Redefinition Process*

84. The Commission concludes that forbearance from the 47 U.S.C. 214(e)(5) service area conformance requirement for recipients of the MF–II competitive bidding process serves the public interest. The Commission has decided that providing MF–II support to only one provider in a given geographic area in exchange for its commitment to offer service that meets its requirements throughout the funded area achieves its objectives for fiscal responsibility.

85. For those entities that obtain ETC designations as a result of being selected as winning bidders for the MF–II auction, the Commission forbears from applying 47 U.S.C. 214(e)(5) and 47 CFR

54.207(b). Forbearing from the service area conformance requirement eliminates the need for redefinition of any rural telephone company service areas in the context of the MF–II auction. Accordingly, Commission rules regarding the redefinition process are inapplicable to petitions that are subject to this order. However, if an existing ETC seeks support through the MF–II auction for areas within its existing service area, this forbearance will not have any impact on the ETC’s pre-existing obligations with respect to other support mechanisms and the existing service area.

86. The Commission concludes that forbearance is warranted in these limited circumstances. The Commission’s objective is to distribute support to winning bidders as soon as possible so that they can begin the process of deploying mobile service to consumers in those areas. Case-by-case forbearance would likely delay the Commission’s post-auction review of entities once they are announced as winning bidders. The Communications Act requires the Commission to forbear from applying any of its requirements or the Commission’s regulations to a telecommunications carrier if it determines that: (1) Enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest. The Commission’s experience in MF–I has shown that service area conformance forbearance was just and reasonable in accomplishing the goals of the Mobility Fund, did not harm consumer protections, and was in the public interest in the Mobility Fund context. The Commission concludes that each of these statutory criteria is met for winning bidders of the MF–II competitive bidding process, and the Commission incorporates by reference here the analysis of these forbearance factors that it considered and found warranted forbearance in MF–I and CAF–II.

#### *C. Spectrum Access*

87. The Commission requires that an applicant for an MF–II auction have access to spectrum necessary to fulfill any obligations related to support. An MF–II applicant must describe its

required spectrum access and certify that the description is accurate and that the applicant will retain such access for at least ten years from the date on which it is authorized to receive support. Specifically, an applicant will be required to disclose whether it currently holds or leases the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent on obtaining support in a MF–II auction. The Commission specifies that any other contingency will render the relevant spectrum access insufficient for the party to meet the Commission’s requirements for participation. For the described spectrum access to be sufficient, the Commission further concludes that the applicant must obtain any necessary approvals from the Commission prior to filing its short-form application.

88. Because it would be inconsistent with the level of commitment the Commission thinks a serious applicant should demonstrate, the Commission declines to adopt the suggestion of some commenters to allow for a substantially more relaxed standard that would permit entities to seek to acquire access to spectrum on a “fill-in” basis after the short-form filing deadline.

89. Consistent with the Commission’s decision in MF–I, the Commission concludes that an applicant seeking MF–II support must have access to spectrum necessary to fulfill any MF–II obligations prior to participating in the MF–II auction because allowing otherwise would be inconsistent with the serious undertakings implicit in bidding for ongoing support. The Commission therefore requires applicants to ensure that if they become winning bidders, they will have the spectrum to meet their obligations as quickly and successfully as possible, and adopts the spectrum access rule proposed in the *2014 CAF Further Notice*.

90. The Commission will require that applicants identify the particular frequency bands and the nature of the access on which they assert their spectrum access necessary to demonstrate eligibility for support. The Commission will assess the reasonableness of those eligibility certifications based on information it will require to be submitted in short- and long-form applications. The Commission cautions applicants that if they make this certification and do not have or maintain access to the appropriate level of spectrum, they will be subject to the auction or performance default rules.

#### *D. Financial and Technical Capability*

91. In MF-I, the Commission concluded that it would require a party to be financially and technically capable of satisfying the performance requirements of providing service within the specified timeframe in the geographic areas for which it sought support. In proposing that parties seeking MF-II support satisfy this same eligibility requirement, the Commission proposed to require an entity to certify, in the pre-auction short-form application and in the post-auction long-form application, that it is financially and technically capable of providing service within the specified timeframe in the geographic areas for which it seeks support. The Commission's experience with MF-I indicates that requiring these certifications is a reasonable protection for the auction process and to safeguard the award of universal service funds. The Commission adopts its proposed requirement and the proposed rule, with the clarification that the applicant must certify that it is financially and technically qualified to provide the services supported by MF-II within the specified timeframe in the geographic areas for which it sought support.

#### *E. Encouraging Participation*

92. The Commission will permit all qualified eligible applicants to participate in the MF-II auction. In so doing, the Commission seeks to encourage participation by the widest possible range of applicants possible, regardless of their size. The Commission's commitment to fiscal responsibility requires that it distributes its finite budget to the provider that submits the superior, most cost-effective bid in the MF-II auction. The Commission will not limit eligibility for MF-II to smaller providers thereby potentially limiting the Commission's ability to further close the 4G LTE coverage gap. The Commission therefore declines to adopt the proposals of some small, rural providers that suggest that it should restrict the participation of certain classes of carriers in order to facilitate participation. Furthermore, as the Commission concluded in MF-I, it will not bar any party from seeking MF-II support based solely on the party's past decision to relinquish Universal Service Funds provided on another basis. Consistent with its approach in spectrum auctions, the Commission expects that its general auction rules and procedures will provide the basis for an auction process that will promote the Commission's objectives for MF-II

and provide a fair opportunity for all serious, interested parties to participate.

#### *F. Inter-Relationship With Other Universal Service Mechanisms and Obligations*

93. Consistent with the record, the Commission will allow recipients of MF-I support to participate in an MF-II auction. While the Commission does not anticipate that it will prohibit MF-II winning bidders from seeking support through other universal service mechanisms merely because they have received MF-II support, the Commission notes that the goals of Phase II of the Mobility Fund are to help ensure the availability of mobile voice and broadband services across the country. The Commission emphasizes that in establishing rules for each separate universal service funding mechanism, it is including rules to prevent the disbursement of redundant support.

94. The Commission stresses that because Phase I provided strictly non-recurring support, the Commission required an MF-I participant to certify at the pre-auction, short-form stage that it was financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it sought support without any assurance of ongoing support, but it did not foreclose the potential of such an entity subsequently receiving ongoing support to maintain that service after the five-year time frame expired. Insofar as it furthers the Commission's policy goals to expand and preserve service to areas that would not be covered absent government subsidies, the Commission concludes that a winning bidder in MF-I may participate in the auction to seek ongoing support in MF-II for any area deemed eligible.

95. On the issue of the interrelationship of MF-II and the Remote Areas Fund (RAF), the Commission has not limited the availability of MF-II support based on the existence of the RAF, which is a concern for several commenters. Rather, the Commission has set the budget based on the reasons discussed in the *MF-II Order*. The Commission reaffirms the commitment to the RAF framework and rules adopted in the *Connect America Phase II Auction Order*. The Commission also concludes that it would not make sense to fund a mobile provider in an eligible area through MF-II and fund yet another such provider (or possibly the same one) in that same area in the RAF. Accordingly, the Commission decides that it shall structure the RAF so as not to award

support to a mobile provider in any area where it has awarded MF-II support.

#### *G. Partnerships*

96. The Commission concludes that the rules it is adopting for MF-II are sufficiently flexible to allow recipients of MF-II to fulfill their public interest obligations associated with MF-II. The Commission is committed to preserving and expanding mobile voice and broadband coverage to those areas that lack services without subsidies, and concludes that allowing support recipients to reach agreements with other providers for this purpose may further that objective. The Commission recognizes based on its experience with MF-I that providers are best suited to determine the most efficient and cost effective manner to fulfill their public interest obligations, and the Commission has designed rules that should afford them the flexibility to consider arrangements that meet their individual business needs without prescribing any particular solutions or limitations, provided that such agreements otherwise comply with relevant statutory and regulatory requirements. The Commission cautions applicants seeking support, however, that regardless of any agreements they may enter, the winning bidder is the entity responsible for maintaining its eligibility, including but not limited to its ETC status, and meeting its performance obligations for MF-II support. Similarly, all monies awarded through the auction process must flow directly to the winning bidder as that is the entity upon which the Commission has assessed compliance with all support requirements, including its ETC status.

#### *H. Bidding Preference for Small Businesses*

97. The Commission declines to adopt a bidding preference for small businesses for MF-II. In view of the Commission's experience with MF-I, where numerous smaller carriers placed winning bids to receive funding for service without the aid of bidding credits, the Commission concludes that it is unnecessary to adopt small business bidding credits for a MF-II auction. Also, a bidding credit for small businesses would potentially reduce the reach of the Commission's finite funds. The Commission is unwilling to forgo additional coverage expansion or preservation in order to favor smaller providers, particularly in light of the participation and success of small and rural businesses in MF-I.

## VII. Auction Rules and Process

98. The Commission adopts rules that govern the auction process for MF–II, including pre-auction requirements and general rules for auction design and the bidding process. These rules provide the basic framework and requirements for participating in an auction for MF–II support. Consistent with past practice, the specific procedures will be established as part of the pre-auction process, including determining auction-related timing and dates, identifying areas eligible for support, and establishing detailed bidding procedures consistent with the *MF–II Order* as well as any issues resolved following the Further Notice of Proposed Rulemaking adopted at the same time as the *MF–II Order*. This pre-auction process will be similar to those the Commission has used for spectrum auctions and to those used in Auction 901 to distribute MF–I support.

### A. Pre-Auction Application Process

99. Based on the Commission's experience with MF–I and the process it adopted in CAF–II, the Commission adopts a two-stage application process for an applicant seeking to participate in the MF–II auction. Under this process, interested parties will submit a pre-auction "short-form" application, providing basic information and certifications regarding their eligibility to receive support. After the application deadline, Commission staff will review the short-form applications to determine whether applicants have provided sufficient information required at the short-form stage to be eligible to participate in a MF–II auction. Once review is complete, Commission staff will release a public notice indicating which short-form applications are deemed complete and which are deemed incomplete. Applicants whose short-form applications are deemed incomplete will be given a limited opportunity to cure defects and to resubmit correct applications. Only minor modifications to an applicant's short-form application will be permitted. Major modifications would include, for example, changes in ownership of the applicant that would constitute an assignment or transfer of control. The Commission will then release a second public notice designating the applicants that are qualified to participate in the MF–II auction. After the close of the auction, winning bidders will be required to submit "long-form" applications with more extensive information to allow for an in-depth review of their

qualifications prior to authorization of support.

100. The Commission also adopts the proposals, with certain amendments, in the *USF/ICC Transformation FNPRM* regarding the types of information bidders will be required to disclose in their MF–II auction short-form applications. The Commission concludes that, based on its experience with MF–I, this approach strikes an appropriate balance in ensuring that entities are legally, technically, and financially qualified, while at the same time minimizing the burden on applicants and Commission staff. Thus, the Commission will require that each auction applicant provide information to establish its identity, including disclosure of parties with ownership interests, consistent with the ownership interest disclosure required in Part 1 of the Commission's rules for applicants for spectrum licenses, as well as any agreements the applicant may have relating to the support to be sought through the auction. Applicants will only be able to make minor modifications to their short-form applications. Major amendments, for example, changes in an applicant's ownership that constitute an assignment or transfer of control, will make the applicant ineligible to bid.

101. Each applicant will be required to disclose and certify its ETC status, although, the Commission does not require an applicant to obtain an ETC designation prior to bidding in MF–II. With respect to eligibility requirements relating to spectrum access, applicants will be required to disclose and certify the source of the spectrum they plan to use to meet Mobility Fund obligations in the particular area(s) for which they plan to bid. Specifically, applicants will be required to disclose whether they currently hold a license or lease the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent on obtaining support in an MF–II auction. Applicants must have secured any Commission approvals necessary for the required spectrum access prior to submitting an auction application. Moreover, applicants will be required to certify that they will retain their access to the spectrum for at least ten years from the date support is authorized. The Commission notes that no commenters addressed the Commission's proposed pre-auction application process for MF–II, and therefore concludes that the rules it adopted will best serve the Commission's ability to hold a fair and efficient auction.

### B. Bidding Process

#### 1. Auction Design and Competitive Bidding Mechanisms and Procedures

102. The Commission adopts, with certain minor non-substantive changes, the existing 47 CFR part 1 rules on competitive bidding for universal service support contained in Subpart AA. The high-level auction rules for competitive bidding procedures for universal service support that the Commission adopts set out a range of options and mechanisms that the Commission may use for such purposes. The Commission takes the opportunity to reorganize the way it articulates certain of the relevant rules, without altering the substance, to be consistent with the latest developments regarding the Commission's approach to competitive bidding in other contexts. Specifically, the Commission restructures the rules to present them in terms of auction procedures governing bid collection, assignment of winning bids, determination of support payment amounts, as well as particular mechanisms for conducting the auctions. The reorganized competitive bidding procedures rules will facilitate the development of procedures for the MF–II auction that are consistent with the universal service support technical requirements and policies generally and that address the needs of the Commission and interested bidders. The bidding procedures for the MF–II auction will include, among other things, details pertaining to multiple round bidding and package bidding.

#### 2. Information and Communications

103. To maximize competition and promote fairness, the Commission proposed to retain for MF–II its usual auction policies regarding permissible communications during the auction and the public release of certain auction-related information. The Commission adopts the proposed rules prohibiting auction applicants from communicating with one another regarding the substance of their bids or bidding strategies, and providing for limited public disclosure of auction-related information as appropriate.

### C. Auction Cancellation

104. In the *USF/ICC Transformation FNPRM*, the Commission proposed, consistent with its approach in spectrum auctions and Mobility Fund Phase I, that its rules provide discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any

other reason that affects the fair and efficient conduct of the bidding. Based on its experience with spectrum license auctions and Mobility Fund Phase I, the Commission concludes that such a rule is necessary and adopts it.

### VIII. Post-Auction Process and Support

105. The Commission adopts rules to govern the post-auction process and the authorization of support for MF–II. These rules provide the basic framework and requirements for winning bidders to demonstrate their qualifications for MF–II support. This post-auction process will be similar to that used for MF–I support. Shortly after bidding has ended, the Bureaus will issue a public notice declaring the auction closed, identifying the winning bidders, and establishing details and deadlines for next steps, beginning with the long-form application.

#### A. Long-Form Application

106. In the *USF/ICC Transformation FNPRM*, the Commission proposed to apply the same long-form application process for MF–II as it adopted for MF–I. Under this process, applicants for MF–II support would be required to demonstrate in their long-form applications that they are legally, technically, and financially qualified to receive MF–II support. The Commission concludes that winning bidders for MF–II support will be required to comply with the same long-form application process it adopted for MF–I, and adopts a rule to govern this process, modified from that originally proposed consistent with the Commission's stance on ETC designation timing and other rules adopted in the *MF–II Order*. Consistent with the Commission's standard practices, upon close of an MF–II auction, the Bureaus will release a public notice, which will provide further details regarding the submission and processing of the long-form application.

#### 1. Ownership Disclosure

107. The Commission also adopts the ownership disclosure requirements proposed in the *USF/ICC Transformation Order* for MF–II. Specifically, the Commission will require the same Part 1 ownership disclosure requirements that already apply in the spectrum license context, and therefore adopts the related proposed rule. Pursuant to these requirements, an applicant for MF–II support must fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application. The Commission

anticipates that wireless providers that have participated in spectrum license auctions will already be familiar with the disclosure requirements. These companies will also have ownership disclosure reports (in the short-form application or FCC Form 602) on file with the Commission, which may simply need to be updated, minimizing the reporting burden on winning bidders.

#### 2. ETC Eligibility

108. Consistent with the eligibility requirements adopted in the *MF–II Order*, the Commission will permit a winning bidder in the MF–II auction to obtain its ETC designation after the close of the auction, provided that it submits proof of its ETC designation within 180 days of the public notice identifying winning bidders.

109. Before MF–II support is authorized, a winning bidder must demonstrate that it has been designated an ETC covering each of the geographic areas for which it seeks to be authorized for support and that its ETC designation allows it to fully comply with the Commission's coverage requirements within the time provided to meet this requirement. A winning bidder must submit appropriate documentation of its ETC designation in all the areas for which it will receive support in its long form application or certify that it will do so within 180 days of the public notice identifying winning bidders. Appropriate documentation should include the original designation order, any relevant modifications (e.g., expansion of service area or inclusion of wireless), along with any name-change orders. Each winning bidder should connect the designations to the winning bids so that it is clear that the bidder has ETC status in each winning area. This obligation may be satisfied by providing maps of the recipient's ETC designation area, map overlays of the MF–II support areas, and narrative explanations explaining the connections between the ETC designations and MF–II support areas.

#### 3. Financial and Technical Capability Certification

110. As in the pre-auction short-form application stage, a long-form applicant must certify that it is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support. An applicant should take care to review its resources and its plans before making the required certification and be prepared to document its review, if necessary. Thus, the Commission

adopts the proposed rule regarding financial and technical capability certification, as amended.

#### 4. Network Coverage Plan

111. For winning bids, the applicant must submit a project description that describes the network to be built or upgraded; identifies the proposed technology; demonstrates that the project is technically feasible; discloses the complete project budget; and discusses each specific phase of the project (e.g., network design, construction, deployment, and maintenance). A complete project schedule, including timelines, milestones, and costs, must also be provided. Milestones should include the start and end date for network design; start and end date for drafting and posting requests for proposal (RFPs); start and end date for selecting vendors and negotiating contracts; and start date for commencing construction and end date for completing construction. Winning bidders may file as separate documents a public/redacted version of their project descriptions and a confidential version of their project descriptions, if necessary, accompanied by a Request for Confidentiality that aligns with existing Commission rules. Project descriptions must align project schedules with the required buildout milestones.

#### 5. Spectrum Access

112. The Commission adopts its proposed rule to require applicants to provide a description of the spectrum access that the applicant will use to meet its obligations in areas for which it is the winning bidder, including whether it currently holds a license or leases the spectrum, along with any necessary renewal expectancy, and certify that the description is accurate and that the applicant will retain such access for the entire ten year support term. The description should identify the license applicable to the spectrum to be accessed. The description of the license must include the type of service (e.g., AWS, 700 MHz, BRS, PCS, etc.), the particular frequency bands and the call sign. This information should be verifiable in the Commission's Universal Licensing System. Reference to other Commission data repositories should not be necessary, as the complete information needed to determine on what licenses the applicant intends to rely should be included in the MF–II long-form application. Applications will be reviewed to assess the reasonableness of the certification.

## 6. Certifications as to Program Requirements

113. With regard to certifications of program requirements, the Commission concludes that an applicant must certify in its long-form application that it has the funds available for all project costs that exceed the amount of support to be received, and that it will comply with all program requirements. These requirements include the public interest obligations contained in the Commission's rules and set forth in the *MF-II Order*. Applicants must certify that they will meet the applicable deadlines and requirements for demonstrating interim and final performance benchmarks set forth in the rules, and that they will comply with the MF-II collocation, voice and data roaming, and reasonably comparable rate obligations. The Commission will retain its authority to look behind recipients' certifications and take action to address any violations that develop.

## 7. Other Information

114. Any additional information that is required to establish whether an applicant is eligible for MF-II support will be announced by public notice.

## 8. Transfers and Assignments

115. The award of MF-II support is based upon the eligibility and performance of the winning bidder. Therefore, a recipient of MF-II support that later seeks to transfer control or assign its licenses in the winning bid area to another carrier should be aware that, if the buyer or assignee carrier is not eligible to receive MF-II funds or is uninterested in remaining in the program, the winning bidder will remain liable for its winning bid obligations and will be considered to have committed a performance default if it can no longer fulfill those obligations after completing the transfer or assignment. All assignees seeking to receive MF-II support will become subject to the eligibility, certification, and disclosure requirements included in the MF-II rules.

## B. Authorization Requirements and Steps

116. In the *USF/ICC Transformation FNPRM*, the Commission proposed to apply the same process for authorization of release of awarded funds for MF-II support as was adopted in Phase I. The Commission concludes that before being authorized for support, a winning bidder must submit an irrevocable standby letter of credit (LOC), which shall be acceptable in all respects to the Commission. Additionally, winning bidders must supply a legal counsel's

opinion letter stating that the funds secured by the LOC will not be considered to be part of the recipient's bankruptcy estate in the event of a bankruptcy proceeding under section 541 of the Bankruptcy Code. These safeguards will allow us to utilize an LOC to resolve a performance default. Accordingly, the following authorization requirements must be satisfied in order for MF-II support to be authorized.

### 1. Letters of Credit

117. In MF-I, the Commission required all winning bidders to obtain LOCs ensuring the successful fulfillment of each winning bid and protecting the Commission's investment of universal service funds. In the CAF-II auction context, the Commission adopted LOC requirements with standards that initially cover the first year of support of a recipient's winning bid, and that are adjusted annually thereafter, reasoning that LOCs were an effective means for fulfilling the Commission's role as stewards of public funds.

118. Consistent with the rules governing MF-I and CAF-II auctions, the Commission adopts a rule for MF-II requiring that, prior to the authorization of support, all winning bidders for support must provide us with an irrevocable standby LOC by a bank that is acceptable to the Commission in substantially the same form as the model Letter of Credit set forth in the appendix to the *MF-II Order*, and, in any event, must be acceptable in all respects to the Commission. Specifically, the Commission adopts requirements for a bank to be acceptable to the Commission to issue the LOC that are similar to the requirements adopted for MF-I, with the exception of the expansion of the acceptable banks noted below.

119. The Commission concludes that an LOC meeting the requirements set out below is neither unreasonably burdensome nor excessively costly for a winning bidder to obtain in light of the benefit to the universal service program. While obtaining an LOC incurs costs, the Commission anticipates that bidders can incorporate these costs when determining their bids. As the Commission found in MF-I, and in considering this issue in other aspects of the Connect America Fund, companies with existing lending relationships often use LOCs in the normal course of operating their businesses and, generally, are able to maintain multiple forms of financing for varying purposes. Therefore, on balance, the Commission

concludes that the government's need to safeguard the disbursement of these monies outweighs the limited burden incurred by winning bidders.

120. In reaching this conclusion, the Commission carefully weighed the comments it received on whether it should require LOCs for MF-II. While the concerns expressed by some commenters do not warrant abandoning an LOC requirement altogether, they do support the Commission's decision to depart from the LOC provisions utilized in MF-I, and to instead adopt LOC provisions that closely align with the CAF-II LOC process and MF-II performance requirements. For instance, allowing the LOC to decrease over time as a support recipient satisfies its minimum coverage and service requirements, as the Commission allowed in the CAF-II context, should effectively protect public funds under less onerous terms than were applied in the MF-I auction. Moreover, the Commission can also incorporate other terms and processes adopted in the CAF-II auction context to address the concerns of commenters to achieve greater efficiencies in the MF-II LOC requirements. The Commission therefore requires an LOC for MF-II winning bids that will remain in place until USAC, in conjunction with the Commission, verifies that a MF-II winning bidder has met its minimum coverage and service requirements at the end of the six-year milestone.

121. Consistent with the approach utilized in CAF-II, the Commission will require that the initial value of the LOC to be set to at least the amount of authorized MF-II support for the first year. Before the winning bidder can receive its next year's MF-II support, it must modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year.

122. Moreover, similar to the process adopted in CAF-II, the Commission will allow a support recipient to modestly reduce its LOC as it meets its interim benchmarks. The LOC must be maintained for 100 percent of the total support amount disbursed plus the amount to be disbursed in the next year until USAC, in coordination with the Commission, has determined that the recipient has met its interim benchmark for deployment to 60 percent of the required coverage area; and subject to USAC's consent, the amount of the LOC may decrease to an amount equal to 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.



Once USAC, in coordination with the Commission, has determined that the recipient has met its interim benchmark for deployment to 80 percent of the required coverage area, and subject to USAC's consent, the amount of the LOC may decrease to an amount equal to 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. After USAC, in coordination with the Commission, has determined that the recipient has met its final benchmark for deployment to a minimum of 85 percent of the required coverage area by state and at least 75 percent by each census block group or census tract in a state included in the LOC, the recipient may relinquish its LOC. Recognizing that the risk of a default will lessen as a recipient makes progress towards building its network, the Commission finds that it is appropriate to modestly reduce the value of the letter of credit in an effort to reduce the cost of maintaining a letter of credit as the recipient meets certain service milestones. Such a system of modest reductions in the value of the LOC aligns with the LOC procedure adopted in CAF-II.

123. These LOC requirements should help to achieve the Commission's goal of fiscal responsibility and should protect the disbursement of universal service funds while also being responsive to concerns expressed in the record that MF-II LOC requirements should not be onerous. The reporting and performance requirements that it has adopted for MF-II together with these LOC provisions, which are consistent with the CAF-II auction LOC requirements previously adopted by the Commission, should ensure that in the event of a performance default, monies are in place to satisfy a recipient's obligations for failing to comply with the terms of support. All MF-II recipients, along with the federal government, should bear the responsibilities of safeguarding these funds. However, the Commission nonetheless recognizes that there may be a need for greater flexibility regarding LOCs for Tribally-owned and controlled winning bidders. Thus, if any Tribally-owned and -controlled MF-II winning bidder is unable to obtain a LOC, it may file a petition for a waiver of the LOC requirement. Waiver applicants must show, with evidence acceptable to the Commission, that the Tribally-owned and -controlled winning bidder is unable to obtain a LOC.

124. In addition to providing greater flexibility on the amount of support the LOC will cover, the Commission concludes that there are additional

specific measures it can take to provide MF-II recipients greater flexibility in obtaining their LOCs. For instance, to reduce the number of LOCs that a winning bidder may need, the Commission will allow winning bidders to provide a single LOC covering all its winning bids within a single state. The Commission therefore directs the Bureaus to establish a reasonable means to permit a winning bidder to provide a single LOC that covers all its winning bids within a single state in the amount specified in the *MF-II Order*, if the recipient so desires. Moreover, consistent with the Commission's decision in the CAF-II context, if a winning bidder chooses to obtain a letter of credit for each of its bids that are located in a state and defaults after its failure to pay the recoupment calculation for non-compliance, the Bureaus will authorize a draw on all of the letters of credit covering all of the bids in that state.

125. Furthermore, consistent with the acceptable bank standards recently adopted for the CAF-II auction process, the Commission amends and expands the definition of an "acceptable bank" for the purposes of MF-II LOC requirements. By expanding the list of banks eligible to provide LOCs, the Commission seeks to lower barriers for entities, particularly small and rural businesses that might otherwise face obstacles in obtaining an LOC from a smaller pool of banks, while still ensuring that there are adequate considerations given to the soundness of the bank issuing a letter of credit.

126. Accordingly, the Commission will require that, for U.S. banks, the bank must be insured by the Federal Deposit Insurance Corporation (FDIC) and have a Weiss bank safety rating of B – or higher. This modification to the definition of acceptable banks expands the number of eligible U.S. banks from fewer than 70 banks, as were allowed in MF-I, to approximately 3,600 banks for MF-II winning bidders. These provisions together should help to ensure that LOCs are secured by financially sound institutions. Moreover, unlike credit ratings obtained by banks in the commercial markets, Weiss rates all banks that report sufficient data for Weiss to analyze and, more importantly, is a subscription service and is not compensated by the banks that it rates. Weiss therefore offers an independent and objective perspective of the safety of the banks it rates based on capitalization, asset quality, profitability, liquidity, and stability indexes. Requiring that the banks have a Weiss rating of at least B – ensures that the bank has a rating that

at a minimum demonstrates that the bank offers good financial security and has the resources to deal with a variety of adverse economic conditions. And requiring that U.S. issuing banks also be FDIC-insured has the added benefit of relying on the oversight of the FDIC and its protections. The Commission therefore concludes that this more expansive definition of acceptable banks achieves an appropriate balance between reducing burdens for winning bidders, particularly small and rural entities, while still protecting the public funds.

127. For similar reasons, the Commission will also permit entities to obtain letters of credit from CoBank, ACB (CoBank) or the National Rural Utilities Cooperative Finance Corporation (CFC) as long as each of these two entities maintains assets that place them among the top-100 U.S. banks in terms of the amount of assets, and they maintain a credit rating of BBB – or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency). The entity's assets will be determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit, determined on a U.S. dollar equivalent basis as of such date. The Commission has recognized that these entities are not traditional banks in that they do not accept deposits from members of the public. Thus, these entities do not have a Weiss bank safety rating and are not FDIC-insured. However, CFC and CoBank can be considered banks in the context of the Commission's program because they use their capital resources to make loans. Accordingly, the Commission finds these two entities to be sufficiently comparable to commercial depository banks to issue letters of credit in the MF-II program.

128. CoBank has met the more stringent issuing bank eligibility requirements for MF-I and rural broadband experiments, and has issued a number of letters of credit for these programs. Although CoBank is not FDIC-insured, it is insured by the Farm Credit System Insurance Corporation, which the Commission found provides protections that are equivalent to those indicated by holding FDIC-insured deposits. As long as CoBank retains its standing with assets equivalent to a top-100 U.S. bank and a qualified credit rating, the Commission sees no reason to depart from its conclusion not to exclude CoBank from eligibility simply because CoBank is not rated by Weiss.

129. CFC's assets also make it comparable to commercial depository banks that are in the top 100 based on

total assets, and it has a credit rating from Standard & Poor's of A. But because CFC is not a depository institution and it is not part of the Farm Credit System, it is not FDIC or FCSIC-insured. Nevertheless, CFC is uniquely situated and should be made eligible to the extent it retains its standing with assets equivalent to a top-100 U.S. bank and a qualified credit rating. CFC is "owned by, and exclusively serves" rural utility providers, and CFC manages and funds its affiliate, the Rural Telephone Finance Cooperative (RTFC), which lends primarily to telecommunications providers and affiliates across the nation. As the largest non-governmental lender for rural utilities, CFC has specialized institutional knowledge regarding the types of entities expected to participate in universal service competitive bidding to serve fixed locations and has demonstrated that it has significant and long-term experience in financing the deployment of rural networks. This unique and long-standing role in rural network deployment coupled with CFC's qualifications, provides the Commission with sufficient assurance that CFC has the qualifications to assess the financial health of winning bidders and honor the LOCs that it issues, without the need for the independent oversight of CFC's safety and soundness that would be offered by FDIC or FCSIC insurance or a Weiss safety rating. The Commission concludes that, based on the totality of these circumstances, CFC is eligible to issue LOCs despite the fact that it does not meet the FDIC and Weiss rating requirements. The decision to make CFC an eligible issuer is conditioned on CFC notifying the Commission of any significant change to any of the showings it has made to the Commission.

130. The Commission further notes that it is not adopting alternative eligibility requirements that would permit banks that are not FDIC or FCSIC-insured or that do not have a Weiss bank safety rating to issue letters of credit. Instead, the Commission concludes that, for purposes of providing security for winning bidders, an LOC from CFC provides assurances that are equivalent to those provided by banks meeting the Commission's general criteria, due to CFC's uniquely extensive experience in financing rural networks, its significant participation in other federal government programs, and its long-standing relationship with many entities that may become MF-II winning bidders.

131. If a recipient seeks to obtain its LOC from a non-U.S. bank, the Commission requires that the bank be

among the 100 largest non-U.S. banks in the world (determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit, determined on a U.S. dollar equivalent basis as of such date) and maintain a credit rating of BBB – or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency). The bank must also have a branch in the District of Columbia or such other branch office as agreed to by the Commission and must issue the letter of credit payable in United States dollars.

132. As in the process permitted in the CAF-II rules and also followed in MF-I, if the winning bidder is not prepared to present its LOC at the time of the long-form application filing, the Commission will allow the submission of a commitment letter from the bank issuing the LOC in the long-form application filing. A winning bidder will, however, be required to have its LOC in place and approved by USAC before it is authorized to receive MF-II support.

## 2. Opinion Letters

133. Consistent with the rules for MF-I and CAF-II, at the time a winning bidder for MF-II support submits its LOC, it also will be required to provide an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that, in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the LOC, under 11 U.S.C. 541. A winning bidder will be required to have its opinion letter in place before it is authorized to receive MF-II support and before any support is disbursed.

## C. Disbursements

134. Consistent with the process adopted in the CAF-II auction context, the Commission concludes that MF-II support should be disbursed in monthly installments over the course of the ten-year support term. For MF-II, support recipients will have made winning bids to provide service at established performance requirements to at least 85 percent of the eligible square miles across all winning bid areas for which they win MF-II support in a state by the final milestone, to provide service to at least 75 percent of every census block group or census tract in a state (depending on minimum bidding unit), and to continue to provide service

throughout the ten-year support term. During the ten-year support term, provided that the winning bidder files acceptable, complete, and timely annual and milestone reports, fulfills the milestone coverage requirements, and does not otherwise have a performance default, the recipient will receive monthly disbursements of 100 percent of the total winning bid(s).

135. This approach provides MF-II recipients with reliable and predictable support payments that conform to a variety of business cycles and correspond to suggestions in the record. The Commission is mindful that some carriers might incur higher up-front project costs prior to their ability to commence the provision of service to the targeted area because infrastructure expansion projects might require larger payments in the earlier years of the disbursement term. The Commission concludes that MF-II monthly disbursements will best accommodate carriers' project schedules or ongoing expenses of providing service in a manner that is efficient from an administrative prospective. Moreover, because the Commission decides that support payments should be regular and predictable over the entire course of the ten-year term for all recipients, and because the Commission seeks to not exceed the budget in any one year of the term, recipients will not be able to receive accelerated payment of their support for attaining the interim milestones early. This determination aligns with the decision to reject accelerated payments in CAF-II as well.

136. All MF-II recipients have a continuing obligation to maintain the accuracy and completeness of the information provided in their long-form applications and their annual and milestone reports. All winning bidders shall provide information about any substantial change that may be of decisional significance regarding their eligibility for MF-II support and compliance with MF-II requirements.

137. The Commission reserves the right for USAC to cease monthly disbursements immediately should the winning bidder have a performance default, or if it fails to comply with any of the terms or conditions for the receipt of the support under any of the Commission's rules. In addition, the Commission directs the Bureaus and the Office of Managing Director to postpone disbursements and/or the incurrence of additional obligations, to preclude an ADA violation if the USF's current exemption expires or is repealed.

## IX. Accountability and Oversight

138. As the Commission recognized from the outset of this proceeding, the monies used to achieve the Mobility Fund goals come from American consumers and businesses, and therefore it is critical for the success of the program that support recipients meet their obligations. This task requires ongoing vigilance and oversight by the Commission together with the Fund administrator, USAC. As the Commission noted in the CAF-II proceeding, reporting obligations serve the public interest by enhancing the ability to monitor the use of Connect America Fund support and ensure its use for intended purposes.

139. In the *USF/ICC Transformation FNP*, the Commission proposed applying the same general rules for accountability and oversight to MF-II as were applied to recipients of MF-I support, including reporting, audit, and record retention requirements. The reporting requirements the Commission adopted for MF-I, and adopts here for MF-II, differ in certain respects from those adopted for CAF and CAF-II due to the specific requirements of the provision of mobile service. Therefore, the Commission excluded MF-I from the application of 47 CFR 54.313(k), which applies generally to recipients of high cost support, and now also excludes that provision for MF-II support recipients.

140. The Commission also proposed that MF-II support recipients should be required to include in their annual reports the same information required of MF-I support recipients. The Commission adopts certification and reporting requirements relating to the performance obligations adopted in the *MF-II Order*. It also addresses consequences for failure to meet program reporting rules and discusses its record retention rules.

### *A. Mobile Reporting, Mobility Fund Phase II Annual Reports, and Mobility Fund Phase II Milestone Reports*

141. *Annual Reports.* The Commission adopts an annual reporting requirement that will enable the Commission and USAC to monitor the ongoing progress and performance of all MF-II recipients, similar to the annual reporting obligations of all other recipients of federal high-cost universal service support. Winning bidders of MF-II support will be subject to the annual reporting requirement, and recipients will be required to file their reports each year following the year in which the auction closes by July 1, including all the certifications required

under the MF-II rules, and in which the recipient will update information, as required for the following year.

142. *Milestone Reports.* In order to ensure that ongoing payment of MF-II support is warranted, and in alignment with the similar progress reporting system instituted for CAF-II, the Commission will require recipients to file a Milestone Report on or before its third, fourth, fifth, and sixth year performance deadline. These Milestone Reports will be where MF-II recipients report the data that demonstrates that they have met their interim benchmarks for deployment and their minimum final deployment requirement at the end of the construction term necessary to support the disbursements of MF-II funds. Reports should be filed via the portal that USAC is creating to receive filings by universal service support recipients. The Commission directs the Bureaus to define more precisely the content and format of the information, including substantiation that recipients are required to include in their Milestone Reports, such that it is consistent with the evidence that will be required in the challenge process.

143. All recipients of MF-II support will also be subject generally to the same audit requirements as recipients of CAF-II support and all other high-cost support.

144. Moreover, in line with the procedures adopted in CAF-II to address missed filing deadlines, the Commission adopts a rule to reduce the support for recipients that miss reporting, certification, and milestone filing deadlines. The Commission will impose a minimum reduction of seven days of total statewide support for a winning bid in any state for which a filing deadline is missed, given the importance of recipients meeting filing deadlines. In addition to the reduction of the initial seven days of support, support will be reduced further statewide on a pro-rata daily basis until the MF-II recipient files the required report or certification. Reducing support on a day-by-day basis plus an additional seven-day reduction is an appropriate measure to create incentives for MF-II recipients to make their filings as soon as they have determined that they have missed the applicable deadlines.

145. The Commission recognizes that despite its best efforts, a recipient may miss a deadline due to an administrative oversight but still file within a few days of the deadline. For a late filer, the Commission finds that it is appropriate to provide a one-time grace period of three days so that a recipient that quickly rectifies its error within three days of the deadline will not be subject

to the seven-day minimum loss of support. The Commission directs USAC to send a letter to such a recipient notifying it that its filing was late but cured within the grace period. If the recipient again files any filing late, the grace period will not be available. Repeated mistakes, even inadvertent, are indicative of a lack of adequate policies and procedures to ensure timely filing. If a recipient misses a filing deadline more than once due to its inadvertence, the support reductions that the Commission adopts should provide an incentive to recipients to revise their procedures to ensure that such inadvertence does not become a pattern.

146. *Maintaining the Accuracy of Filings.* To additionally safeguard the government's monthly disbursement of support, the Commission will require recipients to maintain the accuracy and completeness of the information they furnish in their long-form applications and their annual and milestone reports. Accordingly, the Commission will require recipients to update their annual reports and milestone reports to provide information about any substantial change that may be of decisional significance regarding their eligibility for MF-II support and compliance with MF-II requirements. Such notification of a substantial change, including any reduction in the percentage of eligible square miles being served or any failure to comply with any of the MF-II requirements, shall be submitted within 10 business days after the reportable event occurs, as is also required in CAF-II. A recipient that is required to provide such updated or supplemental information prior to having filed its first annual report, may nevertheless comply with the 10-day filing requirement by submitting that information to the entities listed in 47 CFR 54.1019(c). Moreover, while the Commission expects that it will be a rare occurrence, if a support recipient drops below the level of service to which it has certified in a milestone report or an annual report during the six-year deployment period, it will be subject to the provisions set out in the *MF-II Order* for non-compliance.

### *B. Defaults*

147. In MF-I, the Commission adopted two types of default payment obligations for MF-I winning bidders: An auction default payment owed by winning bidders if they failed to satisfy their auction obligations prior to being authorized to receive support, and a performance default payment owed by winning bidders authorized for support who subsequently failed to meet their

public interest obligations or other terms and conditions of MF-I support. As summarized below, for ease of administration, the Commission modifies its proposal and adopts default rules for MF-II that more closely parallel the CAF-II rules.

#### 1. Forfeiture in the Event of an Auction Default

148. MF-I winning bidders, like all winning bidders in Commission spectrum auctions, had a binding obligation to file a post-auction long-form application—by the applicable deadline and consistent with other requirements of the long-form application process—and failure to do so constituted an auction default. For MF-II, the Commission proposed that a winning bidder for MF-II support would be subject to the same auction default payment obligations adopted for winning bidders of MF-I support, including a default on a winning bid before authorizations, the failure to timely file a long-form application, being found ineligible or unqualified to be a recipient of MF-II support, or if a long-form application is dismissed for any reason after the close of the auction. For CAF-II, the Commission concluded that any entity that files a short-form application to participate in the CAF-II competitive bidding process will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support.

149. The Commission concludes that it will align the MF-II rules with its approach in CAF-II and adopts a rule that subjects a MF-II winning bidder to a forfeiture payment if it defaults on its bid(s) before it is authorized to begin receiving support. This forfeiture payment shall satisfy the requirements of 47 CFR 1.21004(b) with respect to default payments. The Commission holds that such an approach will ensure that each violation has a relationship to the area affected by the auction default, but will not be unduly punitive. Moreover, such an approach will also ensure that the total forfeiture for a default is generally proportionate to the overall scope of the winning bidder's bid. The Commission will determine the minimum geographic unit to be census block groups or census tracts in the pre-auction process. A winning bidder that fails to become authorized to receive MF-II support will then have violated the Commission's rules for each of the census block groups or census tracts included in its defaulted bid. If a winning bidder defaults on a bid that includes 10 census block groups/census tracts, that entity could be subject to a base forfeiture of \$30,000 (10 census

block groups/census tracts multiplied by the base forfeiture of \$3,000).

150. An entity will be considered to have an auction default and will be subject to forfeiture if it fails to timely file a long-form application or meet the document submission deadlines outlined in the *MF-II Order* or is found ineligible or unqualified to receive Phase II support by the Bureaus, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support. Specifically, as the Commission found in the CAF-II context, it is reasonable to subject all bidders to the same \$3,000 base forfeiture per violation, subject to adjustment based on the criteria set forth in the Commission's forfeiture guidelines. A winning bidder will be subject to the base forfeiture for each separate violation of the Commission's rules.

151. For MF-II competitive bidding purposes, the Commission defines a violation as any form of default with respect to each geographic unit subject to a bid. However, to ensure that the amount of the base forfeiture is not disproportionate to the amount of an entity's bid, the Commission limits the total base forfeiture that could be owed by a winning bidder to five percent of its total bid amount for the entire ten-year support term. This would occur in situations where the dollar amount associated with the bid is low. As an example, assume Bidder A bids to serve 100 census block groups (CBGs) for \$100,000 over the ten-year support term. The Commission would impose a base forfeiture of \$5,000 (5 percent of \$100,000) because otherwise the base forfeiture would be \$300,000 ( $\$3,000 \times 100$  CBGs), which is three times the entire bid amount. In contrast, if Bidder B bids to serve 100 census block groups for \$7,000,000 over the support term, the Commission would impose a base forfeiture of \$300,000 ( $\$3,000 \times 100$  CBGs), which is 4.3 percent of the total bid.

152. By adopting such a forfeiture, the Commission impresses upon recipients the importance of being prepared to meet all requirements for the post-selection review process, and emphasizes the requirement that the recipients conduct a due diligence review to ensure that they are qualified to participate in the MF-II competitive bidding process and meet its terms and conditions.

153. Failures by MF-II bidders to fulfill their auction obligations will undermine the stability and predictability of the auction process, and impose costs on the Commission and higher support costs for USF. The

Commission therefore finds that subjecting entities to a forfeiture for an auction default is appropriate to ensure the integrity of the auction process and to safeguard against costs to the Commission and the USF. Thus, as a condition of participating in an MF-II auction, entities acknowledge that they are subject to a forfeiture in the event of an auction default.

154. The Commission distinguishes between an MF-II winning bidder that is subject to an auction default, and a winning bidder whose long-form application is approved but subsequently has a performance default or otherwise fails to comply with the terms and conditions of receiving MF-II support.

#### 2. Measures for Non-Compliance

155. In the *USF/ICC Transformation FNPRM*, the Commission proposed that a recipient of MF-II support would be subject to the same performance default payment provisions as recipients of MF-I support. For MF-I, the Commission required that in the event of a default, a recipient would be required to repay all the support that it had received plus an additional performance default of 10 percent of total support for which the recipient is eligible.

156. In CAF-II, the Commission adopted a framework for reporting and support reductions for all CAF-II recipients that fail to meet the requisite service milestones. Specifically, the framework was adopted to calibrate support reductions to the extent of an ETC's non-compliance with service milestones. The Commission subsequently extended that framework to rate-of-return carriers.

157. Given the policy goals underlying MF-II support, the public interest benefit of establishing procedures for MF-II that are substantially the same as those adopted for CAF-II, and the record gathered on this issue, the Commission concludes that it should adopt a more measured approach to recouping payment in the event of default than the Commission employed in the MF-I auction. Accordingly, the Commission adopts a process by which the Wireline Competition Bureau or the Wireless Telecommunications Bureau will authorize USAC to draw on the LOC(s) to recover all the support that has been disbursed in a state in the event that the MF-II recipient does not meet the relevant service milestones and does not cure its compliance gap pursuant to the steps outlined below. For CAF-II, the Commission determined that USAC would recover support from ETCs

associated with their compliance gap in three separate circumstances. The Commission will adopt a corresponding approach for MF–II recipients. If, after six months, the ETC fails to repay in full, either the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter authorizing USAC to draw on the letter of credit to recover 100 percent of the support that has been disbursed to the ETC within the state.

158. First, for interim milestones, if the ETC has a compliance gap of 50 percent or more of the eligible square miles that the ETC is required to have covered by the relevant interim milestone (*i.e.*, Tier 4 status) at the state level, USAC will withhold 50 percent of the ETC's monthly support for that state, and the ETC will be required to file quarterly reports. If, after having 50 percent of support withheld for six months, the ETC has not reported that it has a compliance gap of less than 50 percent at the state level (*i.e.*, the ETC is eligible for Tier 3 or lower or is in compliance), USAC will withhold 100 percent of the ETC's support for the state and will commence recovery action for a percentage of support that is equal to the ETC's compliance gap plus 10 percent of the ETC's support that has been paid to that point. At this point, this ETC will have six months to pay back the amount of support that USAC seeks to recover. An ETC is encouraged to continue building out its MF–II projects during and after any recovery of funds by USAC. If, at any point during the six-year period for deployment, the ETC reports that it is eligible for Tier 1 status, and USAC is able to substantiate that report, the ETC will have its support fully restored including any support that had been withheld, USAC will repay any funds that were recovered, and the ETC will move to Tier 1 status. If, at the end of six months the ETC has not fully paid back the support, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all of the support that has been disbursed to the ETC. Consistent with CAF–II, the Commission will review compliance with build-out milestones on a state-wide basis. Accordingly, if a winning bidder chooses to obtain multiple letters of credit for separate bids that are located in a state and defaults, either of the Bureaus will authorize a draw on all the letters of credit covering all the bids in that state.

159. Second, if an ETC misses the final milestone(s), it must identify by what percentage the milestone has been

missed at the state level and/or any of the census block group(s) or census tract(s) in the state. The ETC will then have 12 months from that date to come into full compliance with both of those milestones. If it does not come into full compliance within 12 months because it fails to meet the 85 percent benchmark (even if it meets the 75 percent benchmark for some or all the census block group(s) or census tract(s)), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter, and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the ETC received per eligible square mile in the state over the six-year period multiplied by the number of square miles unserved in the ETC's winning areas in the state that would be required to meet the 85 percent benchmark, plus 10 percent of the ETC's total MF–II support received in the state over the six-year period for deployment. It is reasonable to assume that many of the areas left unserved would have higher than the average cost per area of the winning bid. Therefore, a higher amount per area than the average is appropriate. Moreover, the Commission wants to provide more incentive to carriers to complete the build out for their winning bid. Thus, the Commission finds that the administrative simplicity and predictability of using one factor for all bidders outweighs the precision that would come from applying a factor specific to each winning bidder and area. This multiplier was adopted by the Commission for CAF–II.

160. After the ETC has paid the calculated recovery amount for failure to comply with the final deployment milestone, the Bureaus will calculate a reduced support payment for the remaining support term based on the percentage of deployment coverage completed. The reduced ongoing annual support amount will be the total of the ETC's original winning bid amounts for annual support in the state multiplied by the sum of the actual deployment percentage plus 15 percent (*i.e.*, the difference between 100 percent coverage and the required 85 percent minimum coverage), or (annual support) \* (percentage covered + 0.15).

161. If at the end of six months the ETC has not fully paid back the support for missing the relevant 85 percent benchmark, the ETC shall be liable for repayment of all the support that has been disbursed to the ETC for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the LOC(s) to

recover all the support that has been disbursed to the ETC for that state.

162. A similar approach will apply if the ETC meets the 85 percent statewide benchmark but misses the 75 percent benchmark(s) for any census block group(s) or census tract(s) in the state at the final milestone and the ETC does not come into full compliance by meeting the 75 percent benchmark within 12 months. The Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter for any such census block group(s) or census tract(s), and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the ETC received per eligible square mile in the census block group(s) or census tract(s) in the state over the six-year period multiplied by the number of square miles unserved in each of the ETC's winning census block group(s) or census tract(s) in the state that would be required to meet their respective 75 percent benchmarks, plus 10 percent of the ETC's total MF–II support received in the relevant census block group(s) or census tract(s) over the six-year period for deployment. At this point, the ETC will have six months to repay the support USAC seeks to recover. After the ETC has paid the calculated recovery amount, the Bureaus will calculate a reduced support payment for the remaining support term. The reduced ongoing annual support amount will be the ETC's original winning bid amount for annual support in any such census block group or census tract, multiplied by the sum of the actual deployment percentage plus 25 percent (*i.e.*, the difference between 100 percent coverage and the required 75 percent minimum coverage), or (annual support) \* (percentage covered + 0.25). If at the end of six months the ETC has not fully paid back the support for missing the relevant 75 percent benchmark(s), the ETC shall be liable for repayment of all the support that has been disbursed to the ETC for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the LOC(s) to recover all the support that has been disbursed to the ETC for that state. In the event that USAC draws on a letter of credit to recover all the support that has been disbursed to the ETC for a state, the ETC's participation in MF–II in that state will immediately end and no further support will be paid.

163. Third, after compliance with the final build-out milestones has been verified and the ETC closes its letter of

credit, if at any point during the remainder of the 10-year term of support it is determined that the ETC does not have sufficient evidence to demonstrate that it is offering the requisite service to the required percentage of square miles by census block group or census tract, or state, USAC will withhold support for a period not to exceed six months until the ETC demonstrates that it is again providing the requisite service to the required percentage of square miles. When the ETC's demonstration of coverage has been verified by USAC, USAC will pay any withheld support and resume ongoing disbursements. If the ETC cannot provide a verifiable demonstration of coverage within the permitted six-month period, USAC will recover an amount of support that is equal to 1.89 times the average amount of support per square mile received in the winning bid area over the six-year deployment period for the relevant number of square miles for which the ETC has failed to produce sufficient evidence, plus 10 percent of the ETC's total support received in that winning bid area over the six-year deployment time period, and will reduce ongoing annual support as described in the *MF-II Order*. Because the ETC's build-out will have already been verified before it may close its letter of credit, the Commission does not find it necessary to require that the ETC continue to keep its letter of credit open in the event that the ETC does not repay the Commission after it is found to be lacking evidence of continued service deployment. Instead, if the ETC does not repay the Commission after a six-month period permitted for repayment, it may be subject to additional non-compliance measures, including the reduction of support payments for the remaining support term as discussed in the *MF-II Order*, and forfeitures.

164. Drawing on the letter of credit in the event that the ETC fails to repay the support that USAC is instructed to recover will ensure that the Commission will be able to recover the support in the event that the ETC is unable to pay. Through the support reduction framework the Commission adopted for CAF-II, the ETC will have a number of opportunities to cure before the Commission will seek to recover the support that is associated with the compliance gap. And the Commission will only recover 100 percent of the support that has been disbursed via the LOC in those cases where the ETC is unable to repay the support associated with its compliance gap. Because an ETC that is unable to repay the support is also unlikely to be able to meet its

obligations to use the support disbursed to offer service meeting the Commission's requirements, recovering 100 percent of the support will allow the Commission to re-award the support through an alternative mechanism to an ETC that will be able to meet its obligations. This decision is consistent with the conclusions reached by the Commission in the CAF II context, that if an entity fails to repay the support amount associated with its compliance gap, the risk becomes greater that the entity will be unable to continue to serve its customers or may go into bankruptcy, and thus it is necessary to ensure that the Commission can recover the entire amount of support that it has disbursed.

165. If an ETC has a performance default for reasons other than compliance with its construction milestones, such as the failure to maintain its spectrum access, its LOC, or its ETC eligibility, these performance defaults are incurable. The ETC must report its incurable performance default within 10 days to the Commission, USAC will cease disbursing MF-II support payments in the following month for the affected area (whether one or more census block groups or a state), the ETC's participation in MF-II in the affected census block group(s) or census tract(s) will immediately end, and the amount of support subject to recoupment for the ETC's non-compliance will then be calculated based upon the final six-year milestone for either the relevant census block group(s) or census tract(s) or the entire state, depending upon the circumstances of the performance default. Specifically, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter for any census block group(s) or census tract(s) or the entire state in which there has been an incurable performance default. If the incurable performance default is only for some of the ETC's census block group(s) or census tract(s), USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the ETC received per eligible square mile in the census block group(s) or census tract(s) in the state over the time period it has received MF-II disbursements multiplied by the number of square miles unserved in each of the ETC's winning census block group(s) or census tract(s) in the state that would be required to meet its respective 75 percent benchmarks, plus 10 percent of the ETC's total MF-II support received in the relevant census block group(s) or

census tract(s) over the relevant period for deployment. If the incurable performance default is for an entire state, USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the ETC received per eligible square mile in the state over the time period it has received MF-II disbursements multiplied by the number of square miles unserved in the ETC's winning areas in the state that would be required to meet the 85 percent benchmark, plus 10 percent of the ETC's total MF-II support received in the state over the relevant period for deployment. At this point, the ETC will have six months to repay the support USAC seeks to recover. If at the end of six months the ETC has not fully paid back the support for missing the relevant benchmark, the ETC shall be liable for repayment of all the support that has been disbursed to the ETC for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the LOC(s) to recover all of the support that has been disbursed to the ETC for that state. After the ETC has paid the calculated recovery amount for an incurable performance default in a portion of a state, the Bureaus will calculate a reduced support payment for the remaining support term as set out in the *MF-II Order*.

166. Finally, the Commission notes that MF-II recipients may also be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including, but not limited to potential revocation of ETC designation and suspension or debarment.

### C. Record Retention

167. In the *USF/ICC Transformation FNP*, the Commission proposed that a recipient of MF-II support would be subject to the same rules for accountability and oversight (including reporting, audit, and record retention requirements) that apply to all recipients of CAF support. The Commission also proposed that recipients of MF-II support be required to include in their annual reports the same types of additional information that are required of recipients of MF-I support. In MF-I, the Commission adopted requirements that the record retention requirements for recipients of support apply to all agents of the recipient, and any documentation prepared for or in connection with the recipient's MF-I support. The Commission also adopted revised requirements that extend the record

retention period to 10 years for all recipients of high-cost and CAF support, including recipients of Mobility Fund support. The retention period runs from the date of the receipt of the final disbursement of Mobility Fund funds. The Commission concludes that MF-II recipients are subject to the same accountability and oversight requirements in 47 CFR 54.320, including the same audit and record retention requirements as all other recipients of high-cost support.

## X. Procedural Matters

### A. Final Regulatory Flexibility Analysis

168. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *USF/ICC Transformation FNPRM* and the *2014 CAF Further Notice*. The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM* and *2014 CAF Further Notice*, including comment on the IRFAs. The Commission did not receive any comments in response to these IRFAs. The Final Regulatory Flexibility Analysis (FRFA) in the *MF-II Order* conforms to the RFA.

#### 1. Need for, and Objectives of, the Report and Order

169. Despite the growing expansion of 4G Long Term Evolution (LTE) service, rural and high-cost areas of our country have been left behind. At the same time, the Universal Service Fund spends \$25 million a month (a conservative estimate) distributing legacy subsidies to mobile carriers that compete with private capital and millions more distributing duplicative subsidies to multiple carriers in the same area.

170. In the *MF-II Order*, the Commission adopts the framework for moving forward with the Mobility Fund Phase II (MF-II) and Tribal Mobility Fund Phase II (Tribal MF-II), which will allocate up to \$4.53 billion over the next decade to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. The funding for this effort will come from the redirection of legacy subsidies and be distributed using a market-based, multi-round reverse auction and will come with defined, concrete compliance requirements so that rural consumers will be adequately served by the mobile carriers receiving universal service support.

### B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

171. There were no comments filed that specifically addressed the rules and policies proposed in the *USF/ICC Transformation FNPRM* IRFA or the *2014 CAF Further Notice* IRFA.

### C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

172. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

173. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

### D. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

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

175. *Small Entities, Small Organizations, Small Governmental Jurisdictions.* The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive small entity size standards that could be directly affected herein. As of 2014, according to the SBA, there were 28.2 million small businesses in the U.S., which represented 99.7% of all businesses in the United States. Additionally, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities,

towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” Census Bureau data for 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. The Commission estimates that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.” Thus, the Commission estimates that most governmental jurisdictions are small.

176. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

177. *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 Wired Telecommunications Carriers, which consists of all such firms having 1,500



or fewer employees. Census Bureau data for 2012 shows that there were 3,117 firms that operated for the entire year. Of this total, 3,083 firms had employment of 999 or fewer employees, and 34 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms in this industry can be considered small. In addition, while Internet Service Providers (broadband) are a subcategory of the broader category of Wired Telecommunications Carrier, there is Census Bureau data specific to Internet Service Providers (broadband). For 2012, Census Bureau data shows there were a total of 1,180 firms in the subcategory of Internet Service Providers (broadband) that operated for the entire year. Of this total, 1,178 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the *MF-II Order*.

*E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

178. In the *MF-II Order*, the Commission adopts the framework for moving forward with MF-II and Tribal MF-II, which will allocate up to \$4.53 billion over the next decade to advance the deployment of 4G LTE service to areas that are so costly that the private sector has not yet deployed there and to preserve such service where it might not otherwise exist. The funding for this effort will come from the redirection of legacy subsidies and distributed using a market-based, multi-round reverse auction and will come with defined, concrete compliance requirements so that rural consumers will be adequately served by the mobile carriers receiving universal service support. The recordkeeping and other obligations of MF-II established in the *MF-II Order* are summarized in this FRFA. Additional information on each of these requirements can be found in the *MF-II Order*.

179. Recipients of MF-II support will be required to deploy 4G LTE and to offer voice service. Recipients of MF-II funding will be required to meet minimum baseline performance requirements for data speeds, data latency, and data allowances in areas that receive support for at least one plan that they offer. Specifically, the median data speed of the network for the supported area must be 10 Mbps download speed or greater and 1 Mbps upload speed or greater, with at least 90

percent of the required download speed measurements being not less than a certain threshold speed. For latency, at least 90 percent of the required measurements must have a data latency of 100 milliseconds or less round trip. For data allowances, support recipients must offer at least one service plan that includes a data allowance comparable to mid-level service plans offered by nationwide providers—currently at least 2 GB of data per month—and that is at a rate that is within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas. These conditions will be defined more precisely in the pre-auction process.

180. MF-II support recipients will be given a ten-year term of support with no renewal expectancy, which will begin on the first day of the month after the MF-II auction concludes. The Commission adopts interim benchmarks as well as a final benchmark for deployment of service that meets the performance metrics. The starting point for the interim benchmarks is defined as six months from the first day of the month that follows the month in which the MF-II auction closes. The Commission requires a winning bidder to demonstrate coverage of at least 40 percent by three years after the starting point, 60 percent by four years after the starting point, 80 percent by five years after the starting point, and 85 percent by six years after the starting point across all areas for which they receive MF-II support in a state. Support recipients must meet their required benchmarks across all areas for which they receive MF-II support in a state. However, for the final benchmark, every census block group or census tract in a state (depending on minimum bidding unit) must also be at least 75 percent covered. Recipients that fail to meet and maintain the performance obligations within the time provided to submit their representative data and to certify to coverage requirements will be subject to defined measures, and must cure these failures to meet the deployment requirements or they will be in performance default.

181. Entities that are interested in participating in the MF-II auction will be required to file a short-form application in order to establish their eligibility to participate. Each auction applicant will be required to provide information to establish its identity, including disclosure of parties with ownership interests, consistent with the ownership interest disclosure required in 47 CFR part 1 for applicants for spectrum licenses, as well as any agreements the applicant may have

relating to the support to be sought through the auction. Each applicant will also be required to disclose and certify its ETC status, although an applicant will not be required to obtain an ETC designation prior to bidding in MF-II. Applicants will be required to disclose and certify the source of the spectrum they plan to use to meet Mobility Fund obligations in the particular area(s) for which they plan to bid. Specifically, applicants will be required to disclose whether they currently hold a license or lease the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent on obtaining support in an MF-II auction. Applicants must have secured any Commission approvals necessary for the required spectrum access prior to submitting an auction application. Moreover, applicants will be required to certify that they will retain their access to the spectrum for at least ten years from the date support is authorized. The short-form application may also include additional certifications or requirements that are adopted in a public notice.

182. Within a specified number of days of the release of a public notice identifying an entity as a winning bidder, that winning bidder will be required to file a long-form application. In this long-form application, an applicant for MF-II support will be required to fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application. An applicant will also be required to submit with its long-form application appropriate documentation of its ETC designation, including the original designation order and any relevant modifications or name-change orders, in all the areas for which it will receive support or certify that it will do so within 180 days of the public notice identifying winning bidders. An applicant will be required to certify that it is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support.

183. For winning bids, the applicant must submit a project description that describes the network to be built or upgraded; identifies the proposed technology; demonstrates that the project is technically feasible; discloses the complete project budget; and discusses each specific phase of the project (e.g., network design, construction, deployment, and maintenance). A complete project schedule, including timelines,

milestones, and costs, must also be provided.

184. In addition, each applicant must provide in its long-form application a description of the spectrum access that it will use to meet its obligations in areas for which it is the winning bidder, including whether it currently holds a license or leases the spectrum, along with any necessary renewal expectancy, and certify that the description is accurate and that the applicant will retain such access for the entire ten-year support term. Each applicant must certify in its long-form application that it has the funds available for all project costs that exceed the amount of support to be received, and that it will comply with all program requirements, which include the public interest obligations contained in the Commission's rules. Each applicant must also certify that it will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas during the term of support the applicant seeks.

185. Applicants must certify that they will meet the applicable deadlines and requirements for demonstrating interim and final performance benchmarks set forth in the rules, and that they will comply with the MF-II collocation, voice and data roaming, and reasonably comparable rate obligations. The long-form application may also include additional certifications or requirements that are adopted in a public notice.

186. Prior to the authorization of support, all winning bidders must provide the Commission with an irrevocable standby letter of credit (LOC) by a bank that is acceptable to the Commission in substantially the same form as the model Letter of Credit set forth in an appendix to the *MF-II Order*. The initial value of the LOC must be set to at least the amount of authorized MF-II support for the first year. Before the winning bidder can receive its next year's MF-II support, it must modify, renew, or obtain a new LOC to ensure that it is valued at a minimum at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year. The LOC must be maintained for 100 percent of the total support amount disbursed plus the amount to be disbursed in the next year until the Universal Service Administrative Company (USAC), in coordination with the Commission, has determined that the recipient has met its interim benchmark for deployment to 60 percent of the required coverage area; and subject to USAC's consent, the amount of the LOC may decrease to an

amount equal to 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. Once USAC, in coordination with the Commission, has determined that the recipient has met its interim benchmark for deployment to 80 percent of the required coverage area; and subject to USAC's consent, the amount of the LOC may decrease to an amount equal to 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year. After USAC, in coordination with the Commission, has determined that the recipient has met its final benchmark for deployment to a minimum of 85 percent of the required coverage area by state and at least 75 percent by each census block group or census tract in a state included in the LOC, the recipient may relinquish its LOC. Each winning bidder will be allowed to provide a single LOC covering all its winning bids within a single state.

187. At the time a winning bidder in MF-II submits its LOC, it also will be required to provide an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the LOC, under 11 U.S.C. 541. If the winning bidder is not prepared to present its LOC at the time of the long-form application filing, it may submit a commitment letter from the bank issuing the LOC in the long-form application filing.

188. An entity will be considered to have an auction default and will be subject to a forfeiture payment if it fails to timely file a long-form application or meet the document submission deadlines, or is found ineligible or unqualified to receive MF-II support, or otherwise defaults on its bid or is disqualified for any reason prior to the authorization of support. All bidders will be subject to the same \$3,000 base forfeiture per violation, subject to adjustment based on the criteria set forth in the Commission's forfeiture guidelines. A violation is defined as any form of default with respect to each geographic unit subject to a bid. However, the total base forfeiture that could be owed by a winning bidder is limited to five percent of its total bid amount for the entire ten-year support term.

189. The Wireline Competition Bureau or the Wireless

Telecommunications Bureau will authorize USAC to draw on the LOC(s) to recover all the support that has been disbursed in a state in the event that the MF-II recipient does not meet the relevant service milestones and does not cure its compliance gap. USAC will recover support from ETCs associated with their compliance gap in three separate circumstances. First, for interim milestones, if the ETC has a compliance gap of 50 percent or more of the eligible square miles that the ETC is required to have covered by the relevant interim milestone (*i.e.*, Tier 4 status) at the state level, USAC will withhold 50 percent of the ETC's monthly support for that state, and the ETC will be required to file quarterly reports. If, after having 50 percent of support withheld for six months, the ETC has not reported that it has a compliance gap of less than 50 percent at the state level (*i.e.*, the ETC is eligible for Tier 3 or lower or is in compliance), USAC will withhold 100 percent of the ETC's support for the state and will commence recovery action for a percentage of support that is equal to the ETC's compliance gap plus 10 percent of the ETC's support that has been paid to that point. At this point, this ETC will have six months to pay back the amount of support that USAC seeks to recover. If, at any point during the six-year period for deployment the ETC reports that it is eligible for Tier 1 status, and USAC is able to substantiate that report, the ETC will have its support fully restored including any support that had been withheld, USAC will repay any funds that were recovered, and the ETC will move to Tier 1 status. If, at the end of six months the ETC has not fully paid back the support, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect and USAC will draw on the letter of credit to recover all the support that has been disbursed to the ETC.

190. Second, if an ETC misses the final milestone(s), it must identify by what percentage the milestone has been missed at the state level and/or any of the census block group(s) or census tract(s) in the state. The ETC will then have 12 months from that date to come into full compliance with both of those milestones. If it does not come into full compliance within 12 months because it fails to meet the 85 percent benchmark (even if it meets the 75 percent benchmark for some or all the census block group(s) or census tract(s)), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter, and USAC will

recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the ETC received per eligible square mile in the state over the six-year period multiplied by the number of square miles unserved in the ETC's winning areas in the state that would be required to meet the 85 percent benchmark, plus 10 percent of the ETC's total MF-II support received in the state over the six-year period for deployment. After the ETC has paid the calculated recovery amount for failure to comply with the final deployment milestone, the Bureaus will calculate a reduced support payment for the remaining support term based on the percentage of deployment coverage completed. If, at the end of six months the ETC has not fully paid back the support for missing the relevant 85 percent benchmark, the ETC shall be liable for repayment of all the support that has been disbursed to the ETC for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the LOC(s) to recover all the support that has been disbursed to the ETC for that state. A similar approach will apply if the ETC meets the 85 percent statewide benchmark but misses the 75 percent benchmark(s) for any census block group(s) or census tract(s) in the state at the final milestone and the ETC does not come into full compliance by meeting the 75 percent benchmark within 12 months. At this point, the ETC will have six months to repay the support USAC seeks to recover. After the ETC has paid the calculated recovery amount, the Bureaus will calculate a reduced support payment for the remaining support term. If, at the end of six months the ETC has not fully paid back the support for missing the relevant 75 percent benchmark(s), the ETC shall be liable for repayment of all the support that has been disbursed to the ETC for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the LOC(s) to recover all the support that has been disbursed to the ETC for that state. In the event that USAC draws on a letter of credit to recover all the support that has been disbursed to the ETC for a state, the ETC's participation in MF-II in that state will immediately end and no further support will be paid.

191. Third, after compliance with the final build-out milestones has been verified and the ETC closes its letter of credit, if at any point during the

remainder of the 10-year term of support it is determined that the ETC does not have sufficient evidence to demonstrate that it is offering the requisite service to the required percentage of square miles by census block group or census tract, or state, USAC will withhold support for a period not to exceed six months until the ETC demonstrates that it is again providing the requisite service to the required percentage of square miles. When the ETC's demonstration of coverage has been verified by USAC, USAC will pay any withheld support and resume ongoing disbursements. If the ETC cannot provide a verifiable demonstration of coverage within the permitted six-month period, USAC will recover an amount of support that is equal to 1.89 times the average amount of support per square mile received in the winning bid area over the six-year deployment period for the relevant number of square miles for which the ETC has failed to produce sufficient evidence, plus 10 percent of the ETC's total support received in that winning bid over the six-year deployment time period and will reduce ongoing annual support. If the ETC does not repay the Commission after a six-month period permitted for repayment, it may be subject to additional non-compliance measures, including the reduction of support payments for the remaining support term and forfeitures. MF-II recipients may also be subject to other sanctions for non-compliance with the terms and conditions of high-cost funding, including, but not limited to potential revocation of ETC designation and suspension or debarment.

192. Once an MF-II recipient has been authorized to begin receiving support, it will be required to report certain information so that the Commission and USAC can track the progress of MF-II recipients and monitor their use of the public's funds before and after they meet service milestones. All MF-II recipients will be required to file annual reports. Recipients will be required to file their reports each year following the year in which the auction closes by July 1, including all the certifications required under the MF-II rules, and in which the recipient will update information, as required for the following year.

193. MF-II recipients will be required to file a Milestone Report on or before its third, fourth, fifth, and sixth year performance deadline. The Bureaus will define more precisely the content and format of the information, including substantiation that recipients are required to include in their Milestone Reports, such that it is consistent with the evidence that will be required from

challenging parties in the challenge process. Reports should be filed via the portal that USAC is creating to receive filings by universal service support recipients.

194. Support will be reduced for recipients that miss reporting, certification, and milestone filing deadlines. A minimum reduction of support of seven days of total statewide support for a winning bid in any state for which a filing deadline is missed will be imposed. In addition to the reduction of the initial seven days of support, support will be reduced further state-wide on a pro-rata daily basis until the MF-II recipient files the required report or certification. For a late filer, a one-time grace period of three days will be provided so that a recipient that quickly rectifies its error within three days of the deadline will not be subject to the seven-day minimum loss of support. USAC will send a letter to such a recipient notifying it that its filing was late but cured within the grace period. If the recipient again files any filing late, the grace period will not be available.

195. Each recipient will be required to maintain the accuracy and completeness of the information it furnishes in its long-form application and its annual and milestone reports. Recipients must update their annual reports and milestone reports to provide information about any substantial change that may be of decisional significance regarding their eligibility for MF-II support and compliance with MF-II requirements. Such notification of a substantial change, including any reduction in the percentage of eligible square miles being served or any failure to comply with any of the MF-II requirements, must be submitted within 10 business days after the reportable event occurs. If a support recipient drops below the level of service to which it has certified in a milestone report or an annual report during the six-year deployment period, it will be subject to the Commission rules for non-compliance.

#### *F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

196. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements

under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.”

197. The Commission has considered the economic impact on small entities in reaching its final conclusions and taking action in this proceeding. The rules adopted in the *MF-II Order* will provide greater certainty and flexibility for all carriers, including small entities. For example, the Commission concludes that the minimum geographic area for bidding should be census block groups or census tracts containing one or more census blocks with eligible areas for bidding and support for MF-II. The Commission found that adopting a smaller geographic area would allow it to target support more efficiently to specific areas and provide bidders, including small entities, the ability to tailor their bids to their business plans. The Commission expects that the auction design will similarly account for the needs of small entities.

198. To determine coverage levels in individual census blocks and whether MF-II support is being awarded, the Commission has decided to rely on Form 477 and high-cost disbursement data available from USAC. Not only is this information the most reliable data currently available for the purpose of determining the coverage levels of existing mobile services, but it can also provide sufficiently granular information to identify those areas of the country that lack 4G LTE service or where such service is only provided by a subsidized provider. Moreover, the Commission will utilize a streamlined challenge process to provide interested parties, including small entities, with an opportunity to challenge the coverage analysis and improve its accuracy. The Bureaus will make an initial determination of eligible areas by census block as part of the pre-auction process. Subsequently, the Bureaus will implement a process consistent with the decisions the Commission will make after review of the record received in response to the Further Notice of Proposed Rulemaking included with the *MF-II Order*. The Commission anticipates that this challenge process will be more streamlined for all parties, including small entities, as it will be based on Form 477 data, which use a uniform filing format.

199. The Commission amends its rules for the phase-down of identical support to account for the relative costs of deploying a coverage-based network given the differing terrain throughout the United States. Wireless providers, including smaller providers, incur

additional costs to deploy service in more difficult terrain. Accordingly, the Bureaus will apply a more-refined methodology that uses a terrain factor as a proxy for determining higher cost areas. In census blocks determined (after the completion of the challenge process) not to be eligible for MF-II support, legacy support will be phased down starting the first day of the month following release of a public notice announcing the close of the MF-II auction. On that same date, legacy support for current recipients in eligible census blocks shall either be converted to MF-II support (for the winning bidder), maintained (for one CETC in areas without a winning bidder), or subject to phase down (for all other CETCs). More specifically, in census blocks determined (after the completion of the challenge process) not to be eligible for MF-II, legacy support will be phased down starting the first day of the month following the close of the MF-II auction. For the first 12 months thereafter, phase-down support shall be  $\frac{2}{3}$  of the legacy support for each CETC associated with that area. For the next 12 months, phase-down support shall be  $\frac{1}{3}$  of the legacy support for each CETC associated with that area. All legacy support shall end thereafter. For a winning bidder that is a CETC receiving legacy support in the area of its bid, MF-II support shall commence on the first day of the month after the auction concludes. To ensure a smooth transition to MF-II support, and to the extent the Commission authorizes a winning bidder to receive MF-II support after that date, a winning bidder will receive support payments at the current legacy support level until such Commission action. A non-CETC winning bidder will receive MF-II support once the Commission issues a public notice authorizing MF-II support to the bidder. In eligible areas where there is no winning bidder in MF-II, the CETC receiving the minimum level of sustainable support will continue to receive such support until further Commission action, but for no more than five years from the first day of the month following the close of the MF-II auction. For CETCs receiving support in areas eligible for MF-II that do not either win MF-II support or receive the minimum level of sustainable support, the phase-down of support shall commence on the first day of the month after the auction concludes. For the first 12 months, phase-down support shall be  $\frac{2}{3}$  of the legacy support for each CETC associated with that area. For the next 12 months thereafter, phase-down support shall be  $\frac{1}{3}$  of the legacy support

for each CETC associated with that area. All legacy support shall end thereafter. The Commission concludes that this two-year phase-down schedule will ensure that affected CETCs, including smaller providers, will have a smooth transition in areas that are too costly to serve absent universal service subsidies.

200. The Commission has taken a number of steps to ensure that small entities have the opportunity to participate in the MF-II auction. For example, the Commission adopts more flexible eligibility requirements by permitting a winning bidder in the MF-II auction to obtain its ETC designation after the close of the auction, provided that it submits proof of its ETC designation within 180 days of the public notice identifying winning bidders. The Commission found that the benefits of encouraging greater participation in the competitive bidding process by all interested parties, including small entities, outweigh the possible risk that a winning bidder will not meet the necessary requirements to be designated as an ETC. The Commission also recognized that some qualified bidders, including small entities, may be hesitant to invest resources to apply for an ETC designation prior to the competitive bidding process without any sense of whether they are likely to be awarded MF-II support.

201. While the Commission requested comment on whether to adopt a bidding credit preference for Tribally-owned-and-controlled entities, it finds that such a bidding credit preference is unnecessary for the MF-II auction. Setting aside funds specifically to serve Tribal lands is likely to accomplish the Commission's goal of ensuring greater coverage on Tribal lands. The Commission also finds that layering an additional bidding credit for Tribal carriers on top of the funding exclusively available for service to Tribal lands could deter other entities from bidding to serve Tribal lands, reducing both the competitiveness of the auction and the potential reach of the Commission's finite funds for MF-II. Furthermore, commenters fail to demonstrate that the benefits of a bidding credit preference outweigh the costs of potentially depriving other eligible areas of MF-II support.

202. The Commission requested comment on the adoption of a small business bidding preference and the small business definition that should apply if it adopts such a bidding preference for MF-II. The Commission, however, declines to adopt a bidding preference for small businesses for MF-II. It agrees with commenters that

oppose a bidding preference for small businesses, concluding that such credits are unnecessary for an MF–II auction and would not further the objective of MF–II of encouraging the efficient use of universal support funds because a bidding credit for small businesses could potentially reduce the reach of the Commission's finite funds.

203. The Commission adopts requirements for the short-form and long-form applications that will maximize the number and types of entities that can participate. For example, it adopts a two-stage application process for an applicant seeking to participate in the MF–II auction under which interested parties will submit a pre-auction “short-form” application, providing basic information and certifications regarding their eligibility to receive support, and then a long-form application, fully disclosing its ownership structure, information and certifications regarding applicant eligibility, and plans to meet performance requirements. This process is similar to that used in spectrum license auctions and for Mobility Fund Phase I. Since the Commission anticipates that many interested parties, including small entities, will already be familiar with these requirements, it expects that the application procedures will minimize burdens on applicants and encourage a wide variety of parties to participate.

204. In light of concerns expressed by commenters, including small entities, the Commission adopts more flexible provisions for MF–II LOCs to help ease the administrative burden for support recipients. For example, the Commission adopts LOC provisions that closely align with the CAF–II LOC process and the MF–II performance requirements, allowing the LOC to decrease over time as a support recipient satisfies its minimum coverage and service requirements. The Commission also allows winning bidders to provide a single LOC covering all its winning bids within a single state, reducing the number of LOCs that a winning bidder may need. Moreover, the Commission amends and expands the definition of an “acceptable bank” for the purposes of MF–II LOC requirements, which will lower barriers for entities, particularly small and rural businesses that might otherwise face obstacles in obtaining an LOC from a smaller pool of banks. The Commission also allows the submission of a commitment letter from the bank issuing the LOC in the long-form application filing, if the winning bidder is not prepared to present its LOC at the time of the long-form application filing.

205. Similarly, the Commission adopts more flexible measures for non-compliance that will better enable support recipients, including small entities, to meet the MF–II goals of preserving and expanding service. For example, the Commission adopts a more measured approach to recouping payment in the event of default than the Commission employed in the MF–I auction. The Commission also limits when USAC will be permitted to recover support from ETCs associated with their compliance gap and conclude that only if the ETC fails to repay in full after six months, USAC will be authorized to draw on the letter of credit to recover 100 percent of the support that has been disbursed to the ETC within the state.

206. The Commission notes that the reporting requirements it adopts are tailored to ensuring that support is used for its intended purposes and so that the Commission and USAC can monitor the ongoing progress and performance of all MF–II recipients. The Commission finds the benefits in establishing annual and milestone reporting obligations outweigh any potential burdens on the recipients in filing these reports because the targeted information required will be the type of data that MF–II recipients will be already collecting for their own business purposes and will help to ensure that program goals are met. Nevertheless, to help minimize the burden of reporting requirements, including the burden on small businesses, the Commission has adopted annual and milestone reporting requirements that are consistent with the reporting requirements for MF–I and CAF–II support recipients, including grace periods for missed filing deadlines.

#### G. Report to Congress

207. The Commission will send a copy of the *MF–II Order*, including the FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *MF–II Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

#### XI. Ordering Clauses

208. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 2, 4(i), 5, 10, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, and 503 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155, 160, 201–

206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 503, 1302, and sections 1.1, 1.427, and 1.429 of the Commission's rules, 47 CFR 1.1, 1.427, and 1.429, that the *MF–II Order* is *adopted*. It is the Commission's intention in adopting these rules that if any of the rules that it retains, modifies, or adopts, or the application thereof to any person or circumstance, are held to be unlawful, the remaining portions of the rules not deemed unlawful, and the application of such rules to other persons or circumstances, shall remain in effect to the fullest extent permitted by law.

209. *It is further ordered* that Parts 1 and 54 of the Commission's rules, 47 CFR 1 and 54, are *amended* as set forth in Appendix A of the *MF–II Order*, and such rule amendments shall be effective thirty (30) days after publication in the **Federal Register**, except to the extent they contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act. The rules that contain new and modified information collection requirement subject to PRA review *shall become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

210. *It is further ordered* that the Petition for Declaratory Ruling filed by United States Cellular Corporation on March 21, 2014 is *denied*.

211. *It is further ordered* that the Commission *shall send* a copy of the *MF–II Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

212. *It is further ordered*, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *MF–II Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects

##### 47 CFR Part 1

Administrative practice and procedures, Reporting and recordkeeping requirements, Telecommunications.

##### 47 CFR Part 54

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

Federal Communications Commission.

**Katura Howard,**

*Federal Register Liaison Officer. Office of the Secretary.*

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 54 as follows:

### PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79, *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 310, 332, 1403, 1404, 1451, 1452, and 1455.

- 2. In § 1.21003, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), remove paragraph (b), and add new paragraphs (b) and (c) to read as follows:

#### § 1.21003 Competitive bidding process.

\* \* \* \* \*

(b) *Competitive Bidding Procedures—Design Options.* The public notice detailing competitive bidding procedures may establish the design of the competitive bidding utilizing any of the following options, without limitation:

- (1) *Procedures for Collecting Bids.* (i) Procedures for collecting bids in a single round or in multiple rounds.
- (ii) Procedures for collecting bids on an item-by-item basis, or using various aggregation specifications.
- (iii) Procedures for collecting bids that specify contingencies linking bids on the same item and/or for multiple items.
- (iv) Procedures allowing for bids that specify a support level, indicate demand at a specified support level, or provide other information as specified by the Commission.
- (v) Procedures to collect bids in one or more stage or stages, including for transitions between stages.
- (2) *Procedures for Assigning Winning Bids.* (i) Procedures for scoring bids by factors in addition to bid amount, such as population coverage or geographic contour, or other relevant measurable factors.
- (ii) Procedures to incorporate public interest considerations into the process for assigning winning bids.
- (3) *Procedures for Determining Payments.* (i) Procedures to determine the amount of any support for which winning bidders may become authorized, consistent with other auction design choices.
- (ii) Procedures that provide for support amounts based on the amount

as bid or on other pricing rules, either uniform or discriminatory.

(c) *Competitive Bidding Procedures—Mechanisms.* The public notice detailing competitive bidding procedures may establish any of the following mechanisms, without limitation:

- (1) *Limits on Available Information.* Procedures establishing limits on the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process, as well as procedures for parties to report the receipt of non-public information during such periods.

(2) *Sequencing.* Procedures establishing one or more groups of eligible areas and if more than one, the sequence of groups for which bids will be accepted.

(3) *Reserve Price.* Procedures establishing reserve prices, either disclosed or undisclosed, above which bids would not win in the auction. The reserve prices may apply individually, in combination, or in the aggregate.

(4) *Timing and Method of Placing Bids.* Procedures establishing methods and times for submission of bids, whether remotely, by telephonic or electronic transmission, or in person.

(5) *Opening Bids and Bid Increments.* Procedures establishing maximum or minimum opening bids and, by announcement before or during the auction, maximum or minimum bid increments in dollar or percentage terms.

(6) *Withdrawals.* Procedures by which bidders may withdraw bids, if withdrawals are allowed.

(7) *Stopping Procedures.* Procedures regarding when bidding will stop for a round, a stage, or an entire auction, in order to terminate the auction within a reasonable time and in accordance with public interest considerations and the goals, statutory requirements, rules, and procedures for the auction, including any reserve price or prices.

(8) *Activity Rules.* Procedures for activity rules that require a minimum amount of bidding activity.

(9) *Auction Delay, Suspension, or Cancellation.* Procedures for announcing by public notice or by announcement during the reverse auction, delay, suspension, or cancellation of the auction in the event of a natural disaster, technical obstacle, network disruption, evidence of an auction security breach or unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding, and procedures for resuming the competitive

bidding starting from the beginning of the current or some previous round or cancelling the competitive bidding in its entirety.

\* \* \* \* \*

### PART 54—UNIVERSAL SERVICE

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

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

- 4. In § 54.307, revise paragraph (e)(5) and remove and reserve paragraph (e)(6).

The revision reads as follows:

#### § 54.307 Support to a competitive eligible telecommunications carrier.

\* \* \* \* \*

(e) \* \* \*

(5) *Eligibility for Support after Mobility Fund Phase II Auction.* (i) A mobile competitive eligible telecommunications carrier that receives monthly baseline support pursuant to this section and is a winning bidder in the Mobility Fund Phase II auction shall receive support at the same level as described in paragraph (e)(2)(iii) of this section for such area until the Wireless Telecommunications and Wireline Competition Bureaus determine whether to authorize the carrier to receive Mobility Fund Phase II support.

(A) Upon the Wireless Telecommunications and Wireline Competition Bureaus' release of a public notice approving a mobile competitive eligible telecommunications carrier's application submitted pursuant to § 54.104(b) and authorizing the carrier to receive Mobility Fund Phase II support, the carrier shall no longer receive support at the level of monthly baseline support pursuant to this section for such area. Thereafter, the carrier shall receive monthly support in the amount of its Mobility Fund Phase II winning bid, provided that USAC shall adjust the amount of the carrier's support to the extent necessary to account for any difference in support the carrier received during the period between the close of the Mobility Fund Phase II auction and the release of the public notice authorizing the carrier to receive Mobility Fund Phase II support.

(B) A mobile competitive eligible telecommunications carrier that is a winning bidder in the Mobility Fund Phase II auction but is not authorized to receive Mobility Fund Phase II support shall receive monthly support as set forth in paragraphs (e)(5)(iii) and (iv) of this section for such area, as applicable, provided that USAC shall decrease such

amounts to account for support payments received prior to the Wireless Telecommunications and Wireline Competition Bureaus' authorization determination that exceed the amount of support for such area as set forth in paragraphs (e)(5)(iii) and (iv), and the monthly support in the mobile competitive eligible telecommunications carrier's winning Mobility Fund Phase II, which USAC shall treat as the carrier's monthly baseline support for purposes of paragraphs (e)(5)(iii) and (iv) to the extent the carrier's winning bid is below that amount.

(ii) A mobile competitive eligible telecommunications carrier that receives monthly baseline support pursuant to this section shall receive the following monthly support amounts for areas that are ineligible for Mobility Fund Phase II support, as determined by the Wireless Telecommunications and Wireline Competition Bureaus:

(A) For 12 months starting the first day of the month following the close of the Mobility Fund Phase II auction, each mobile competitive eligible telecommunications carrier shall receive two-thirds ( $\frac{2}{3}$ ) of the carrier's support pursuant to paragraph (e)(2)(iii) of this section for the ineligible area.

(B) For 12 months starting the month following the period described in paragraph (e)(5)(ii)(A) of this section, each mobile competitive eligible telecommunications carrier shall receive one-third ( $\frac{1}{3}$ ) of the carrier's support pursuant to paragraph (e)(2)(iii) of this section for the ineligible area.

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

(iii) Except as provided in paragraph (e)(3) of this section, to the extent Mobility Fund Phase II support is not awarded at auction for an eligible area, as determined by the Wireless Telecommunications and Wireline Competition Bureaus, the mobile competitive eligible telecommunications carrier receiving the minimum level of sustainable support for the eligible area shall continue to receive support at the level described in paragraph (e)(2)(iii) of this section until further Commission action, but such support shall not extend for more than 60 months from the first day of the month following the close of the Mobility Fund Phase II auction. The "minimum level of sustainable support" is the lowest monthly baseline support received by a mobile competitive eligible telecommunications carrier that

deploys the highest technology for the eligible area.

(iv) All other mobile competitive eligible telecommunications carriers shall receive the following monthly support amounts for areas that are eligible for Mobility Fund Phase II support, as determined by the Wireless Telecommunications and Wireline Competition Bureaus:

(A) For 12 months starting the first day of the month following the close of the Mobility Fund Phase II auction, each mobile competitive eligible telecommunications carrier shall receive two-thirds ( $\frac{2}{3}$ ) of the carrier's support pursuant to paragraph (e)(2)(iii) of this section for the eligible area.

(B) For 12 months starting the month following the period described in paragraph (e)(5)(iv)(A) of this section, each mobile competitive eligible telecommunications carrier shall receive one-third ( $\frac{1}{3}$ ) of the carrier's support pursuant to paragraph (e)(2)(iii) of this section for the eligible area.

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

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

\* \* \* \* \*

■ 5. In § 54.313, revise paragraph (k) to read as follows:

**§ 54.313 Annual reporting requirements for high-cost recipients.**

\* \* \* \* \*

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

\* \* \* \* \*

■ 6. Amend subpart L by adding §§ 54.1011 through 54.1021 to read as follows:

**Subpart L—Mobility Fund**

Sec.

- |         |  |   |   |   |
|---------|--|---|---|---|
| *       | *                                      | * | * | * |
| 54.1011 | Mobility Fund—Phase II.                |   |   |   |
| 54.1012 | Geographic areas eligible for support. |   |   |   |
| 54.1013 | Provider eligibility.                  |   |   |   |
| 54.1014 | Application process.                   |   |   |   |
| 54.1015 | Public interest obligations.           |   |   |   |
| 54.1016 | Letter of credit.                      |   |   |   |

54.1017 Compliance for Mobility Fund Phase II.

54.1018 Mobility Fund Phase II disbursements.

54.1019 Annual reports.

54.1020 Milestone reports.

54.1021 Record retention for Mobility Fund Phase II.

**§ 54.1011 Mobility Fund—Phase II.**

The Commission will use competitive bidding, as provided in part 1, subpart AA of this chapter, to determine the recipients of support available through Phase II of the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

**§ 54.1012 Geographic areas eligible for support.**

(a) Mobility Fund Phase II support may be made available for eligible geographic areas as identified by public notice prior to auction.

(b) Coverage units for purposes of conducting competitive bidding and disbursing support based on designated square miles in a geographic area will be identified by public notice for each area eligible for support prior to auction.

**§ 54.1013 Provider eligibility.**

(a) An applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase II support for that area. An applicant may obtain its designation as an Eligible Telecommunications Carrier after the close of the Mobility Fund Phase II auction, provided that the applicant submits proof of its designation within 180 days of the public notice identifying the applicant as a winning bidder. An applicant shall not receive Mobility Fund Phase II support prior to the submission of proof of its designation as an Eligible Telecommunications Carrier. After such submission, the Eligible Telecommunications Carrier shall receive a balloon payment that will consist of the carrier's monthly Mobility Fund Phase II payment amount multiplied by the number of whole months between the first day of the month after the close of the auction and the issuance of the public notice authorizing the carrier to receive Mobility Fund Phase II support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase II support for that area. The applicant shall describe its access to spectrum and certify, in a form acceptable to the Commission, that it has such access at the time it applies to participate in competitive bidding and



at the time that it applies for support and that it will retain such access for at least ten (10) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase II within the specified timeframe in the geographic areas for which it seeks support in order to receive such support.

#### **§ 54.1014 Application process.**

(a) *Application to Participate in Competitive Bidding for Mobility Fund Phase II Support.* In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase II support shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter as well as information on any agreement the applicant may have relating to the support to be sought through the auction;

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1015 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as an entity that will file an application to become an Eligible Telecommunications Carrier in any such area after winning support in Mobility Fund Phase II, and certify that the disclosure is accurate; and

(4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds or leases the spectrum, including any necessary renewal expectancy, and whether such spectrum access is contingent upon receiving support in a Mobility Fund Phase II auction, and certify that the description is accurate and that the applicant will retain such access for the entire ten (10) year Mobility Fund Phase II support term.

(b) *Application by Winning Bidders for Mobility Fund Phase II Support—(1) Deadline.* Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase II support shall file an application for Mobility Fund Phase II support no later than ten (10) business days after the public notice identifying them as winning bidders.

(2) *Application contents.* An application for Mobility Fund Phase II support must contain:

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

(ii) Certification that the applicant is financially and technically capable of providing the required coverage and performance levels within the specified timeframe in the geographic areas in which it won support;

(iii) Proof of the applicant's status as an Eligible Telecommunications Carrier, or a statement that the applicant will become an Eligible Telecommunications Carrier in any area for which it seeks support within 180 days of the public notice identifying them as winning bidders, and certification that the proof is accurate;

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is winning bidder for support, including whether the applicant currently holds or leases the spectrum, along with any necessary renewal expectancy, and certification that the description is accurate and that the applicant will retain such access for the entire ten (10) year Mobility Fund Phase II support term;

(v) A detailed project description that describes the network to be built or upgraded, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the complete project budget, and discusses each specific phase of the project (e.g., network design, construction, deployment, and maintenance), as well as a complete project schedule, including timelines, milestones, and costs;

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase II and that the applicant will comply with all program requirements, including the public interest obligations set forth in § 54.1015;

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in § 54.1016, or a written commitment from an acceptable bank, as defined in § 54.1016(a)(2), to issue such a letter of credit;

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas during the term of support the applicant seeks;

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

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

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

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

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

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

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase II support, after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1016, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than ten (10) business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Mobility Fund Phase II support.

#### **§ 54.1015 Public interest obligations.**

(a) *First interim deadline for construction.* A winning bidder authorized to receive Mobility Fund

Phase II support shall, no later than 42 months from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes, submit to the entities listed in § 54.1020(c) any required data covering all areas for which they receive support in a state demonstrating mobile transmissions supporting voice and data to and from the network covering at least 40 percent of the square miles associated with the eligible areas and meeting or exceeding the following:

(1) Outdoor median data transmission rates of 1 Mbps upload and 10 Mbps download, with at least 90 percent of the required download speed measurements not less than a certain threshold speed that will be defined prior to the Mobility Fund Phase II auction; and

(2) Transmission latency of 100 ms or less round trip for at least 90 percent of the measurements.

(b) *Second interim deadline for construction.* A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than 54 months from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes, submit to the entities listed in § 54.1020(c) any required data covering all areas for which they receive support in a state demonstrating mobile transmissions supporting voice and data to and from the network covering at least 60 percent of the square miles associated with the eligible areas and meeting or exceeding the thresholds in paragraphs (a)(1) and (2) of this section.

(c) *Third interim deadline for construction.* A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than 66 months from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes, submit to the entities listed in § 54.1020(c) any required data covering all areas for which they receive support in a state demonstrating mobile transmissions supporting voice and data to and from the network covering at least 80 percent of the square miles associated with the eligible areas and meeting or exceeding the thresholds in paragraphs (a)(1) and (2) of this section.

(d) *Final deadline for construction.* A winning bidder authorized to receive Mobility Fund Phase II support shall, no later than 78 months from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes, submit to the entities listed in § 54.1020(c) any required data covering all areas for which they receive support in a state demonstrating mobile transmissions supporting voice and data

to and from the network covering at least 85 percent of the square miles associated with the eligible areas and meeting or exceeding the thresholds in paragraphs (a)(1) and (2) of this section. A winning bidder shall also submit representative data demonstrating that its network covers at least 75 percent of every census block group or census tract for which it receives support in a state.

(e) *Coverage data.* Coverage data submitted in compliance with a recipient's public interest obligations shall demonstrate coverage of the square miles designated in the public notice announcing the final list of eligible areas for the competitive bidding that is the basis of the recipient's support. Any data submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the applicable public notice.

(f) *Collocation obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase II on all towers it owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(g) *Voice and data roaming obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall comply with the Commission's voice and data roaming requirements that are currently in effect on networks that are built through Mobility Fund Phase II support.

(h) *Reasonably comparable rates obligations.* Beginning no later than the deadline set forth in paragraph (a) of this section and continuing throughout the remaining period when a recipient shall file annual reports pursuant to § 54.1019, the recipient shall offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.

(i) *Data allowance obligations.* Beginning no later than the deadline set forth in paragraph (a) of this section and continuing throughout the remaining period when a recipient shall file annual reports pursuant to § 54.1019, recipient shall offer at least one service plan in supported areas that includes a data allowance comparable to mid-level service plans offered by nationwide providers.

(j) *Liability for failing to satisfy public interest obligations.* A Mobility Fund Phase II support recipient's failure to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase II support constitutes a performance default.

#### **§ 54.1016 Letter of credit.**

(a) Before being authorized to receive Mobility Fund Phase II support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission.

(1) Each recipient authorized to receive Mobility Fund Phase II support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to at a minimum the amount of Mobility Fund Phase II auction support that has been disbursed and that will be disbursed in the coming year, until the Universal Service Administrative Company has verified that the recipient met the final service milestone as described in § 54.1015(d) of this chapter.

(i) Once the recipient has met its 60 percent service milestone as described in § 54.1015(b) of this chapter, it may, subject to the consent of the Universal Service Administrative Company, obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

(ii) Once the recipient has met its 80 percent service milestone as described in § 54.1015(c) of this chapter, it may, subject to the consent of the Universal Service Administrative Company, obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 80 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

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

(i) Any United States Bank—

(A) Whose deposits are insured by the Federal Deposit Insurance Corporation; and

(B) That has a Weiss bank safety rating of B— or higher, or

(ii) CoBank, ACB—

(A) As long as it maintains assets that would place it among the top-100 U.S. banks in terms of the amount of assets, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit;

(B) Its obligations are insured by the Farm Credit System Insurance Corporation; and

(C) It has a long-term unsecured credit rating of BBB – or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency); or

(iii) The National Rural Utilities Cooperative Finance Corporation—

(A) As long as it maintains assets that would place it among the top-100 U.S. banks in terms of the amount of assets, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit; and

(B) It has a long-term unsecured credit rating of BBB – or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency); or

(iv) Any non-U.S. bank that—

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

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

(C) Maintains a credit rating of BBB – or better from Standard & Poor's (or the equivalent from a nationally-recognized credit rating agency); and

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

(b) Before being authorized to receive Mobility Fund Phase II support, a winning bidder shall provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the letter of credit, under section 541 of the Bankruptcy Code.

(c) Authorization to receive Mobility Fund Phase II support is conditioned upon full and timely performance of all the requirements set forth in this section, § 54.1015, and any additional terms and conditions upon which the support was granted.

(1) If a Mobility Fund Phase II recipient has triggered a recovery action by USAC as set out in § 54.1017 and has failed to repay the requisite amount of support within six (6) months, USAC

will be entitled to draw the entire amount of the letter of credit and may disqualify the Mobility Fund Phase II recipient from the receipt of Mobility Fund Phase II auction support or additional universal service support.

(2) The default will be evidenced by a letter issued by the Chief of either the Wireless Telecommunications Bureau or Wireline Competition Bureau or their respective designees, which letter, describing the performance default and attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit.

#### **§ 54.1017 Compliance for Mobility Fund Phase II.**

(a) Mobile eligible telecommunications carriers subject to defined build-out milestones in § 54.1015 must notify the Commission and USAC, and the relevant state, U.S. Territory, or Tribal government, if applicable, within ten (10) business days after the applicable deadline if they have failed to meet a build-out milestone.

(1) *Interim build-out milestones.* Upon notification that a mobile eligible telecommunications carrier has defaulted on an interim build-out milestone after it has begun receiving Mobility Fund Phase II support, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter evidencing the default. For purposes of determining whether a default has occurred, any service a mobile eligible telecommunications carrier offers must meet the performance obligations in § 54.1015(a)(1) and (2). The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the mobile eligible telecommunication carrier's total monthly Mobility Fund Phase II support, if applicable, starting the month following the issuance of the letter:

(i) *Tier 1.* If a mobile eligible telecommunications carrier has a compliance gap of at least five (5) percent but less than 15 percent of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the relevant interim milestone at the state level, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect. Starting three (3) months after the issuance of this letter, the mobile eligible telecommunications carrier will be required to file a report every three (3) months identifying the eligible square miles to which the mobile eligible telecommunications carrier has newly

deployed facilities capable of meeting the requisite Mobility Fund Phase II requirements at the state level in the previous quarter. Mobile eligible telecommunications carriers that do not file these quarterly reports on time will be subject to support reductions as specified in § 54.1019(f). The mobile eligible telecommunications carrier must continue to file quarterly reports until the mobile eligible telecommunications carrier reports that it has reduced the compliance gap to less than five (5) percent of the eligible square miles for that interim milestone at the state level and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect.

(ii) *Tier 2.* If a mobile eligible telecommunications carrier has a compliance gap of at least 15 percent but less than 25 percent of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the interim milestone at the state level, USAC will withhold 15 percent of the mobile eligible telecommunications carrier's monthly support for that state and the mobile eligible telecommunications carrier will be required to file quarterly reports. Once the mobile eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 15 percent of the eligible square miles for that interim milestone at the state level, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, and the mobile eligible telecommunications carrier will then move to Tier 1 status.

(iii) *Tier 3.* If a mobile eligible telecommunications carrier has a compliance gap of at least 25 percent but less than 50 percent of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the interim milestone at the state level, USAC will withhold 25 percent of the mobile eligible telecommunications carrier's monthly support for that state and the mobile eligible telecommunications carrier will be required to file quarterly reports. Once the mobile eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 25 percent of the eligible square miles for that interim milestone at the state level, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, and the mobile eligible telecommunications carrier will move to Tier 2 status.

(iv) *Tier 4.* If a mobile eligible telecommunications carrier has a

compliance gap of 50 percent or more of the eligible square miles that the mobile eligible telecommunications carrier is required to have covered by the interim milestone at the state level:

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

(B) If, after having 50 percent of its support withheld for six (6) months, the mobile eligible telecommunications carrier has not reported that it has a compliance gap of less than 50 percent, USAC will withhold 100 percent of the mobile eligible telecommunications carrier's monthly support for the state and will commence a recovery action for a percentage of support that is equal to the mobile eligible telecommunications carrier's compliance gap plus 10 percent of the mobile eligible telecommunications carrier's support that has been disbursed to that date.

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

(2) *Final milestone.* Upon notification that the mobile eligible telecommunications carrier has not met a final milestone, the mobile eligible telecommunications carrier will have twelve (12) months from the date of the final milestone deadline to come into full compliance with this milestone.

(i) If the mobile eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve (12) months because it fails to meet the 85 percent benchmark (even if it meets the 75 percent benchmark for some or all the census block group(s) or census tract(s)), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter, and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the mobile eligible telecommunications

carrier received per eligible square mile in the state over the six year period multiplied by the number of square miles unserved in the mobile eligible telecommunications carrier's winning areas in the state that would be required to meet the 85 percent benchmark, plus 10 percent of the mobile eligible telecommunications carrier's total Mobility Fund Phase II support received in the state over the six-year period for deployment. After the mobile eligible telecommunications carrier has paid the calculated recovery amount for failure to comply with the final deployment milestone, the Bureaus will calculate a reduced support payment for the remaining support term based on the percentage of deployment coverage completed. The reduced ongoing annual support amount will be the total of the mobile eligible telecommunications carrier's original winning bid amounts for annual support in the state multiplied by the sum of the actual deployment percentage plus 15 percent (*i.e.*, the difference between 100 percent coverage and the required 85 percent minimum coverage), or (annual support) \* (percentage covered + 0.15). If at the end of six months the mobile eligible telecommunications carrier has not fully paid back the support for missing the relevant 85 percent benchmark, the mobile eligible telecommunications carrier shall be liable for repayment of all the support that has been disbursed to the mobile eligible telecommunications carrier for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the letter(s) of credit to recover all the support that has been disbursed to the mobile eligible telecommunications carrier for that state.

(ii) If the mobile eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve (12) months because it fails to meet the 75 percent benchmark(s) for any census block group(s) or census tract(s) in the state at the final milestone (even if it meets the 85 percent statewide benchmark), the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter for any such census block group(s) or census tract(s), and USAC will recover disbursement(s) in an amount of support that is equal to 1.89 multiplied by the average amount of support the mobile eligible telecommunications carrier received per eligible square mile in the census block group(s) or census tract(s) in the state

over the six year period multiplied by the number of square miles unserved in each of the mobile eligible telecommunications carrier's winning census block group(s) or census tract(s) in the state that would be required to meet their respective 75 percent benchmarks, plus 10 percent of the mobile eligible telecommunications carrier's total Mobility Fund Phase II support received in the relevant census block group(s) or census tract(s) over the six-year period for deployment. The mobile eligible telecommunications carrier will have six months to repay the support USAC seeks to recover. After the mobile eligible telecommunications carrier has paid the calculated recovery amount, the Bureaus will calculate a reduced support payment for the remaining support term. The reduced ongoing annual support amount will be the mobile eligible telecommunications carrier's original winning bid amount for annual support in any such census block group or census tract, multiplied by the sum of the actual deployment percentage plus 25 percent (*i.e.*, the difference between 100 percent coverage and the required 75 percent minimum coverage), or (annual support) \* (percentage covered + 0.25). If at the end of six months the mobile eligible telecommunications carrier has not fully paid back the support for missing the relevant 75 percent benchmark(s), the mobile eligible telecommunications carrier shall be liable for repayment of all the support that has been disbursed to the mobile eligible telecommunications carrier for that state, the Wireline Competition Bureau or the Wireless Telecommunications Bureau will issue a letter to that effect, and USAC will draw on the letter(s) of credit to recover all the support that has been disbursed to the mobile eligible telecommunications carrier for that state. In the event that USAC draws on a letter of credit to recover all the support that has been disbursed to the mobile eligible telecommunications carrier for a state, the mobile eligible telecommunications carrier's participation in Mobility Fund Phase II in that state will immediately end and no further support will be paid.

(3) *Compliance reviews.* If, subsequent to the mobile eligible telecommunications carrier's final milestone but during the remaining support term, USAC determines in the course of a compliance review that the mobile eligible telecommunications carrier does not have sufficient evidence to demonstrate that it is offering service to the required percentage of square miles by census block group or census

tract, or state, USAC shall withhold support for a period not to exceed six months until the mobile eligible telecommunications carrier demonstrates that it is again providing the requisite service to the required percentage of square miles. Once the mobile eligible telecommunications carrier demonstrates that it is providing the requisite service to the required percentage of square miles and USAC has verified the demonstration, USAC will pay any withheld support and resume ongoing disbursements. If the mobile eligible telecommunications carrier does not provide a verifiable demonstration of coverage within the permitted six-month period, USAC shall recover an amount of support that is equal to 1.89 times the average amount of support per square mile received in the winning bid area over the six-year deployment period for the relevant number of square miles for which the mobile eligible telecommunications carrier has failed to produce sufficient evidence, plus 10 percent of the mobile eligible telecommunications carrier's total support received in that winning bid area over the six-year deployment time period, and will calculate a reduced ongoing annual support amount as set out in paragraphs (a)(2)(i) and (ii) of this section, as appropriate.

(b) [Reserved].

#### **§ 54.1018 Mobility Fund Phase II disbursements.**

(a) A winning bidder for Mobility Fund Phase II support will be advised by public notice whether it has been authorized to receive such support. The public notice will detail how disbursements will be made.

(b) Mobility Fund Phase II support will be available for monthly disbursement to a winning bidder authorized to receive such support for ten years from the first day of the month that follows the month in which the Mobility Fund Phase II auction closes.

#### **§ 54.1019 Annual reports.**

(a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit an annual report no later than July 1 in each year for the ten (10) years after it is so authorized.

(b) The party submitting the annual report must certify that it has been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing the appropriate docket for Mobility Fund Phase II reporting; the Administrator; and the relevant state commissions, relevant authority in a

U.S. Territory, or Tribal governments, as appropriate, until such time that the Administrator announces that annual reports shall be filed solely via the Administrator's online portal.

(d) In each annual report, a recipient of Mobility Fund Phase II support shall certify that it is in compliance with all requirements for receipt of such support to continue receiving Mobility Fund Phase II disbursements.

(e) Winning bidders have a continuing obligation to maintain the accuracy and completeness of the information provided in their long-form applications and their annual reports. All winning bidders shall provide information about any substantial change that may be of decisional significance regarding their eligibility for Mobility Fund Phase II support and compliance with Mobility Fund Phase II requirements as an update to their annual report submitted to the entities listed in § 54.1019(c). Such notification of a substantial change, including any reduction in the percentage of eligible square miles being served or any failure to comply with any of the Mobility Fund Phase II requirements, shall be submitted within ten (10) business days after the reportable event occurs.

(f) In order for a recipient of Mobility Fund Phase II support to continue to receive support for the following calendar year, it must submit the annual report required by this section annually by July 1 of each year. Mobile eligible telecommunications carriers that file their reports after the July 1 deadline shall receive a reduction in support pursuant to the following schedule:

(1) A mobile eligible telecommunications carrier that files after the July 1 deadline, but by July 8, will have its support reduced in an amount equivalent to seven (7) days of support;

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

(f) A mobile eligible telecommunications carrier that submits the annual reporting information required by this section within three (3) days of the July 1 deadline will not receive a reduction in support if the mobile eligible telecommunications carrier has not missed the July 1 deadline in any prior year.

#### **§ 54.1020 Milestone reports.**

(a) A winning bidder authorized to receive Mobility Fund Phase II support shall submit the reports required in

§ 54.1015(a) through (d) as well as certifications that it has met the construction requirements in § 54.1015(a) through (d).

(b) The party submitting the report must certify that it has been authorized to do so by the winning bidder.

(c) Each report shall be submitted to the Office of the Secretary of the Commission, clearly referencing the appropriate docket for Mobility Fund Phase II reporting; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate, until such time that the Administrator announces that such reports shall be filed solely via the Administrator's online portal.

(d) Winning bidders have a continuing obligation to maintain the accuracy and completeness of the information provided in their long-form applications and their milestone reports. All winning bidders shall provide information about any substantial change that may be of decisional significance regarding their eligibility for Mobility Fund Phase II support and compliance with Mobility Fund Phase II requirements as an update to their milestone report submitted to the entities listed in paragraph (c) of this section. Such notification of a substantial change, including any reduction in the percentage of eligible square miles being served or any failure to comply with any of the Mobility Fund Phase II requirements, shall be submitted within ten (10) business days after the reportable event occurs.

(e) In order for a recipient of Mobility Fund Phase II support to continue to receive support for the following calendar year, it must submit the milestone reports required by this section by the deadlines set forth in § 54.1015(a) through (d). Mobile eligible telecommunications carriers that file their reports after the relevant deadlines shall receive a reduction in support pursuant to the following schedule:

(1) A mobile eligible telecommunications carrier that files after the deadline, but within seven days of the deadline, will have its support reduced in an amount equivalent to seven (7) days of support;

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

(g) A mobile eligible telecommunications carrier that submits the milestone reporting information required by this section within three (3)

days of the deadline will not receive a reduction in support if the mobile eligible telecommunications carrier has not missed the deadline in any prior year.

**§ 54.1021 Record retention for Mobility Fund Phase II.**  
A winning bidder authorized to receive Mobility Fund Phase II support

and its agents are subject to the record retention requirements in § 54.320.  
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