

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)

REPORT AND ORDER

Adopted: May 21, 2013

Released: May 22, 2013

By the Commission: Acting Chairwoman Clyburn and Commissioner Pai issuing separate statements.

I. INTRODUCTION

1. On November 18, 2011, the Commission released the *USF/ICC Transformation Order*, which comprehensively reformed and modernized the high-cost universal service and intercarrier compensation systems.¹ Recognizing, among other facts, that over 80 percent of the more than 18 million Americans who were unserved by broadband at that time lived in price cap territories, the Commission provided for two phases of funding to make broadband-capable networks available to as many unserved locations as possible in those areas.² In Connect America Phase I, the Commission froze existing high-cost support for price cap carriers and provided up to \$300 million of additional, incremental support in 2012 in order to advance deployment of broadband-capable infrastructure pending implementation of Phase II subject to strict accountability and efficiency measures.³ Approximately \$115 million was accepted, which will deliver new broadband service to nearly 400,000 unserved Americans.⁴

2. We now provide for a second round of Connect America Phase I incremental funding in 2013 to further leverage private investment in rural America and accelerate the availability of broadband to consumers who lack access. We allocate \$300 million for this second round.⁵ Price cap carriers will be able to accept support to extend broadband-capable networks under the rules for the first round of Phase I. In addition, they will have an opportunity to deploy into newly eligible areas

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*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

² See *USF/ICC Transformation Order*, 26 FCC Rcd at 17673, para. 21. This 18 million unserved were as of the release of the *USF/ICC Transformation Order* in 2011. According to most recent available State Broadband Initiative data, there were approximately 15 million Americans unserved by fixed broadband with speeds of 3 Mbps downstream and 768 kbps upstream speed as of June 2012.

³ See *id.* at 17715-17, paras. 133-38.

⁴ See Press Release, FCC, FCC Releases New, Interactive Map Illustrating States Set to Receive “Connect America Fund” Support to Bring 400,000 Americans High-Speed Broadband (July 26, 2012).

⁵ As discussed below, in the event demand exceeds \$300 million, we authorize up to an additional \$185 million in funding.

that are unserved by broadband, so long as they comply with additional requirements discussed below. We also adopt a process to challenge the eligibility of particular census blocks, establish two different per-location support amounts based on the existing level of Internet access (\$550 for homes with low-speed Internet access and \$775, as in the first round, for homes with only dial-up access), and make certain other rule changes to encourage participation and ensure accountability and oversight. Especially in light of several major carriers' commitments to match new Connect America funding with an equal new investment of private capital,⁶ the additional funding we make available has the potential to expand broadband access to hundreds of thousands of additional, currently unserved Americans. We expect this to be the last round of Phase I funding, given the significant progress to date on Phase II implementation.

II. BACKGROUND

3. In the *USF/ICC Transformation Order*, the Commission adopted a framework for the Connect America Fund to provide support in the territories of price cap carriers and their rate-of-return affiliates based on a combination of a forward-looking cost model and competitive bidding.⁷ The Commission recognized, however, that developing a new cost model and bidding mechanism could be expected to take some time.⁸ To support the expansion of broadband-capable networks even as those mechanisms were being developed, the Commission established Connect America Phase I to transition support from the old high-cost support mechanisms for price cap carriers to the new Connect America Phase II mechanism. In Phase I, the Commission provided up to \$300 million annually in incremental support to promote new broadband deployment until Phase II could be implemented.⁹ The Commission concluded that to the extent incremental support was declined, the funding would be used in other ways to advance the Commission's broadband objectives consistent with its statutory authority.¹⁰

4. Participation in the Connect America Phase I incremental support program is optional. Under the Commission's rules for the first round of Phase I, carriers that participated were required to deploy broadband-capable infrastructure within three years to a number of locations, currently unserved by fixed, terrestrial Internet access with minimum speeds of 768 kbps downstream and 200 kbps upstream (768 kbps/200 kbps), equal to the amount of incremental support the carrier accepted divided by \$775.¹¹ For the first round of Phase I incremental support, the \$300 million available was allocated among price cap carriers using a formula to estimate wire center costs based on the prior high-cost proxy model.¹² Price cap carriers were required to declare how much of their allocated support they planned to accept and to identify the locations to which they would deploy broadband-capable infrastructure in order to meet their deployment obligations.¹³ On July 24, 2012,

⁶ See Letter from Glen F. Post, CEO and President, CenturyLink et al. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 19, 2013).

⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd 17729-33, paras. 171-79.

⁸ See *id.* at 17715, para. 132.

⁹ See *id.* at 17715, para. 133.

¹⁰ See *id.* at 17717, para. 138.

¹¹ See *id.* at 17715, para. 133.

¹² See *id.*; see also *Wireline Competition Bureau Announces Support Amounts for Connect America Fund Phase One Incremental Support*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 4203 (Wireline Comp. Bur. 2012) (*Phase I Support Announcement PN*).

¹³ See *Phase I Support Announcement PN*, 27 FCC Rcd at 4206, para. 10.

price cap carriers accepted nearly \$115 million of Phase I incremental support for 2012, committing to bringing broadband to over 145,000 locations that previously had no access to even a minimal level of high-speed Internet access service, and little prospect of receiving service meeting our broadband standard within the next three years.

5. The *USF/ICC Transformation Order* specified that further rounds of Phase I incremental support would become available in subsequent years, as necessary, until Phase II is implemented.¹⁴ The Commission directed the Wireline Competition Bureau (Bureau) to announce the next round of Phase I incremental support by December 15 for the subsequent year, and provided the Bureau with discretion to provide partial funding for a year to take into account potential implementation of Phase II midway through a calendar year.

6. In the *Phase I FNPRM*, the Commission waived the December 15, 2012 deadline for the Bureau to announce the next round of Phase I incremental support.¹⁵ It proposed using the remaining funds from the first round of Phase I in the second round of Phase I support.¹⁶ The Commission also proposed various rule changes to be implemented for the second round of Phase I support. These changes would encourage carriers to accept allocated Phase I support in order to spur broadband deployment. Among other things, the Commission proposed expanding those areas eligible to satisfy a carrier's Phase I obligations: while previously a location had to lack any form of Internet access (i.e. lacking service meeting at least a minimal speed threshold of 768 kbps/200 kbps), the Commission proposed expanding this to encompass additional locations with sub-standard Internet access.¹⁷ The Commission also sought comment on conducting a challenge process, whereby parties could present evidence challenging the designation of a census block as served or unserved.¹⁸ Additionally, the Commission sought comment on two changes that would apply to both the 2012 round of Phase I as well as any future rounds: first, whether Phase I recipients should be required to report the geocoded coordinates of the locations to which they ultimately deploy in order to satisfy their Phase I obligations,¹⁹ and second, whether Phase I elections should be afforded confidentiality.²⁰

III. DISCUSSION

7. *Overview.* In this Order, the Commission provides for a second round of Phase I funding to occur in 2013 and revises the rules for Phase I going forward.²¹ We allocate a maximum of \$300 million for this second round of Phase I incremental support. Price cap carriers will be allocated funds through the same system used in the first round of Phase I. However, carriers will have the option to accept above their allocated support, so as to have an opportunity to receive

¹⁴ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17722, para. 148.

¹⁵ *Connect America Fund*, WC Docket No. 10-90, Further Notice of Proposed Rulemaking, 27 FCC Rcd 14566, 14576, para. 39 (2012) (*Phase I FNPRM*).

¹⁶ *Id.* at 14568, 14574-76, paras. 9, 36-38. Throughout this Order, the term "Phase I support" means Phase I incremental support unless expressly stated otherwise.

¹⁷ *Id.* at 14569, paras. 10-12.

¹⁸ *Id.* at 14569-70, paras. 13-16.

¹⁹ *Id.* at 14577-78, paras. 46-47.

²⁰ *Id.* at 14578, para. 48.

²¹ Unless otherwise noted in the text, the modifications discussed in this Report and Order apply only prospectively. These changes do not affect the obligations carriers have already made following the acceptance of Phase I incremental support in 2012.

additional funding if other carriers decline the support. Additionally, Phase I eligibility is expanded to any location currently unserved by Internet service with speeds of 3 Mbps downstream and 768 kbps upstream (3 Mbps/768 kbps) or higher, though a lower dollar amount of support is provided for locations that already have some level of Internet access. We adopt a process for challenges to the eligibility of specific areas where price cap carriers propose to extend broadband-capable infrastructure. We require information regarding Phase I elections to be public and for carriers to provide geocoded location information when making certifications regarding their buildout to facilitate the Commission's oversight.

8. *Second Round of Connect America Phase I.* While the Bureau has made significant progress in implementing Phase II of Connect America,²² we conclude that a second round of Phase I is an appropriate way to promote the rapid and efficient expansion of broadband-capable infrastructure to serve consumers lacking broadband that meets the Commission's definition. We therefore instruct the Bureau to provide a new round of Connect America Phase I incremental support for 2013.

9. The budget for the new round of Phase I is set at \$300 million. The Commission previously set the budget for an additional round of Phase I support in 2013 at \$300 million and provided the Bureau discretion to pro rate that amount if Phase II was implemented during 2013.²³ We now conclude that \$300 million would be an appropriate amount for a second round of Phase I incremental support to be provided in 2013, given the remaining funding from 2012 and the progress of Phase II implementation. A \$300 million budget should provide a reasonable amount to accommodate potential demand for funding that leverages private investment to accelerate deployment of broadband-capable infrastructure to consumers who can quickly be served in the near-

²² The Bureau recently released an order resolving the key network and engineering assumptions for the Connect America model and has solicited public input on more than 20 topics in a virtual workshop. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, DA 13-807 (Wireline Comp. Bur. Apr. 22, 2013); *Wireline Competition Bureau Announces Connect America Phase II Cost Model Workshop*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 9882 (Wireline Comp. Bur. 2012); *Wireline Competition Bureau Announces Connect America Phase II Cost Model Virtual Workshop*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 11056 (Wireline Comp. Bur. 2012); *Wireline Competition Bureau Releases Additional Discussion Topics for Connect America Phase II Cost Model Virtual Workshop*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 13212 (Wireline Comp. Bur. 2012); *Wireline Competition Bureau Releases Further Discussion Topics for Connect America Cost Model Virtual Workshop*, WC Docket Nos. 10-90, 05-337, Public Notice, 27 FCC Rcd 15795 (Wireline Comp. Bur. 2012); *Wireline Competition Bureau Seeks Additional Comment in Connect America Cost Model Virtual Workshop*, WC Docket Nos. 10-90, 05-337, Public Notice, 28 FCC Rcd 1007 (Wireline Comp. Bur. 2013); *Wireline Competition Bureau Seeks Updates and Corrections to Telcomaster Table for Connect America Cost Model*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 1151 (Wireline Comp. Bur. 2013); *Wireline Competition Bureau Releases Further Discussion Topics and Seeks Additional Comment in Connect America Cost Model Virtual Workshop*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 1447 (Wireline Comp. Bur. 2013); *Wireline Competition Bureau Adds New Discussion Topic to Connect America Cost Model Virtual Workshop*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 1961 (Wireline Comp. Bur. 2013). See also *Wireline Competition Bureau Announces Availability of Version Three of the Connect America Fund Phase II Cost Model*, WC Docket No. 10-90, Public Notice, 28 FCC Rcd 2316 (Wireline Comp. Bur. 2013); *Wireline Competition Bureau Announces Availability of Version 3.1 of the Connect America Fund Phase II Cost Model*, Public Notice, DA 13-956 (Wireline Comp. Bur. rel. Apr. 29, 2013); *Wireline Competition Bureau Announces Availability of Version 3.1.2. of the Connect America Fund Phase II Cost Model and Adds Additional Discussion Topics to Connect America Fund Cost Model Virtual Workshop*, Public Notice, DA 13-1136 (Wireline Comp. Bur. rel. May 17, 2013).

²³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17722, para. 148.

term. As with the first round of Phase I, it is not our goal that all \$300 million will be accepted.²⁴ Rather, we seek to use these funds now to spur rapid broadband deployment to “lower-cost areas where there is no private sector business case for deployment of broadband.”²⁵ Any Phase I support that remain unclaimed at the end of the second round of support will be added to the budget for Phase II, pro-rated in equal annual amounts over the Phase II time period.²⁶ This will have the effect of increasing the yearly budget for Phase II by an amount equal to one-fifth of the unclaimed funds.²⁷

10. Price cap carriers will be allocated Phase I incremental support using the same allocations as in the first round of Phase I.²⁸ Carriers will have 75 days from the release of this Order to make their elections.²⁹

11. As with the first round of Phase I, each carrier may elect to receive all, none, or a portion of its allocated Phase I incremental support. However, in contrast to Phase I, a carrier may also elect to receive an amount above its allocated incremental support, up to the total budget of \$300 million for this second round of Phase I.³⁰ To the extent other carriers decline to accept Phase I incremental support, any remaining funds will be redistributed to carriers that are willing to commit to additional deployment if they receive funding above their initial allocations. If the total demand of all carriers exceeds \$300 million, we authorize up to an additional \$185 million in funding.³¹ Under this approach, each carrier is assured of its allotted amount to expand broadband-capable

²⁴ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Order on Reconsideration, 27 FCC Rcd 4648, 4654, para. 20 (2012) (*Second Order on Reconsideration*).

²⁵ *USF/ICC Transformation Order*, 26 FCC Rcd 17720, para. 145.

²⁶ In the event the Bureau releases a preliminary list of census blocks eligible for Phase II prior to the election date of Phase I support, we direct the Bureau to indicate on that list which additional census blocks could be funded if less than \$485 million in Phase I support is accepted.

²⁷ The *USF/ICC Transformation Order* provides for a transition year between Phase I and Phase II for carriers that will receive more support under Phase II. See *id.* at 17733, para. 180. During this transition year, the support for each carrier will be equal to one half of the amount of support received the previous year plus one half the annual amount of support the carrier will receive under Phase II. This results in total support for the transition year being less than the annual budget for Phase II of \$1.8 billion. Furthermore, if a carrier's Connect America Phase II support is less than the amount of Connect America Phase I support it received pursuant to Connect America Phase I, then the amount of support received during the transition year will also be less than it received pursuant to Connect America Phase I.

²⁸ See *Phase I Support Announcement PN*.

²⁹ In the first round of Phase I, carriers had 90 days to make their elections. However, we conclude that carriers will require less time to prepare their second round elections: much of the analysis they carried out for the first round can be reused for the second round.

³⁰ Elections above allocated support amounts may be made conditionally, such that a carrier is not obligated to accept an amount that is greater than its initial allocation, but less than its elected amount. For example, assume a carrier was initially allocated \$1,000,000 in support and conditionally elects to receive \$1,500,000, planning to expand service using \$500,000 for each of three separate projects. However, if other carriers seek funding in excess of their original allocation, the carrier may ultimately be allocated only \$1,200,000, which may not be sufficient to complete the third project. The carrier may choose to accept any amount of funding between \$1,000,000 and \$1,200,000, taking on the accompanying service obligation to extend service to the appropriate number of locations.

³¹ The additional \$185 million in support would come from the unclaimed funds remaining from the first round of Phase I. In the event that total demand exceeds \$485 million, funds will be distributed proportionally based on initial allocations.

infrastructure to unserved consumers, while at the same time providing additional funds to those carriers willing and able to expand to more Phase I eligible locations.

12. We delegate authority to the Bureau to set the specific deadlines, including the deadlines for any certifications, for a second round of Phase I support and to take other steps to implement a second round, subject to the requirement that the amount of support offered does not exceed the total budget of \$300 million.

13. With the exception of the rules we explicitly change in this Order, all the rules and requirements from the first round of Phase I apply *mutatis mutandis* to the second round of Phase I.

14. *Expanding Eligible Areas.* To meet its Phase I service obligations, a carrier must deploy to locations unserved by broadband. Under the *USF/ICC Transformation Order*, however, only a subset of unserved locations was originally eligible for Phase I for support: specifically, only those locations that lacked Internet access service with speeds of at least 768 kbps/200 kbps (i.e. only dial-up Internet access). In the *Phase I NPRM*, the Commission sought comment on whether to expand eligibility to a larger pool of locations unserved by broadband meeting the Commission's 4 Mbps/1 Mbps standard.³²

15. In addition to areas lacking 768 kbps/200 kbps Internet access, we now expand eligibility for Phase I support to any location that lacks 3 Mbps/768 kbps Internet access.³³ We do so in recognition that carriers evaluate the economics of extending fiber to an area on a project-by-project basis, with each project potentially containing some customers lacking 768 kbps/200 kbps, some lacking 1.5 Mbps/768 kbps, and others lacking 3 Mbps/768 kbps.³⁴ By providing some support for those locations that lack 1.5 Mbps/768 kbps or 3 Mbps/768 kbps, carriers should find it more economical to extend fiber closer to those locations that only have dial-up Internet access.³⁵ Thus, expanding eligibility to include locations with minimal non-dial-up Internet access, but without broadband, should also improve the economics of extending service to those customers who lack even 768 kbps/200 kbps Internet access.³⁶ Moreover, upgrading the most distant locations to receive

³² *Phase I FNPRM*, 27 FCC Rcd at 14569, paras. 10-12.

³³ This expansion does not apply to the buildout obligations incurred as a result of accepting Phase I support in 2012. Buildout obligations from the first round of Phase I must still be satisfied by deploying to locations lacking Internet access with speeds of at least 768 kbps downstream and 200 kbps upstream.

³⁴ See Letter from Malena F. Barzilai, Senior Counsel for Government Affairs, Windstream Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3 (filed Apr. 8, 2013) (Windstream April 8 Ex Parte). See also Declaration of Mike Skudin, Vice President of Network Planning and Capital Management, Windstream Corp., WC Docket No. 10-90 et al., at para. 4 (filed July 24, 2012). It is overly simplistic to assume there are some feeder lines that only serve customers lacking 768 kbps/200 kbps and other feeder lines that only serve customers lacking 3 Mbps/768 kbps service, and that it would be efficient to extend fiber closer to the customer for the latter group only if the first group has been fully addressed.

³⁵ The first round of Phase I focused on those areas completely lacking high-speed Internet access, rather than those areas that have some level of access, albeit access that does not meet the Commission's broadband performance requirements. See *Second Order on Reconsideration*, 27 FCC Rcd at 4653, para. 15. Because of the success of the first round of Phase I, we find it is appropriate to expand our focus. The first round of Phase I has already resulted in commitments to build to a number of the economically viable locations that lack access to networks with speeds of at least 768 kbps/200 kbps. For some carriers, the 768 kbps/200 kbps locations that now remain are not economically feasible to deploy to with \$775 in support. Therefore, by expanding our focus to include areas lacking 3 Mbps/768 kbps, we improve the economics for carriers to serve areas that do not meet the Commission's broadband standards.

³⁶ See Letter from Michael D. Saperstein, Vice President of Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Apr. 8, 2013).

service meeting our 4 Mbps/1 Mbps standard should have the added benefit of providing many consumers currently lacking broadband with access to speeds in excess of our 4 Mbps/1 Mbps standard.³⁷

16. At the same time, we remain committed to prioritizing broadband-capable infrastructure to those areas that completely lack even 768 kbps/200 kbps Internet access.³⁸ Therefore, we place certain strictures on carriers that seek to avail themselves of the opportunity to count towards their deployment obligation locations in the expanded areas of availability. *First*, price cap carriers must accept support for a second round of Phase I under the rules governing the first round, to the extent they are able to do so, before they may avail themselves of the expanded eligibility of areas adopted in this Order. Specifically, a carrier may not accept funding for locations already served by Internet access with speeds of 768 kbps/200 kbps unless the carrier has already accepted funding for all projects or routes including locations unserved by 768 kbps/200 kbps that can economically be built with \$775 in Connect America funding for each location unserved by 768 kbps/200 kbps plus an equal amount of non-Connect America carrier capital expenditure funding.³⁹ For example, to the extent a carrier analyzed its network under the previous Phase I rules to identify projects to extend broadband-capable infrastructure to locations lacking 768 kbps/200 kbps service, and the identified projects would be economic to build with a one-to-one match of Connect America and carrier resources, the carrier must prioritize these projects when it accepts funding, and may not count toward satisfaction of its deployment obligation locations already served by Internet access with speeds of 768 kbps/200 kbps, regardless of the fact that some locations served by 768 kbps/200 kbps but not 3 Mbps/768 kbps will be reached through these identified projects.

17. *Second*, if a carrier has accepted funding for all projects or routes to locations unserved by 768/200 kbps that can be economically reached as noted in the preceding paragraph, it may also accept funding for routes to locations unserved by 3 Mbps/768 kbps that would count

³⁷ Letter from Malena F. Barzilai, Senior Counsel for Government Affairs, Windstream Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Apr. 15, 2013) (estimating that 80 percent of customers served by DSLAMs upgraded with fiber backhaul would have access to broadband with 10 Mbps download speed, and 85 percent would have access to broadband with download speed of 6 Mbps); *see also* Letter from Malena F. Barzilai, Senior Counsel for Government Affairs, Windstream Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Mar. 28, 2013) (explaining that Windstream expects most areas deployed to through Phase I would actually receive speeds above 4 Mbps/1 Mbps).

³⁸ The Commission sought comment on expanding eligible locations to include any location unserved by 4 Mbps/1 Mbps, and inquired whether to use a different standard than the National Broadband Map 3 Mbps/768 kbps threshold for determining what locations are unserved by 4 Mbps/1 Mbps. The decision to expand only to locations unserved by 3 Mbps/768 kbps strikes a balance between those parties that wished to expand eligible areas to those lacking 4 Mbps/1 Mbps, and those that wished for it to remain at 768 kbps/200 kbps. *Compare* Comments of the National Cable and Telecommunications Association, WC Docket No. 10-90, at 7-8 (filed Jan. 28, 2013) (NCTA Comments) (contending that the Commission should not expand Phase I to areas lacking 4 Mbps/1 Mbps) *with* Comments of USTelecom, WC Docket No. 10-90, at 11-13 (filed Jan. 28, 2013) (USTelecom Comments) (arguing for eligibility for any location not served by 4 Mbps/1 Mbps, using a proxy of 6 Mbps/1.5 Mbps). The Commission has consistently used 3 Mbps/768 kbps as a proxy for 4 Mbps/1 Mbps. Limiting eligible areas to those unserved by 3 Mbps/768 kbps also makes it easier to administer the challenge process, discussed below. If we were to now adopt a 6 Mbps/1.5 Mbps proxy, the Bureau would need to adjudicate challenges that an area is accurately shown on the National Broadband Map as served by 3 Mbps/768 kbps, but actual speeds still fall below 4 Mbps/1 Mbps. We determine that the administrative burden of processing such challenges outweighs any marginal benefit.

³⁹ “Non-Connect America carrier capital expenditure” in this context does not include Phase I incremental, Phase I frozen support, Phase II support, Mobility Fund support, or Remote Areas Fund support.

toward satisfaction of its deployment obligation. However, to the extent that carrier has multiple projects or routes for which it would be economic to extend service with a one-for-one match of Connect America funding, it must prioritize funded projects or routes so as to maximize the number of newly served locations that are currently unserved by Internet access with speeds of 768 kbps/200 kbps that will receive service as a result of Phase I funding. To accept new Phase I funding and count deployment to locations served by 768 kbps/200 kbps but unserved by 3 Mbps/768 kbps, carriers will be required to certify that they have met both conditions.

18. In conjunction with these rule changes, we adopt a different metric for the dollar amount of support for those locations lacking 3 Mbps/768 kbps, compared to the \$775 available for locations unserved by 768 kbps/200 kbps. We conclude that it is appropriate for carriers to be permitted to meet buildout obligations by deploying broadband-capable infrastructure to locations that have service of 768 kbps/200 kbps but not 3 Mbps/768 kbps for \$550 per location.⁴⁰ Less fiber should be needed to upgrade the locations with some form of Internet access, as they are likely to be closer to the central office or remote terminal.⁴¹

19. In addition to expanding eligible locations to any location lacking 3 Mbps/768 kbps Internet access, we also provide limited eligibility for locations shown on the current version of the National Broadband Map (data as of June 2012) as served by 3 Mbps/768 Internet access. A carrier may satisfy its Phase I obligations by deploying to certain locations in its own service territory that are shown on the National Broadband Map as being served by 3 Mbps/768 kbps where it is likely that such service is not in fact delivered, so long as no other provider is offering service at speeds of 3 Mbps/768 kbps to those locations. The carrier must identify those specific locations and certify that the locations are currently served from a copper-fed digital subscriber line access multiplexer (DSLAM) and are shown on the National Broadband Map as receiving speeds of 3 Mbps/768 kbps or less.⁴² It is likely that while locations served by a copper-fed DSLAM are shown as having an advertised speed of 3 Mbps/768 kbps, actual speeds to such locations fall below that.⁴³ As noted in

⁴⁰ The \$550 support amount is in line with earlier estimates of the cost to deploy under the Broadband Initiatives Program. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17718, para. 140 (noting an average cost per location of \$557). This calculation included deployment to areas that were completely unserved, as well as those that already had some level of service. As we expand eligible areas for Phase I to include some locations that have low-speed Internet access, we find the earlier analysis provides a reasonable basis to set a new dollar metric for locations served by 768 kbps/200 kbps but unserved by 3 Mbps/768 kbps. The small difference between the Broadband Initiatives Program estimate (\$557) and the new support level (\$550) is justified by a degree of administrative judgment. *See also* Letter from Thomas Cohen, Counsel, American Cable Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Apr. 26, 2013) (suggesting \$468 in support for locations with Internet access between 768 kbps/200 kbps and 3Mbps/768 kbps, based on its analysis of the average cost per location from the current version of the Connect America Cost Model).

⁴¹ Letter from Jeffery S. Lanning, Vice President for Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Apr. 23, 2013).

⁴² *See* Windstream April 8 Ex Parte at 3.

⁴³ A price cap carrier that intends to accept funding to expand service to locations served by a copper-fed DSLAM is not required to identify those locations in the challenge process, discussed below. To the extent that the National Broadband Map shows a census block location as receiving speeds above 3 Mbps/768 kbps, and the carrier or its affiliates are the only fixed broadband providers for that location, the carrier may file a certification that the location does not receive speeds above 3 Mbps/768 kbps because it is served through a copper-fed DSLAM, and the Commission will treat that location as served by 3 Mbps/768 kbps for the purposes of Phase I support. Carriers are likely the only party to know whether a particular location is served by a copper-fed DSLAM, and we conclude that little benefit would be gained by allowing challenges on this point.

the record, copper-fed DSLAMs have a maximum of 12 Mbps of backhaul available; as consumers increasingly use bandwidth-intensive applications, such as streaming video, the aggregate demand for bandwidth of all users on a DSLAM exceeds the DSLAM's backhaul capacity, resulting in reduced speeds to the end user.⁴⁴

20. We will also limit support for any census block containing a project that received funding under the Broadband Initiatives Program (BIP) or the Broadband Technology Opportunities Program (BTOP), so long as the project meets the speed requirement that would disqualify the location from Phase I (i.e., the project will eventually provide speeds of 3 Mbps/768 kbps or greater). It would be an inefficient use of public funds to provide government support to two different projects aimed at serving the same location. If a carrier wishes to satisfy its Phase I deployment obligations by building in census blocks with BIP or BTOP projects, it must certify that it has engaged in due diligence and reviewed publicly available data sources to ensure that the particular locations it plans to serve do not and will not receive funding under BIP or BTOP for the construction of a network meeting our broadband standards.⁴⁵ We direct the Bureau to work with the Universal Service Administrative Company (USAC), the National Telecommunications and Information Administration, and/or the Rural Utilities Service, as appropriate, to take steps necessary to ensure Phase I support is not provided to areas receiving BIP or BTOP support.

21. Also, in order to use Connect America funds in the most efficient manner possible and avoid providing excess support to an area, we direct the Bureau to ensure the funding is not provided to the same census blocks under both Phase I incremental support and Phase II. No carrier should be allowed to satisfy its Phase I obligations in any census block where it receives Phase II support.⁴⁶ Carriers must be prepared to deploy to an equivalent number of locations that are unserved in a census block where they are not receiving Phase II support.⁴⁷ If a carrier accepts Phase II support in a census block where it had initially planned to deploy broadband-capable networks to locations in order to meet its Phase I obligations, it must identify and deploy to the requisite number of locations in another census block for which it did not receive Phase II support.

22. *Service Obligations.* A carrier electing to receive second round Phase I support must deploy to a number of unserved locations. The number of locations varies depending on the speed of service currently available to that location. As noted above, deploying broadband-capable infrastructure to an area lacking Internet access with speeds of 768 kbps/200 kbps will satisfy a greater portion of a carrier's public service obligation than deploying to areas with some level of non-broadband Internet access (i.e., a location that is served by Internet access at 768 kbps/200 kbps but not 4 Mbps/1 Mbps). Deploying to a location unserved by 768 kbps/200 kbps will satisfy \$775 of a

⁴⁴ Letter from Malena F. Barzilai, Senior Counsel for Government Affairs, Windstream Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Apr. 17, 2013). For example, four users streaming 3 Mbps would exhaust the DSLAM's backhaul capacity, and each additional user beyond that would reduce the actual speeds to all users.

⁴⁵ A map of BTOP projects, along with links to individual project summaries, is available at <http://www2.ntia.doc.gov/BTOPmap/>. Information on BIP projects can be found at http://www.rurdev.usda.gov/UTP_BIPResources.html.

⁴⁶ After Phase I and Phase II elections are completed, we direct USAC to compare census blocks in which carriers have planned Phase I deployments and census blocks where carriers have elected to receive Phase II support. USAC should inform carriers within 60 days of the close of the Phase II election period regarding any overlap between a carrier's planned Phase I deployments and its Phase II election, and remind those carriers that it may not count deployments in those census blocks toward their Phase I deployment obligations.

⁴⁷ See USTelecom Comments at 26.

carrier's Phase I obligations. Deploying to a location served by 768 kbps/200 kbps but unserved by 3 Mbps/768 kbps, as specified above,⁴⁸ will satisfy \$550 of a carrier's Phase I obligation.

23. As in the first round of Phase I,⁴⁹ when electing to accept support, the carrier must provide a list identifying the census blocks and wire centers in which it plans to use support. In addition, the carrier must specify how many \$775 locations and how many \$550 locations it will deploy to. The carrier must certify that that deployment funded through Phase I incremental support will occur in areas shown on the most current version of the National Broadband Map (data as of June 2012) as unserved by fixed Internet access with a minimum speed of 3 Mbps/768 kbps or that the carrier is challenging the National Broadband Map's designation, and that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed Internet access with a minimum speed of 3 Mbps/768 kbps.⁵⁰ The carrier must also certify that its current capital improvement plan did not already include plans to complete broadband deployment to that area within the next three years, and that Phase I incremental support will not be used to satisfy any merger commitment or similar regulatory obligations.⁵¹

24. As a change from the first round of Phase I, and as described above, the carrier must additionally make the following certifications regarding locations that it seeks to count to satisfy Phase I deployment obligations.⁵² The carrier must certify to the best of its knowledge that no locations are the subject of funding under BIP or BTOP for projects that will provide Internet access with speeds of at least 3 Mbps/768 kbps. If a carrier seeks to count locations in its own service territory that are shown on the current version of the National Broadband Map (data as of June 2012) as served 3 Mbps/768 kbps, the carrier must certify that those locations are served through a copper-fed DSLAM. If the carrier seeks to satisfy any of its obligations by deploying to locations served by 768 kbps/200 kbps but not 3 Mbps/768 kbps Internet service, it must certify that it has committed to all projects or routes to locations unserved by 768 kbps/200 kbps that can economically be built with \$775 in Connect America funds plus an equal amount of non-Connect America carrier capital expenditure funding, and that it has prioritized funded routes so as to maximize the number of newly served locations that are currently unserved by Internet access with speeds of 768 kbps/200 kbps.

25. The buildout obligations mirror those in the first round of Phase I. A carrier accepting Phase I support must complete deployment of broadband-capable infrastructure to two-thirds of the required number of locations within two years and must complete deployment to all required locations within three years. As a condition of this support, a carrier must offer broadband service to such locations of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet

⁴⁸ See *supra* paras. 16-18.

⁴⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17720-21, para. 146.

⁵⁰ A single version of the National Broadband Map will govern both the election and challenge process for the second round of Phase I.

⁵¹ Phase I incremental support may be used in areas where the carrier may be subject to an existing regulatory obligation or merger commitment to deploy lower speed Internet access service that does not meet the 4 Mbps/1 Mbps broadband speed threshold. In this instance, the support would appropriately be used to support the cost of the upgrade to meet the Commission's standards, not the cost of meeting the original regulatory obligation or merger commitment.

⁵² The Bureau will specify by public notice a deadline by which these certifications must be made after approval is obtained under the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.

Protocol, and with usage allowances, if any, associated with a specified price for a service offering that are reasonably comparable to comparable offerings in urban areas.⁵³

26. Phase I funding recipients will report that their networks meet the above standards through a process of self-certification. We note that the Wireline Competition Bureau, the Wireless Telecommunications Bureau, and Office of Engineering & Technology have not specified a methodology for testing the performance of a funding recipient's broadband-capable network.⁵⁴ As Phase I incremental support is designed to provide one-time support for deployment to specific locations, we now conclude that the potential effort to implement a testing regime for Phase I incremental support recipients would exceed any marginal benefit that is gained as compared to self-certification. To the extent there are any issues with broadband performance, the consumer complaint process will help to inform the Commission of such instances.

27. *Confidentiality.* The Commission sought comment on whether Phase I elections should be afforded confidentiality.⁵⁵ We now decide that Phase I elections in the second round should not be treated as confidential. We strongly encourage Phase I recipients to discuss their elections with Commission staff at least 15 days prior to the election deadline in order to ensure facial compliance with the filing requirements. While these discussions and documents related to them may be afforded confidentiality, the finalized elections must be filed publicly. Public disclosure is generally preferred, especially when the use of public funds is at issue. Furthermore, we find that the competitive harm to carriers from this disclosure is likely minimal. Indeed, not all carriers requested confidentiality for first round Phase I filings.⁵⁶

28. *Challenge Process.* In the *Phase I FNPRM*, the Commission proposed conducting a challenge process whereby parties could challenge the status of census blocks as shown on the National Broadband Map.⁵⁷ We conclude that such a challenge process would improve the accuracy and efficacy of a second round of Phase I support, allowing support to be appropriately targeted to unserved areas consistent with our overarching goals for Phase I.⁵⁸ Consistent with the guidance contained herein, we delegate to the Bureau authority to implement the challenge process.

⁵³ For purposes of demonstrating compliance with this reasonable comparability requirement, a price cap carrier may certify it is offering identical plans providing the same usage allowances for a given price in both urban and rural areas.

⁵⁴ *Connect America Fund et al.*, WC Docket 10-90 et al., Order, 28 FCC Rcd 2051, 2057, para. 16 (Wireline Comp. Bur. 2013).

⁵⁵ *Phase I FNPRM*, 27 FCC Rcd at 14578, para. 48. This proposal was supported in the record, and no party opposed. See, e.g., Reply of the National Cable and Telecommunications Association, WC Docket No. 10-90, at 7-8 (filed Feb. 11, 2013).

⁵⁶ See, e.g., Letter from Melissa E. Newman, Vice President for Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed July 24, 2012) (accepting support allocated to CenturyLink and not requesting confidential treatment for planned deployment locations).

⁵⁷ *Phase I FNPRM*, 27 FCC Rcd at 14569-70, paras. 13-16.

⁵⁸ As directed by the Commission, the Bureau solicited updates to the National Broadband Map (reflecting data as of December 2011) after the FNPRM was released. See *Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map for Connect America Phase I Incremental Support*, WC Docket No. 10-90, Public Notice, 27 FCC Rcd 15165 (Wireline Comp. Bur. 2012). While this provided valuable insight into some of the issues that may arise in a challenge process, we agree with commenters that it would be an inefficient use of Bureau resources to evaluate that record if no carrier intends to use Phase I support in specific areas where commenters provided updated information. Furthermore, many comments related to changes that had already been submitted to the State Broadband Initiative grantees, and thus will be

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29. Based on our review of the record, we are persuaded that the appropriate way to conduct a Phase I challenge process is to require price cap carriers first to identify the specific census blocks and wire centers where they propose to deploy broadband-capable infrastructure with second round Phase I support. This will reduce the burden on parties both making and responding to challenges, and the administrative burden of processing such challenges.⁵⁹ The price cap carriers should identify where they intend to build based on the current version of the National Broadband Map (i.e., the map reflecting data as of June 2012).

30. In the first round of Phase I, several carriers initially sought to meet their Phase I deployment commitments in areas that were already served or failed to identify enough census blocks to account for the required number of newly served locations. To ensure that carriers properly identify the blocks that will be subject to the challenge process, we strongly encourage those electing funding to submit their intended elections and planned buildout locations by census block to the Bureau on a confidential basis at least 15 days in advance of the acceptance deadline. The Bureau will evaluate the submissions to determine facial compliance with our requirements and will work with Phase I recipients to resolve any possible inconsistencies prior to the acceptance deadline. To the extent carriers do not avail themselves of this procedure, they run the risk of having their respective commitment amounts reduced, to the extent they fail to identify enough census blocks to account for the required number of new locations; carriers will not be permitted to amend their elections once the challenge process has commenced to add additional census blocks. Once the Bureau completes its review of the elections made on the deadline, it will publicly announce the acceptance amounts and census blocks for planned buildout. The challenge process then will be conducted, as described below.

31. When electing to receive second round Phase I support, price cap carriers must provide a list of census blocks unserved by 3 Mbps/768 kbps Internet access in which they intend to deploy to meet their buildout obligations.⁶⁰ In submitting such a list,⁶¹ price cap carriers may argue no providers in the area are offering broadband, challenging the National Broadband Map's designation of a census block as being served by 3 Mbps/768 kbps Internet access or as being served by 768 kbps/200 kbps Internet access.⁶² When making an election to accept Phase I support, a price

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reflected in updated versions of the National Broadband Map. Accordingly, the Bureau will not be processing challenges based on the December 2011 SBI data, but providers may resubmit or reference their prior submissions in the forthcoming challenge process to the extent they remain relevant based on June 2012 data.

⁵⁹ Conducting the challenge process after the initial acceptances also has broad support in the record. *See, e.g.*, USTelecom Comments at 17; Comments of the Wireless Internet Service Providers Association, WC Docket 10-90, at 6-8 (filed Jan. 28, 2013) (WISPA Comments); NCTA Comments at 9.

⁶⁰ Under our existing rules, the census blocks listed in a recipient's Phase I election are merely a good faith statement of the recipient's initial intentions of where it plans to deploy broadband-capable infrastructure. The recipient is not bound by this list: a carrier is free to deploy to blocks not on the list and is free to not deploy to all blocks on the list. This flexibility allows recipients to adjust their plans as needed, if future conditions necessitate a reevaluation of capital improvement plans.

⁶¹ When making challenges along with their initial elections, price cap carriers must submit evidence in support of those challenges.

⁶² Parties may contend that a census block is completely unserved (i.e., lacks speeds of 768 kbps/200 kbps and thus is eligible for \$775 in funding), is unserved by 3 Mbps/768 kbps but served by 768 kbps/200 kbps (thus is eligible for \$550 in funding), or is served by 3 Mbps/768 kbps (and thus is eligible for no support). For example, assume Census Block A is shown on the National Broadband Map as served by 3 Mbps/768 kbps, Census Block B is shown as served by 768 kbps/200 kbps, and Census Block C is shown as completely unserved. A price cap carrier could raise a challenge that Census Block A should be treated as unserved by 3

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cap carrier may condition all or a portion of its acceptance on its challenge being granted.⁶³ To eliminate the incentive to make blanket challenges in areas where the carrier has little intent to serve, however, if a carrier challenges the designation of a census block as served on the National Broadband Map and that challenge is ultimately granted, it will be obligated to deploy in that particular census block, absent extraordinary circumstances beyond its control.⁶⁴

32. Following the price cap carriers' initial submissions identifying where they intend to serve and which census blocks they are challenging the National Broadband Map classification as served, the Bureau will publish a list of all census blocks that carriers propose to serve to meet their Phase I obligations. Interested parties will have 30 days to challenge this list by demonstrating that the block is in fact served by fixed Internet access⁶⁵ with speeds of 3 Mbps/768 kbps or higher.⁶⁶ Carriers will then be given an additional 30 days to respond to these challenges. To the extent a more

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Mbps/768 kbps (making it eligible for \$550/location in support) or that it should be treated as unserved by 768 kbps/200 kbps (making it eligible for \$775/location in support). A price cap carrier could argue that Census Block B should be treated as unserved by 768 kbps/200 kbps (making it eligible for \$775/location in support), while an unsubsidized provider could argue that Census Block B should be treated as served by 3 Mbps/768 kbps (making the price cap carrier ineligible for support). An unsubsidized provider could challenge the designation of Census Block C, arguing either that it should be treated as served by 768 kbps/200 kbps (making the price cap carrier eligible for only \$550/location in support) or that it should be treated as served by 3 Mbps/768 kbps (making the price cap carrier ineligible for any support).

⁶³ Some parties have argued that partial census block challenges should be considered. *See, e.g.*, Letter from Melissa E. Newman, Senior Vice President for Federal Policy and Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Apr. 15, 2013). We reiterate what was stated in the *Second Order on Reconsideration*: if the data underlying the National Broadband Map show that a location is not served by a particular provider, then, for purposes of this rule, the location is "shown as unserved" by that provider. *Second Order on Reconsideration*, 27 FCC Rcd at 4651, para. 11. For example, assume that the underlying data of the National Broadband Map contain a shapefile showing Census Block A as completely covered by WISP service, while the shapefile only covers the eastern half of Census Block B. A price cap carrier may build to the locations in the western half of Census Block B without filing a challenge. If it wishes to build to the eastern half of Census Block B, it must file a challenge stating that the census block is completely unserved by the WISP. Because we conclude that it is not administratively feasible to allow partial census block challenges, the price cap carrier may not allege that the WISP serves a smaller portion of Census Block B. Similarly, if the price cap carrier wishes to serve in Census Block A, it must contend that Census Block A is completely unserved by the WISP.

⁶⁴ By requiring deployment to a census block when the block's status on the National Broadband Map is challenged, recipients will be deterred from making frivolous challenges that unnecessarily consume the resources of the Bureau and external parties.

⁶⁵ The term "served by fixed Internet access" for the purposes of the second round of Phase I includes areas identified as served by at least one of the following technologies: asymmetric xDSL; symmetric xDSL; other copper wireline; cable modem – DOCSIS 3.0; cable modem – other; optical carrier/fiber to the end user; electric power line; terrestrial fixed wireless – unlicensed; and terrestrial fixed wireless – licensed. *Cf. USF/ICC Transformation Order*, 26 FCC Rcd at 17720, para. 146 n.231.

⁶⁶ While metrics such as latency, capacity, and price, along with the availability of voice service from the putative unsubsidized competitor, will be considered when implementing other aspects of Connect America, for simplicity and ease of administration, we direct the Bureau to focus only on speed of broadband service when determining areas that are eligible for Connect America Phase I incremental support, consistent with the Commission's objective of quickly utilizing these Phase I funds to expand access to broadband.

recent National Broadband Map becomes available in this time period, interested parties are free to bring new information regarding availability as shown on the map to the Bureau's attention.⁶⁷

33. All filings in the challenge process, whether from a price cap carrier or another provider, must be supported by some form of documented evidence. The Bureau should not consider conclusory assertions without supporting evidence that a census block's designation as served or unserved should be changed. In cases where another provider contests the price cap carrier's intention to serve, the Bureau may consider such evidence as a signed certification from an officer of the provider under penalty of perjury that it offers 3 Mbps/768 kbps Internet service to customers in that particular census block. Such a certification could be accompanied by current customer billing records, appropriately redacted to preserve customer privacy. In cases where the price cap carrier seeks to contest the classification of a census block on the map as served by broadband, the Bureau may consider such evidence as statements from residents of an area noting that they have attempted and failed to receive service from a putative unsubsidized competitor.⁶⁸ The Bureau may also consider FCC Form 477 data in evaluating whether a provider is providing broadband in a particular census block. Where the Bureau finds it more likely than not that the status of a census block should be treated differently than the status shown on the National Broadband Map, the Bureau will deem that census block as served or unserved, as appropriate, for the purposes of Connect America Phase I.⁶⁹

⁶⁷ While the Bureau should consider any updates shown on a more recent version of the National Broadband Map when adjudicating challenges, that information, by itself, will not necessarily be determinative if the price cap carrier introduces other evidence indicating that the block in question is not served. Parties that provide updated map information therefore may wish to submit other evidence supplementing their showing.

⁶⁸ We would also consider a signed certification from an officer of the price cap carrier under penalty of perjury, that it has not ported a telephone number to the provider shown on the National Broadband Map as serving that block with service that meets the 3 Mbps/768 kbps proxy, as potentially relevant to whether that provider is providing service in the area. *See* Comments of Windstream Corp., WC Docket No. 10-90, at 7-9 (filed Jan. 9, 2013). If a cable provider or fixed wireless Internet service provider (WISP) purports to serve the entire area with broadband and offers VoIP, it would be reasonable to expect that some of the provider's customers would opt to use that provider's VoIP service. A complete lack of number porting to a number of census blocks over a sufficiently long time period would therefore bring into question whether the cable company or WISP is actually offering broadband in that area. On the other hand, we recognize that in some instances, customers may drop their landline service altogether, relying on mobile voice service from a wireless company and broadband from another provider. The absence of any porting activity from the incumbent to the other provider does not necessarily prove that the cable company or WISP is not providing broadband in the area. Thus, while the lack of porting is relevant evidence, it is not determinative. We encourage price cap carriers to supplement any evidence related to number porting with other evidence, such as information from commercial data sources regarding the presence, or lack thereof, of a broadband provider.

⁶⁹ A challenge process is also being developed for Phase II of Connect America. *See 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 No. 10-90, Public Notice, 27 FCC Rcd 15970 (Wireline Comp. Bur. 2012). It is possible that the Phase I and Phase II challenge processes will occur close to one another in time. A challenge or rebuttal filed in the Phase I challenge process will not automatically be considered for the Phase II challenge process. If a party wishes its challenge to be considered in both the Phase I and Phase II challenge processes, it must file two distinct challenges. Furthermore, a decision in the Phase I challenge process that an area is served or unserved will not be treated as determinative for purposes of the Phase II challenge process and vice versa, though we direct the Bureau to coordinate its efforts in the two processes insofar as possible.

34. *Reporting Requirements.* We adopt our two proposals regarding the reporting requirements for Phase I of Connect America.⁷⁰ These changes apply both to support already accepted in the first round of Phase I and support that will be accepted in the second round of Phase I. We also adopt measures to ensure greater transparency for the public about how Phase I funds are being used, in response to a commenter's suggestions.⁷¹

35. First, in their two- and three-year milestone certifications, recipients of Phase I support must provide geocoded latitude and longitude location information, along with census block and wire center information, for each location the carrier intends to count toward its deployment requirement. As recipients should know by that point in time to which locations they are deploying in order to satisfy their buildout requirements, it is unlikely this additional reporting requirement will substantially burden Phase I recipients. While the additional burden will be minimal, requiring geocoded location information will considerably improve the Commission's ability to ensure accountability of Phase I funds.⁷² We direct the Bureau to work with USAC to publish a map indicating the location of projects funded with Phase I incremental support.

36. Second, in the event a recipient intends to deploy to areas other than those identified in its initial acceptance, it is permitted (but not required) to make a supplemental filing providing updated deployment plans at any time. Compliance with the deployment requirements will be determined based on the recipient's final deployment certification. As this interim reporting is completely optional, it should not unnecessarily burden any recipient that decides to file such reports.

37. In addition, we require carriers that elect to take Phase I funding under these revised rules to report annually on the dollar amount of investment they have made in the prior calendar year, using Phase I incremental support, beginning with the annual report due July 1, 2015. In their annual reports required under section 54.313, recipients should provide the total amount of capital funding expended in the previous year in meeting Connect America Phase I deployment obligations, accompanied by a list of census blocks indicating where funding was spent.

38. *Alternative Proposals.* We are not persuaded by arguments we should make more fundamental changes to Phase I.⁷³ The Commission is implementing a multi-faceted strategy to

⁷⁰ See *Phase I FNPRM*, 27 FCC Rcd at 14577-78, paras. 46-47. We also take this opportunity to clarify that if a price cap carrier is not otherwise subject to Connect America reporting requirements, its receipt of Phase I incremental support triggers reporting requirements only with respect to those locations which the carrier seeks to count toward the satisfaction of its Phase I incremental deployment obligations. Cf. Letter from Mary L. Henze, Assistant Vice President for Regulatory Affairs, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Oct. 1, 2012) (urging that the Commission to clarify that Phase II recipients would be subject to the broadband performance measurement and reporting for the geographic areas in which they receive support). Furthermore, the reporting obligations related to those locations apply only until the final report on Phase I incremental buildout is submitted. 47 C.F.R. § 54.313(b). There is no ongoing reporting requirement after the three-year milestone. If a carrier is also subject to the reporting requirements in section 54.313(a) of the Commission's rules, it should include any Phase I incremental support locations in its section 54.313(a) report. There is no requirement to distinguish incremental support locations from non-incremental support locations in the section 54.313(a) report.

⁷¹ See Letter from Thomas Cohen, Counsel, ACA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 3-4 (filed May 6, 2013).

⁷² Consistent with existing requirements for Connect America, see 47 C.F.R. § 54.320, recipients of funding must retain asset records relating to the deployment of new facilities in Phase I buildout and produce those records upon request in an audit or investigation.

⁷³ Proposed changes included: (1) expanding parties eligible for Phase I support beyond price cap carriers, Reply of Utilities Telecom Council, WC Docket No. 10-90, at 5-7 (filed Feb. 11, 2013) (recommending that all
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expand the availability of broadband, both fixed and mobile, throughout the nation. We decline at this time to revisit the relative allocation of funding among the various programs designed to achieve our broadband objectives for the nation. Phase I was limited to price cap carriers in order to address a specific issue: over 80 percent of unserved Americans live in price cap territories.⁷⁴ The most direct and expedient way to address that issue is to provide a discrete amount of support to price cap carriers that will leverage their private capital in exchange for a clearly defined obligation to deploy to those unserved locations in the near term. A second round of Phase I can be quickly implemented in the months ahead. In contrast, other proposals, such as developing an auction by which to distribute Phase I funds, would take longer to implement. Thus, Phase I as refined today is a reasonable step forward in achieving our goal of rapidly deploying broadband-capable infrastructure to unserved Americans living in price cap territories.⁷⁵

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

39. This document contains modified information collection requirements subject to the PRA. 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 are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,⁷⁶ we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

40. In this present document, we have assessed the effects of requiring carriers to submit new elections for the second round of Connect America Phase I support, as well as requiring geocoded location information for all Phase I certifications, and find that it will not impact businesses with fewer than 25 employees. Only price cap carriers or rate-of-return carriers affiliated with price cap carriers are eligible for Phase I support. All such entities have more than 25 employees.

B. Final Regulatory Flexibility Certification

41. The Regulatory Flexibility Act (RFA)⁷⁷ requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that (Continued from previous page) _____

entities, including utility companies providing telecommunications services, should be eligible for Phase I); Reply of US Cellular, WC Docket No. 10-90, at 22 (filed Feb. 11, 2013) (recommending that funds be available to mobile providers); (2) distributing support through an auction or other market-based mechanism, Comments of General Communication, Inc., WC Docket No. 10-90, at 2 (filed Feb. 11, 2013) (recommending that funds be distributed through a reverse auction); and/or (3) diverting Phase I funds into the Remote Areas Fund or other universal service mechanisms, Comments of Viasat, WC Docket No. 10-90, at 9 (filed Jan. 28, 2013) (recommending funds from Phase I be added to the Remote Areas Fund); Reply of the Wireless Internet Service Providers Association, WC Docket No. 10-90, at 4 (filed Feb. 11, 2013) (recommending that unclaimed Phase I funds be added to the Remote Areas Fund); Reply of Fred Williamson and Associates, WC Docket No. 10-90, at 5 (filed Feb. 11, 2013) (recommending that funds be provided to support rural local exchange carriers).

⁷⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17712, para. 127.

⁷⁵ See, e.g., Comments of the National Rural Electric Cooperative Association, WC Docket No. 10-90, at 2-3 (filed Jan. 28, 2013); Comments of the National Association of Telecommunications Officers and Advisors, WC Docket No. 10-90, at 2 (filed Jan. 28, 2013).

⁷⁶ See 44 U.S.C. § 3506(c)(4).

⁷⁷ See 5 U.S.C. § 601 *et seq.* The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857.

“the rule will not have a significant economic impact on a substantial number of small entities.”⁷⁸ The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁷⁹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸⁰ 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.⁸¹

42. This document modifies and clarifies the Phase I rules adopted by the Commission in *USF/ICC Transformation Order*.⁸² These modifications and clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order*.⁸³ Therefore, we certify that the requirements adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order, including a copy of this final certification, in a report to Congress pursuant to SBREFA.⁸⁴ In addition, the Report and Order and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.⁸⁵

C. Congressional Review Act

43. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁸⁶

V. ORDERING CLAUSES

44. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 201(b), 214, 218-220, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 201(b), 214, 218-220, 254, 1302, that this Report and Order IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval and an effective date.

45. IT IS FURTHER ORDERED that authority to implement a Connect America Phase I challenge process IS DELEGATED to the Wireline Competition Bureau, consistent with paragraphs [[28-33]] of this Report and Order.

⁷⁸ 5 U.S.C. § 605(b).

⁷⁹ 5 U.S.C. § 601(6).

⁸⁰ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration (SBA) and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

⁸¹ Small Business Act, 15 U.S.C. § 632.

⁸² See *USF/ICC Transformation Order*, 26 FCC Rcd at 17716-22, paras. 136-47.

⁸³ See *id.* at 18324-63, App. O.

⁸⁴ See 5 U.S.C. § 801(a)(1)(A).

⁸⁵ See 5 U.S.C. § 605(b).

⁸⁶ See 5 U.S.C. § 801(a)(1)(A).

46. IT IS FURTHER ORDERED that authority to set the timeline for a second round of Phase I support, including certifications related to the second round of Connect America Phase I, IS DELEGATED to the Wireline Competition Bureau.

47. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, is AMENDED as set forth in the Appendix, and such rule amendments shall be effective 30 days after the date of publication of the rules amendments in the Federal Register, except to the extent they contain information collections subject to Paperwork Reduction Act review. The rules that contain information collections subject to Paperwork Reduction Act review WILL BECOME EFFECTIVE upon announcement in the Federal Register of OMB approval and an effective date.

48. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

49. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX**Final Rules**

For the reasons discussed in the Report and Order, the Federal Communications Commission amends 47 C.F.R. Part 54 to read as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority citation for Part 54 is modified to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.312 by revising paragraph (b) and adding paragraph (c) as follows:

§ 54.312 Connect America Fund in Price Cap Territories – Phase I.

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

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

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

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

(3) An eligible telecommunications carrier must accept funding pursuant to (c)(2) before it may accept funding pursuant to (c)(3). If an eligible telecommunications carrier has committed to deploy to all locations eligible for support under (c)(2) on routes or projects that can economically be built with \$775 in Connect America funding for each location unserved

by 768 kbps downstream and 200 kbps upstream plus an equal amount of non-Connect America carrier capital expenditure funding, but the carrier has not fully utilized its allotted funding, it may also count towards its deployment obligation locations shown as unserved by fixed Internet access with speeds of at least 3 Mbps downstream and 768 kbps upstream equal to the amount of remaining incremental support divided by \$550.

(4) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, the Administrator, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept, the number of locations at the \$775 amount, the number of locations at the \$550 amount, and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 75 days of being notified of any incremental support for which it would be eligible.

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

- (i) the locations to be served to satisfy the deployment obligation are not shown as served by fixed broadband at the speeds specified in (c)(2) or (c)(3) provided by any entity other than the certifying entity or its affiliate on the then-current version of the National Broadband Map or that it is challenging the National Broadband Map's designation of that census block under the challenge process in paragraph (c)(7) of this section;
- (ii) to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed Internet access with speeds of at least 3 Mbps downstream and 768 kbps upstream, or 768 kbps downstream and 200 kbps upstream, as appropriate;
- (iii) the carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation;
- (iv) incremental support will not be used to satisfy any merger commitment or similar regulatory obligation; and
- (v) the carrier has undertaken due diligence to determine the locations in question are not within the service area of either Broadband Initiatives Program or the Broadband Technology Opportunities Program projects that will provide Internet access with speeds of at least 3 Mbps downstream and 768 upstream.

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

(7) A person may challenge the designation of a census block as served or unserved by a certain speed as shown on the National Broadband Map. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as served by broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream, that locations in that census block will be treated as served by broadband and therefore ineligible to be counted for the purposes of paragraph (c)(3) of this section. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as served by Internet service with speeds of 768 kbps downstream and 200 kbps upstream, but unserved by broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream, locations in that census block will be treated as served by Internet access with speeds of 768 kbps downstream and 200 kbps upstream and therefore eligible to be counted for the purposes of paragraph (c)(3) of this section. When the Wireline Competition Bureau determines that the evidence presented makes it more likely than not that the census block should be designated as unserved by Internet service with speeds of 768 kbps downstream and 200 kbps upstream, locations in that census block will be treated as unserved by Internet access with speeds of 768 kbps downstream and 200 kbps upstream and therefore eligible to be counted for the purposes of paragraph (c)(2) of this section.

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

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

3. Amend § 54.313 by revising paragraph (b) as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

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

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

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

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

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

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

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

**STATEMENT OF
ACTING CHAIRWOMAN MIGNON L. CLYBURN**

Re: *Connect America Fund*, WC Docket No. 10-90.

Broadband is no longer a luxury, but a necessity. It is the gateway through which most Americans obtain critical information and services, find jobs, communicate with their teachers and health care providers, and keep up to date with their family and friends. The sad reality, however, is that millions of Americans still lack access to broadband networks, and for those living in areas where the business case will not likely be made for rapid deployment, government engagement is essential.

Today's Order, which leverages private investment and universal service funding, will potentially connect hundreds of thousands of unserved consumers to robust broadband networks. Providers electing to receive funding under the new rules for incremental support must include a one-for-one matching of private investment for each dollar of universal service support. This public-private partnership stretches the impact of federal funding to reach more communities. In addition, it provides a mechanism to make available additional universal service support if the demand exceeds \$300 million, and commits to using any unclaimed funding to reach unserved communities through Connect America Phase II.

We take significant steps to connect these unserved communities and consumers today, and in so doing are moving another step closer to fulfilling goals set forth in our historical overhaul of the high-cost Universal Service Fund: to ensure that *all* Americans have access to voice and broadband services. Comprehensive reforms made this Order possible, and I want to thank former Chairman Genachowski for his leadership on these issues.

None of this would be possible without the support of my fellow Commissioners, whose collaborative efforts to reach a unanimous decision and unleash funding, should help to close the digital divide for hundreds of thousands of Americans.

**STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Connect America Fund*, WC Docket No. 10-90.

This is a good day for rural America. Today's order makes available almost half a billion dollars for the deployment of broadband in areas served by price-cap carriers, while ensuring that public funding does not displace private investment. Any money that is not accepted will roll over into the next phase of the Connect America Fund and support broadband build-out in these same areas. And all of this will be done within the budget set forth by the *Universal Service Transformation Order*.¹

I hope that these reforms herald the arrival of broadband in currently unserved parts of our country. And I thank my colleagues—particularly Chairwoman Clyburn and staff of the Wireline Competition Bureau—for collaborating with me on this item and incorporating a number of my suggestions.

¹ *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) (*Universal Service Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011).