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WIRELINE COMPETITION BUREAU SEEKS FURTHER COMMENT ON ISSUES REGARDING THE DESIGN OF THE REMOTE AREAS FUND

WC Docket No. 10-90

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I. INTRODUCTION

1. On November 18, 2011, the Commission released the *USF/ICC Transformation Order and FNPRM*, which comprehensively reformed and modernized the universal service high-cost and intercarrier compensation systems.[1] The Commission established the Connect America Fund to ensure that voice and broadband service is available throughout the nation. Within Connect America, the Commission created a Remote Areas Fund with a budget of "at least $100 million annually" to ensure that even Americans living in the most remote areas of the nation, where the cost of providing terrestrial

[1] *See Connect America Fund et al*., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (USF/ICC Transformation Order and FNPRM or Order or FNPRM), *pets. for review pending sub nom. In re: FCC 11-161,* No. 11-9900 (10th Cir. filed Dec. 8, 2011).

broadband service is extremely high, can obtain service.[2] In the accompanying *FNPRM,* the Commission sought comment on various issues relating to the Remote Areas Fund, including how to define the remote areas eligible for support from the Remote Areas Fund,[3] qualifications for participating providers,[4] the public interest obligations of these providers,[5] as well as administrative issues.[6]

2. Based on the record generated in response to the *FNPRM*, the Wireline Competition Bureau (the Bureau) now seeks further detailed comment on issues relating to the implementation of the Remote Areas Fund as a portable consumer subsidy program, as proposed by the Commission in the *FNPRM* and supported by a diverse group of commenters.[7] In particular, we seek to further develop the record on a number of specific issues, including defining the areas where Remote Areas funding will be available, how to set the consumer subsidy, consumer eligibility, measures to keep the program within a defined annual budget, service provider participation, performance requirements, and accountability and oversight.

II. DISCUSSION

A. Areas eligible for Remote Areas Fund support

3. *Background*. In the *USF/ICC Transformation Order and FNPRM*, the Commission budgeted funding for the Remote Areas Fund to address remote areas where the cost of deploying traditional terrestrial broadband networks is extremely high.[8] The Commission stated that it intended "to use a forward-looking cost model—once finalized—to identify a small number of extremely high-cost areas in both rate-of-return and price cap areas that should receive support from the Remote Areas Fund."[9] The Commission also proposed that any eligible areas that do not receive Connect America Phase II support, either through a state-level commitment or through the subsequent competitive bidding process, would be eligible for Remote Areas Fund support.[10] The Commission proposed as an interim

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[2] *Id.* at 17837-38, paras. 533-34. For purposes of this Public Notice, we focus the record on the design of a Remote Areas Fund targeted to $100 million annually, which should not be viewed as prejudging any Commission action with regard to the size of the Remote Areas Fund.

[3] *Id.* at 18093-95, paras. 1229-32.

[4] *Id.* at 18095, paras. 1233-37.

[5] *Id.* at 18096-99, paras. 1239-54.

[6] *Id.* at 18099-107, paras. 1255-90.

[7] *See, e.g.,* Comments of the Satellite Broadband Providers, WC Docket No. 10-90 et al., at 8-9 (filed Jan. 18, 2012) (SBP Comments); Comments of the Wireless Internet Service Provider Association, WC Docket No. 10-90 et al., at 9-11 (filed Jan. 18, 2012) (WISPA Comments); Comments of AT&T, WC Docket No. 10-90, at 36 (filed Jan. 18, 2012).

[8] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18092, para. 1223. The Commission suggested that less than one percent of all Americans reside in areas that would be included in the Remote Areas Fund. *See also id*. at 17837-38, para. 533.

[9] *Id.* at 18093-94, para. 1229.

[10] *Id.* at 18092, para. 1222. For price cap carriers, Connect America is being implemented in two general phases, with Phase I implemented in 2012. *Id.* at 17709, para. 116. In a June 2012 Public Notice discussing the Connect America Phase II cost model, the Bureau sought comment on how to use the model to "establish both the cost benchmark above which a high-cost area will be eligible for support and the extremely high-cost threshold, above which an area will be ineligible for support through [Connect America] Phase II and will instead be eligible for support through the Remote Areas Fund . . . ." *Wireline Competition Bureau Seeks Comment on Model Design and*

(continued…)

measure to use the National Broadband Map to identify "those census blocks in price cap territories that are identified by National Broadband Map data as having no wireline or terrestrial wireless broadband service available, subsidized or unsubsidized," and provide Remote Areas Fund support to those price cap areas, until the model becomes available.[11]

4. *Discussion.* We seek to further develop the record on administratively feasible ways to identify areas (both those served by price cap carriers and by rate-of-return carriers) where consumers would be eligible for the Remote Areas Fund.

5. In lieu of using the cost model to define eligible areas, should the Commission use the National Broadband Map to identify unserved census blocks and provide Remote Areas Fund support to those census areas until they become served with broadband that meets the Commission's performance requirements (*i.e.*, speed, capacity, latency) for non-Remote Areas Fund eligible areas?

6. If the Commission chooses to utilize the most current version of the National Broadband Map available at the time it adopts rules for the Remote Areas Fund for the purpose of determining areas eligible for the Remote Areas Fund, should there be a process to contest the classification of areas as unserved or served on the map before Remote Areas funding is provided, and how could that process be implemented in a way to expedite the launch of the Remote Areas Fund? For instance, should the Commission consider any updates to the National Broadband Map gathered in conjunction with Connect America Phase I when finalizing areas eligible for the Remote Areas Fund?[12] Should the Commission implement a process to allow households to self-report if data indicate that certain areas are served, if they contend those areas are unserved?[13]

7. We ask for further comment on other possible data sources that the Commission could use to identify unserved areas. Should the Commission take into consideration the unique characteristics of locations like Alaska or Hawaii in determining areas eligible for Remote Areas funding, and if so, how? To the extent parties advocate use of information other than a cost model or the National Broadband Map to identify remote areas, they should provide specific objective metrics that could be used under such an approach.

8. *Implementing the Remote Areas Fund in Rate-of-Return Areas.* We seek to further develop the record on the suggestion of the National Exchange Carrier Association, Inc. et al. that the Commission take into account the $250 per-line per month cap when identifying areas that are eligible for the Remote Areas Fund.[14] In lieu of relying on a forward-looking cost model, should the Commission

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Data Inputs for Phase II of the Connect America Fund, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 6147, 6168, para. 64 (Wireline Comp. Bur. 2012).

[11] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18094, para. 1230.

[12] We note that the Commission recently sought comment on a challenge process for potential future rounds of Connect America Phase I and directed the Bureau to seek updates and corrections to the National Broadband Map for potential future rounds of Connect America Phase I incremental support. *Connect America Fund*, WC Docket 10-90, Further Notice of Proposed Rulemaking, 27 FCC Rcd 14566, 14570, paras. 15-16 (2012). The Bureau also recently sought comment on a challenge process for purposes of identifying areas eligible for support under the forward-looking cost model in Phase II. *Wireline Competition Bureau Seeks Comment on Procedures Relating to Areas Eligible for Funding and Election to Make a Statewide Commitment in Phase II of the Connect America Fund*, WC Docket 10-90, Public Notice, DA 12-2075 (Wireline Comp. Bur. 2012).

[13] SBP Comments at 4-5.

[14] *See* Initial Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, WC Docket No. 10-90 et al., at 94 (filed Jan. 18, 2012).

identify areas for the Remote Areas Fund based on reported loop cost, such as a rule that all unserved locations in rate-of-return study areas for which the reported loop cost equals or exceeds the 95th percentile for average cost be eligible for Remote Areas Fund support?[15]

9. Alternatively, should the Commission rely on the National Broadband Map to identify rate-of-return census blocks that would be eligible for the Remote Areas Fund, as well as price cap census blocks?

10. We anticipate that rate-of-return carriers would be eligible, as existing eligible telecommunications carriers (ETCs), to seek funding from the Remote Areas Fund and potentially could use alternative technologies, either directly or through resale, to provide broadband to their highest cost customers. To the extent an existing ETC receives funding from the Remote Areas Fund, should any adjustment be made to its receipt of support under other high-cost support mechanisms? Should there be any adjustment to an existing rate-of-return ETC's support if another ETC were to serve some portion of the study area through the Remote Areas Fund?[16]

11. Would the ability to serve customers through the Remote Areas Fund address concerns raised by rate-of-return carriers regarding their ability to meet the current rule requiring the deployment of broadband upon reasonable request?[17]

12. To the extent parties argue that a different method for identifying remote areas should be used in areas served by rate-of-return carriers than in areas served by price cap carriers, they should present specific alternative proposals of how to identify those areas that would be eligible for such funding.

13. *Transition Issues.* If the Commission were to adopt an approach that relied on the National Broadband Map in lieu of a cost threshold in the forward-looking cost model to designate census blocks eligible for Remote Areas funding, the potential eligibility of specific areas would change over time with the ongoing deployment of broadband-capable infrastructure by existing ETCs receiving support under other universal service mechanisms, as well as with expansion by unsubsidized competitors.

14. How should the rules address the transition where an area that is initially classified as unserved, and therefore eligible for Remote Areas Fund support, subsequently becomes served by a terrestrial broadband provider, and how does the answer differ if the Commission chooses to structure the Remote Areas Fund as a one-time payment, as opposed to a monthly subsidy?

15. Would it be a cost-effective use of universal service funds to provide a Remote Areas Fund voucher to a consumer that resides in a location that is expected to receive terrestrial broadband at some point in the future through Connect America Phase I or Phase II? How would a rule identifying all

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[15] Based on the 2012 NECA cost data submission, the 95th percentile for average loop cost is $2,915. *See* National Exchange Carrier Association, Inc., Universal Service Fund Data: NECA Study Results, 2012 Report (filed Sept. 28, 2012), http://www.fcc.gov/wcb/iatd/neca.html.

[16] We note that pursuant to section 214(e)(5) of the Communications Act of 1934, as amended, states determine the study areas of the rural carriers under their jurisdiction. 47 U.S.C. § 214(e)(5). In order to change a rural carrier's study area, the Bureau (pursuant to delegated authority) must reach an agreement with the relevant state commission, or if the state commission petitions the Commission to change a study area, the change will become effective if the Bureau does not initiate a proceeding to consider the petition or otherwise act within 90 days of releasing a public notice seeking comment on the petition. 47 C.F.R. § 54.207(c)-(e). The Commission has sought comment on modifying or forbearing from this process. *See USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18064-66, paras. 1097-1101.

[17] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17740-41, para. 206.

unserved areas as eligible for the Remote Areas Fund, at least until they become served, affect the incentives of existing ETCs to deploy terrestrial broadband? How would it impact carriers' incentives to participate in other universal service programs, such as Connect America Phase II or the Mobility Fund Phase II?

B. Consumer subsidy

16. *Background*. In the *USF/ICC Transformation Order and FNPRM*, the Commission proposed to structure the Remote Areas Fund as a portable consumer subsidy.[18] The consumer subsidy would provide each consumer with a fixed amount that could be used either to cover upfront charges and other fees for service from an ETC of the consumer's choosing in areas eligible for Remote Areas funding, or to receive a monthly discount off the price of service from an ETC of the consumer's choosing in areas eligible for Remote Areas funding.[19] As in the Commission's Lifeline program, which provides a discount on phone service for qualifying low-income consumers, providers would take responsibility for signing up eligible consumers.[20] Also similar to the Lifeline program, the Commission would provide the subsidy directly to providers, and the provider would pass along the subsidy amount to the consumer.[21]

17. *Discussion.* We seek to further develop the record on implementation details regarding how a portable consumer subsidy should be structured, how the amount of the portable consumer subsidy would be set, what restrictions, if any, should be placed on the service contracts that are supported by this subsidy, and how such a program could be designed to stay within a $100 million annual budget. We also seek to further develop the record on the relative advantages and disadvantages of structuring the Remote Areas Fund as a one-time subsidy or a monthly retail subsidy.

1. One-time subsidy

18. We seek to further develop the record on setting the subsidy amount for a one-time payment. Satellite and fixed wireless broadband services typically include a combination of upfront and monthly set-up and equipment fees.[22] We note that in its satellite program, RUS awarded Hughes Network Systems (Hughes) a grant of $58,777,306 and Wildblue Communications (Wildblue) a grant of $19,533,444.[23] Based on RUS' estimates of the number of subscribers that would benefit from these grants, Hughes received an award of approximately $227 per subscriber and Wildblue received an award of approximately $177 per subscriber.[24] Would $200 in one-time support per location be an appropriate amount for the Remote Areas Fund one-time subsidy, or should it be higher or lower? How should the Commission account for the fact that in some locations, installation and other upfront costs may be significantly higher (*e.g.*, due to the extreme remoteness of a location or obstacles that may make it

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[18] *Id.* at 18093, para. 1225.

[19] *Id.* at 18102, paras. 1267-71. The Commission proposed to use one-time support until the forward-looking cost model was completed. *Id*. at 18094-95, para. 1232.

[20] *See, e.g.*, 47 C.F.R. § 54.410; *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18108, para. 1291.

[21] *See, e.g.,* 47 C.F.R. § 54.403(b); *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18099, para. 1252.

[22] Providers also often offer time-limited discounts on their fees and charges.

[23] Press Release, Rural Utilities Service, *Satellite Awards, Broadband Initiatives Program* (Oct. 20, 2010), *available at* http://www.rurdev.usda.gov/supportdocuments/BIPSatelliteFactSheet10-20-10.pdf. In 2011, EchoStar Corporation acquired Hughes. Press Release, EchoStar Corporation, *EchoStar Completes Hughes Acquisition* (June 8, 2011), *available at* http://www.echostar.com/NewsEvents/Press%20Releases/PressRelease.aspx?prid=%7bBD8B9364-C9D6-49B7-8648-EE51AC596E93%7d.

[24] *Id.*

difficult for a signal to reach the location)?[25] We encourage commenters to suggest specific dollar amounts and provide specific factual information in support of their assertions.

19. How would adoption of a consumer voucher structured as a one-time payment impact providers' existing practices regarding the amortization of installation costs through monthly rates?[26] Would this approach avoid distorting providers' business decisions regarding the relative amounts of upfront and monthly fees charged to the retail consumer? Would this approach present any unique administrative challenges?

20. Should the Commission set forth pricing and performance requirements that would apply over a minimum period of time to ensure ongoing and acceptable service to the consumer, as a condition of receiving a one-time payment?[27] We note that RUS' BIP program for satellite took such an approach, setting pricing restrictions on basic service packages, prohibiting carriers from requiring customers to enter into extended contracts (subject to certain exceptions), and requiring carriers to offer customer premise equipment at no cost for all their service packages.[28] Would a similar approach be appropriate for the Remote Areas Fund? Should a condition of receiving the one-time payment be that the Remote Areas Fund-supported providers offer voice service at a rate not to exceed the Commission's prior reasonable comparability benchmark for voice service for non-rural carriers, *i.e.*, \$36.52?[29] What would be an appropriate amount of time for such pricing and performance requirements?

21. How would structuring the consumer subsidy as a one-time payment affect the nature of competition among potential providers to serve the consumer? Should the Commission adopt any restrictions on the ability of consumers to obtain a new one-time subsidy if they switch providers after some amount of time? Would it be wasteful for the Remote Areas Fund to subsidize the cost of installing a satellite dish or fixed wireless receiver on a home if the consumer previously has used a Remote Areas Fund voucher to install equipment from another provider? What types of reporting or other requirements might the Commission impose to protect against waste, fraud and abuse? For example, in the Lifeline program, consumers must certify that they will notify their service providers within 30 days if they move to a new address.[30] What kinds of burdens might this requirement impose on service providers, and particularly on small businesses?

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[25] We note that Spacenet, Inc. received a grant of \$7,530,000 from the Broadband Initiatives Program (BIP) satellite program to serve Alaska and Hawaii, which based on RUS' estimates, would be approximately \$600 per subscriber—far more than the \$227 per subscriber awarded to Hughes and the \$177 per subscriber awarded to Wildblue to provide service in the Lower 48 states. *Id.*

[26] SBP Comments at 9.

[27] *See infra* paras. 47-51.

[28] Broadband Initiatives Program, Request for Proposals, 75 Fed. Reg. 25185, 25187 (May 7, 2010) (requiring awardees to offer customer premises equipment at no cost for all packages they offer (which included "no installation, activation, or other fees") and a basic broadband service package – defined as 768 kbps downstream – at a rate "no higher than \$50 per month for at least one year with no length of service requirements," subject to the exception where an awardee offered a basic service package of less than \$40 per month, in which a one-year contract requirement could be imposed as long as there was an unconditional 30-day cancellation cause included in the contract).

[29] WIRELINE COMPETITION BUREAU, REFERENCE BOOK OF RATES, PRICE INDICES, AND HOUSEHOLD EXPENDITURES FOR TELEPHONE SERVICE, Table 1.13 (2008), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284934A1.pdf (*WCB Reference Book of Rates*).

[30] 47 C.F.R. § 54.410(d).

2. Monthly retail subsidy

22. In the *USF/ICC Transformation Order and FNPRM*, the Commission also sought comment on various issues relating to structuring the portable consumer subsidy as "a monthly amount equal to the difference between the retail price of a 'basic' satellite voice-broadband service and an appropriate reference price for reasonably comparable service in urban areas."[31] We seek to further develop the record on what specific figure should be used as the urban reference price, pending implementation of the urban rate survey,[32] if the Commission were to implement a monthly subsidy.

23. We note that the Commission's prior reasonable comparability benchmark for voice service for non-rural carriers was $36.52.[33] On an interim basis, would it be reasonable to set the urban reference price for voice at $37 for purposes of the Remote Areas Fund? We also note that several large fixed terrestrial providers offer broadband at speeds close to the Commission's 4 Mbps downstream/1 Mbps upstream benchmark at prices ranging from $45 to $49.95 per month.[34] Would setting an urban reference price for broadband at a somewhat higher level, such as $60, be a reasonable interim approach for the Remote Areas Fund?[35] Should that figure be lower or higher?

24. We also seek further comment on what should be considered "basic" satellite voice-broadband service for the purposes of setting the monthly consumer subsidy amount. Satellite broadband providers offer a variety of service tiers with different usage limits at different prices, with the lowest price offerings currently in the $50 range.[36] Should the Commission deem the lowest price offering to be a "basic" broadband offering, and therefore focus on the $50 plan in setting the satellite reference rate? Should consumers be able to use their monthly voucher to purchase services above the basic offering?

25. How, if at all, should the Commission take into account the costs of installation and other upfront costs as part of a monthly retail subsidy? For instance, should the representative retail rate

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[31] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18102, para. 1267.

[32] The Bureau has sought comment on an urban rate survey instrument to gather data relating to fixed voice and fixed broadband prices in the urban areas. *Wireline Competition Bureau Seeks Comment on Proposed Urban Rates Survey and Issues Relating to Reasonable Comparability Benchmarks and the Local Rate Floor*, WC Docket No. 10-90, Public Notice, 27 FCC Rcd 8332 (Wireline Comp. Bur. 2012) (*Rate Survey PN*); *see also USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17708-09, para. 114. The annual rate survey will be used to develop reasonable comparability benchmarks for voice and broadband rates, which carriers will be required to certify each year that their rates do not exceed.

[33] *WCB Reference Book of Rates* at Table 1.13.

[34] According to a report on international broadband prices, AT&T was offering a 6 Mbps downstream/768 kbps upstream DSL service in San Francisco for $48 per month, Comcast was offering a 6 Mbps downstream/1 Mbps upstream service in the Washington, D.C. area for $49.95, CenturyLink was offering a 7 Mbps downstream/896 kbps upstream service in Denver for $45, and Windstream was offering a 6 Mbps downstream service for $44.99. *See* Third International Broadband Data Report at Appendix B, *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-12-1334A3.xls.

[35] We note that in the voice context, the Commission has presumed that a rate is reasonably comparable if it falls within two standard deviations of the national average. The reasonable comparability benchmark for voice was $36.52, nearly $10 above the average urban voice rate of $25.62. *WCB Reference Book of Rates* at I-2.

[36] *See, e.g.,* Exede Internet, Packages and Pricing, http://www.exede.com/internet-packages-pricing (last visited Jan. 16, 2012) (Exede Pricing Website); HughesNet Gen4, Plans and Promotions, http://www.hughesnet.com/index.cfm?page=Plans-Pricing (last visited Jan. 16, 2012) (Hughes' lowest tier Gen4 plan is usually priced at $59.99 per month, but is currently being offered at $39.99 per month for new customers through March 2013).

be determined by adding together the monthly service amount plus any upfront fees, amortized over a two-year period?[37]

26. Satellite broadband service rates provide a useful framework for setting the portable consumer subsidy amount because they are generally uniform nationwide. However, we acknowledge that terrestrial wireless or wireline service providers may be viable providers for certain remote areas and may choose to participate in the Remote Areas Fund. Given that these service providers can charge rates that vary by geography, we seek comment on whether, and if so, how to account for these varying rates when setting the rate that will be compared to reasonably comparable services in urban areas.

27. How, if at all, should the usage amounts associated with wireless broadband services in urban areas be factored into such an adjustment?

3. Applying the subsidy to consumer bill

28. Regardless of whether the Commission structures the Remote Areas Fund as a one-time or monthly subsidy, we seek further comment on measures to ensure the consumer receives the full benefit of the subsidy.

29. To discourage service providers from raising their rates in response to the availability of a consumer subsidy, the Commission sought comment in the *USF/ICC Transformation Order and FNPRM* on requiring "each ETC to establish an 'anchor price' for its basic service offering—including installation and equipment charges—as a condition of eligibility to receive Remote Areas Fund support."[38] Should the Remote Areas Fund-supported provider be required to apply the discount to the provider's best available rates, including any discounts or promotions, at the time the consumer subscribes to the service? How could the Commission structure this requirement to prevent service providers from capturing the subsidy and not passing it on to the consumer? How could it be structured so that it could be audited to verify that providers are in fact providing consumers their best available rates?

4. Restrictions on extended contracts

30. As the Commission noted in the *FNPRM*, certain satellite providers require that consumers enter into 24-month contracts when they subscribe to their services.[39] We seek to further develop the record on issues relating to the use of extended contracts by Remote Areas Fund-supported providers.

31. If Remote Areas Fund-supported providers are permitted to enter into extended contracts with consumers receiving Remote Areas Fund subsidies, should the maximum permitted contract term be 24 months? We note that in implementing its satellite broadband program, RUS only permitted awardees to enter into one-year contracts in certain circumstances.[40] Does the answer depend

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[37] Using such an approach would result in a $64.58 monthly average satellite retail rate, if calculated based on ViaSat's current pricing of a $50 per month rate for service plus a $149.99 account set-up fee plus a $199.99 prepaid equipment lease. *See* Exede Pricing Website. For illustrative purposes, if the urban reference price were set at $60 for broadband service, this would result in a monthly subsidy of $4.58.

[38] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18099, para. 1253. *See* Comments of the National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, the New Jersey Division of Rate Counsel, and the Utility Reform Network, WC Docket No. 10-90 et al., at 95 (filed Jan. 18, 2012) ("[I]t is essential that any mechanism prevent the ETC from *increasing* its price as a direct result of the [Remote Areas Fund] support").

[39] *USF/ICC Transformation Order and FNPRM,* 26 FCC Rcd at 18103, para. 1273.

[40] *See supra* note 28 and accompanying text.

on whether the Commission structures the Remote Areas Fund as a one-time payment or a monthly subsidy? If the Commission provides portable consumer subsidies for extended contracts, how should it handle early termination fees?

C. Consumer eligibility for the Remote Areas Fund

32. *Background.* The Commission sought comment on limiting Remote Areas Fund support to a single subsidy per household or residence, stating that "[a] single fixed broadband connection should be sufficient for a single residence/household."[41]

33. For purposes of imposing a one Remote Areas Fund subsidy per household restriction, the Commission proposed to adopt the definition of the terms "household" or "residence" for the Remote Areas Fund as ultimately adopted by the Commission for the Lifeline and Linkup program.[42] Subsequent to the *FNPRM*, the Commission adopted a definition for "household" in the context of the Lifeline program to mean "any individual or group of individuals who are living together at the same address as one economic unit," and economic unit as "all adult individuals contributing to and sharing in the income and expenses of a household."[43]

34. We seek further comment on limiting consumers to one Remote Areas Fund subsidy per household and other measures to ensure that the available funds are used in a fiscally responsible manner.

35. *Discussion.* Should the Commission adopt the same definition for household for purposes of the Remote Areas Fund as it did for Lifeline and associated implementing regulations?

36. Should the Commission require consumer self-certifications that they do not have terrestrial broadband available at their home meeting defined requirements (*i.e.*, for capacity, latency, usage, and price) as a precondition to receiving the Remote Areas Fund consumer subsidy? Are there any other specific mechanisms the Commission should adopt to ensure that Remote Areas funding does not go to consumers that already have terrestrial broadband that meets the Commission's requirements?

37. Should consumers be required to self-certify that they are using Remote Areas Fund support at their primary address? If consumers are found to be making false self-certifications, should the Commission impose penalties for such false statements and misrepresentations?

38. If the Commission did require primary address self-certifications, would it be reasonable to employ Lifeline requirements (*e.g.*, 30-day moving notifications, a prohibition on P.O. box addresses, and a requirement that applicants provide both a primary address and billing address) to

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[41] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18100, para. 1256. Commenters generally agreed with this proposal. *See* Comments Submitted on Behalf of the Ohio Public Utilities Commission, WC Docket No. 10-90 et al., at 11 (filed Jan. 18, 2012); WISPA Comments at 9; *but see* Comments of General Communication, Inc., WC Docket No. 10-90 et al., at 23-25 (filed Jan. 18, 2012).

[42] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18100, para. 1257. At the time the *USF/ICC Transformation Order and FNPRM* was released, the Commission was seeking comment on reforms to the Lifeline and Link Up programs. *See Lifeline and Link Up Reform and Modernization*, *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011).

[43] 47 C.F.R. § 54.400(h) (defining an adult as "any person eighteen years or older," and stating that "[i]f an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.").

impose the primary address restriction?[44] How should the Commission account for certain groups like seasonal workers that may make frequent moves between residences?

39. If the Commission requires consumers to submit a certification pursuant to a one Remote Areas Fund subsidy per household or primary address restriction, should the service provider be responsible for collecting and verifying the certification? We note that USAC is in the process of developing a database to verify that households do not receive more than one Lifeline subsidy.[45] Should USAC also develop a database of Remote Areas Fund-eligible households with associated addresses, and could the Lifeline database be expanded for this purpose in a cost-effective way? What steps, if any, should USAC or ETCs take to verify self-certifications in the interim while the database would be developed? We also seek comment on whether the costs to ETCs or the Administrator of verifying certifications against such a database or other data source would outweigh any potential savings associated with restricting Remote Areas Fund support to one-per-household and/or primary addresses.

40. If a database is employed, should ETCs be required to collect the data for the database from their customers?[46] How can the Commission ensure that data that are submitted to the database by ETCs are uniform? As an alternative to creating a database or utilizing an expanded version of USAC's Lifeline database, are there other types of tools or data sources that USAC or ETCs could rely on to verify consumers' addresses?

D. Designing the Remote Areas Fund within a set budget

41. *Background.* In the *USF/ICC Transformation Order and FNPRM*, the Commission stated the annual budget for the Remote Areas Fund will be "at least $100 million annually,"[47] and it set the total budget for Connect America at "no more than $4.5 billion over the next six years."[48] The Commission also questioned what it should do if "support expenditures begin to approach the budgeted amount . . . ."[49] The Commission proposed possibly providing support on a "'first come, first served' basis,"[50] or otherwise limiting eligibility criteria.[51] The Commission also sought comment on "what the Commission should do if requests for reimbursement from the Remote Areas Fund are lower than the budget."[52]

42. *Discussion.* Recognizing that the answer depends on the level of subsidy provided, what would be the financial impact of making *all* census blocks shown as unserved on the National Broadband Map eligible for Remote Areas Fund support, until deployment occurs in those areas, whether through support from universal service or through market forces? How likely is it that the Commission

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[44] *Lifeline and Link Up Reform and Modernization*, *Federal-State Joint Board on Universal Service, Lifeline and Link Up*, *Advancing Broadband Through Digital Literacy Training*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6695-96, paras. 85, 87 (2012) (*Lifeline Report and Order*).

[45] *Id.* at 6734-55, paras. 179-225.

[46] *See id.* at 6737, para. 189.

[47] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17838, para. 534.

[48] *Id.* at 17672, para. 18.

[49] *Id.* at 18103, para. 1274.

[50] *Id.*

[51] *Id.*

[52] *Id.* at 18103, para. 1275.

would need to limit the number of locations in remote areas that will be eligible for support to stay within a defined budget? If so, what criteria should the Commission use to determine which remote areas will receive support and which will not? If the demand for the Remote Areas Fund were to exceed a defined $100 million annual budget, should the Commission reevaluate and set a higher budget for the following year, or should the Commission adopt a $100 million hard cap in interest of promoting fiscal responsibility and controlling the overall size of the universal service budget?[53]

E. Service providers eligible to receive support from the Remote Areas Fund

43. *Background.* In the *USF/ICC Transformation Order and FNPRM,* the Commission stated that it sought "to encourage maximum participation of providers able to serve these most difficult to reach areas."[54] In the *FNPRM*, the Commission proposed to require providers to obtain ETC designation in order to receive support from the Remote Areas Fund.[55] The Commission sought comment on various issues relating to the ETC designation process to identify ways to expand the number of participants in the Remote Areas Fund.[56]

44. In this section, we seek to further develop the record on issues relating to ETC participation in the program, both for providers that have not yet been designated as ETCs and for existing ETCs.[57]

45. *Discussion.* Should the Commission impose requirements to standardize the required showings to be designated an ETC to participate in the Remote Areas Fund, the procedural aspects of the ETC application process, the time states take to review ETC applications, the criteria states use to evaluate ETC applications, and the obligations that states place on ETCs? If so, what specific requirements should be adopted? The National Cable & Telecommunications Association proposes that ETC applications be deemed granted within 30 days of filing; would a more reasonable time frame for such a requirement be 60 or 90 days?[58]

46. ETCs that receive Remote Areas Fund support will be required to provide voice service.[59] We seek to update the record on the quality of the voice service that satellite providers and wireless Internet Service Providers (WISPs) are able to offer today, and over the next twelve months. We note that nothing in the Commission's existing regulations would preclude incumbent voice providers that have already received an ETC designation and who wish to resell satellite broadband services or other wireless broadband services from receiving Remote Areas funding, assuming such services meet specified performance requirements. What is the likelihood that satellite providers and WISPs would

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[53] *Id.* at 17670, para. 11.

[54] *Id.* at 17839, para. 537.

[55] *Id.* at 18095, para. 1234.

[56] *Id.* at 18095, para. 1235.

[57] *See* 47 U.S.C. §§ 214(e), 254. We note that existing ETCs will be eligible to participate in the Remote Areas Fund, and some of these ETCs may choose to partner with other providers to serve their highest cost consumers with alternative technologies.

[58] Letter from Steven F. Morris and Jennifer K. McKee, National Cable & Telecommunications Association to Marlene H. Dortch, Federal Communications Commission, WC Docket 10-90 et al. at 4 (filed Oct. 21, 2011) (NCTA Oct. 21, 2011 Ex Parte).

[59] 47 U.S.C. § 214(e)(1)(A) (requiring that ETCs "offer the services that are supported by Federal universal service support mechanisms . . . ."); 47 C.F.R. § 54.101(b) (requiring ETCs to offer "voice telephony"). *See USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17672, para. 17 (stating that one of the Commission's goals for universal service is to "preserve and advance universal availability of voice service . . .").

enter partnerships with traditional voice providers, *i.e.*, incumbent telephone companies, to fulfill voice obligations in areas eligible for Remote Areas funding?[60]

F. Performance requirements for Remote Areas Fund-supported service providers

47. *Background.* The Commission proposed in the *USF/ICC Transformation Order and FNPRM* to require ETCs to offer service "of sufficiently low latency to enable use of real-time applications, including VoIP,"[61] and at a capacity that is "reasonably comparable to usage limits for comparable residential broadband offerings in urban areas."[62] The Commission also sought comment on whether it should "modestly relax" the Connect America performance requirements for Remote Areas funding,[63] in order to "tailor broadband performance requirements to the economic and technical characteristics of networks likely to exist in . . . remote areas."[64]

48. We seek to further develop the record on the Commission's performance requirement proposals.

49. *Discussion.* The International Telecommunication Union has noted that while latency delays above 400 milliseconds are unacceptable for network planning, latency up to 300 milliseconds provides acceptable voice quality for most users with an increasing number of users becoming dissatisfied if latency exceeds 300 milliseconds.[65] Based on this information, we seek comment on an appropriate latency standard for the Remote Areas Fund. How should the Commission address the increased latency experienced during double hop calls?

50. We also seek to further develop the record on setting required usage allowances for providers participating in the Remote Areas Fund.[66] We have not yet established minimum usage requirements that will apply to price cap carriers that elect to make a statewide commitment to serve areas in Phase II. Given the Commission's recognition that it may be appropriate to "modestly relax" performance requirements in areas supported by the Remote Areas Fund, what downward adjustments would represent an appropriate balancing of the "economic and technical characteristics of networks" likely to serve the most remote areas?[67]

51. We note that according to one source, during the second half of 2012, the median monthly data consumption for fixed services in North America was 16.8 GB per subscriber.[68] And

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[60] *See, e.g.*, NCTA Oct. 21, 2011 Ex Parte at 2.

[61] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18097, para. 1242.

[62] *Id.* at 18097, paras. 1243-44.

[63] *Id.* at 18096, para. 1240. *See also id.* at 17695-700, paras. 86-101 (describing broadband performance requirements for other Connect America recipients.)

[64] *Id.* at 18096, para. 1240.

[65] International Telecommunication Union Telecommunication Standardization Sector, Recommendation G.114, One-Way Transmission Time at 2- 3 (May 2003), available at http://www.itu.int/rec/T-REC-G.114-200305-I/en.

[66] As noted above, the Bureau has sought comment on an urban rate survey instrument to gather data relating to fixed voice and fixed broadband prices and usage limits, if any, in the urban areas, but that data will likely not yet be available at the time the Commission implements the Remote Areas Fund. *See Rate Survey PN; see also USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17708-09, para. 114. The annual rate survey will be used to develop reasonable comparability benchmarks for voice and broadband rates, which carriers will be required to certify each year that their rates do not exceed.

[67] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18096, para. 1240.

[68] SANDVINE INTELLIGENT BROADBAND NETWORKS, GLOBAL INTERNET PHENOMENA REPORT, 6 (2H 2012),

(continued…)

according to recent Commission speed testing data, 75 percent of surveyed DSL subscribers in April 2012 used less than 20 GB per month.[69] Given this historical data and industry forecasts for future usage, what usage allowance should be a required minimum for providers participating in the Remote Areas Fund? Would 20 GB be an appropriate usage allowance requirement for the Remote Areas Fund, at least in its initial implementation? Should the Commission periodically adjust the Remote Areas Fund usage allowance requirement to reflect consumer behavior, and if so, how often?

G. Accountability and oversight

52. *Background*. All Connect America recipients are required to fulfill certain reporting requirements as defined in section 54.313.[70] These requirements include submitting an annual report in which a carrier must submit, among other information and certifications, a five-year build-out plan, results of speed and latency tests, as well as certifications relating to capacity and prices.[71] Additional reporting requirements vary based on the type of provider at issue (*e.g.*, price cap carrier, rate-of-return carrier) and the type of universal service support they receive.[72] The Commission's rules specify that Connect America support recipients that fail to submit the required information by the July 1st deadline will have their support reduced accordingly.[73]

53. To aid in the Commission's oversight of Connect America funds, support recipients are subject to USAC audits and investigations.[74] Recipients must also retain for ten years all records that are required to demonstrate that the support they received was consistent with universal service rules.[75]

54. In the *USF/ICC Transformation Order*, the Commission proposed requiring Remote Areas Fund recipients to comply with generally the same reporting, audit, and record retention requirements that also apply to other recipients of Connect America support.[76]

55. We seek to further develop the record on the types of information that Remote Areas Fund-supported providers should be required to report to the Commission.

56. *Discussion.* Should any of the section 54.313 reporting requirements not apply or be tailored for Remote Areas Fund recipients? For example, is the requirement that ETCs report detailed information about outages,[77] and the number of complaints they receive per 1,000 connections,[78]

(Continued from previous page)
http://www.sandvine.com/downloads/documents/Phenomena_2H_2012/Sandvine_Global_Internet_Phenomena_Report_2H_2012.pdf.

[69] FEDERAL COMMUNICATIONS COMMISSION, OFFICE OF ENGINEERING AND TECHNOLOGY AND CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU, 2012 MEASURING BROADBAND AMERICA 45 (July 2012), http://transition.fcc.gov/cgb/measuringbroadbandreport/2012/Measuring-Broadband-America.pdf.

[70] 47 C.F.R. § 54.313.

[71] *See* 47 C.F.R. § 54.313(a); *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17852-54, paras. 579-87.

[72] *See* 47 C.F.R. § 54.313(b)-(h).

[73] 47 C.F.R. § 54.313(j).

[74] 47 C.F.R. § 54.320(a); *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17864-66, paras. 622-29.

[75] 47 C.F.R. § 54.320(b); *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17864, para. 621.

[76] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18108, para. 1292.

[77] 47 C.F.R. § 54.313(a)(2).

[78] 47 C.F.R. § 54.313(a)(4).

reasonable for Remote Areas Fund-supported participants? Is there a need to require a five-year build-out plan in a situation where the subsidy is structured as a consumer subsidy, rather than a supply-side subsidy for deployment?[79] While recognizing there are fundamental differences between the Lifeline program and Connect America high-cost programs, are there lessons that the Commission could learn from Lifeline's administration of consumer subsidies?[80] What measures would the Commission need to put in place to ensure that subsidies are not flowing to consumers that are already served by terrestrial broadband meeting the Commission's broadband speed benchmark? What specific kinds of documents should Remote Areas Fund participants be required to retain in order to facilitate USAC's audits and investigations of funding recipients? Should Remote Areas Fund participants be required to maintain date stamped screen shots of website advertisements and/or other documentary evidence of pricing, including both published and unpublished rates available upon request, to facilitate the ability of auditors to ensure that consumers have the benefit of best available rates?

III. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

57. The *USF/ICC Transformation Order and FNPRM* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission's proposal.[81] We invite parties to file comments on the IRFA in light of this additional notice.

B. Filing Requirements

58. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments are to reference **WC Docket Nos. 10-90 and DA 13-69** and may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://fjallfoss.fcc.gov/ecfs2/.

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

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[79] 47 C.F.R. § 54.313(a)(1).

[80] *See, e.g.*, *Lifeline Report and Order*, 27 FCC Rcd at 6816, para. 379 (requiring carriers that do not offer supported services over their own facilities to file a compliance plan with the Commission that, among other requirements, identifies "the procedures the ETC follows in enrolling a subscriber in Lifeline and submitting for reimbursement for that subscriber from the Fund," along with "a detailed description of how the carrier offers service, the geographic areas in which it offers service, and a description of the carrier's various Lifeline service plan offerings, including subscriber rates, number of minutes included and types of plans available").

[81] *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 18364-95, App. P; *see* 76 Fed. Reg. 78384, 78430-42 (2011).

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

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

In addition, we request that one copy of each pleading be sent to each of the following:

(1) Ted Burmeister, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A445, Washington, D.C. 20554; e-mail: Theodore.Burmeister@fcc.gov;

(2) Heidi Lankau, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-B511, Washington, D.C. 20554; e-mail: Heidi.Lankau@fcc.gov;

(3) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-A452, Washington, D.C. 20554; e-mail: Charles.Tyler@fcc.gov.

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

60. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[82] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

61. For further information, please contact Ted Burmeister, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-7389, or Heidi Lankau, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-2876; or at TTY (202) 418-0484.

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[82] 47 C.F.R. §§ 1.1200 *et seq.*