dropped. Finally, we have seen numerous competitors exploit arbitrage opportunities created by a patchwork of above-cost intercarrier compensation rates. Although the Commission has attempted to address many of these issues on a case-by-case basis, it has become increasingly clear that piecemeal efforts to respond to these developments are inadequate—only comprehensive reform can address the fundamental challenges that they present.[3]

3. Today we adopt a comprehensive approach to addressing these difficult, but critical issues. First, we spur widespread deployment of broadband by ensuring that carriers receiving universal service high-cost support offer broadband throughout their service areas. Second, we help Lifeline/Link Up customers participate in this new broadband world by creating a pilot program to provide discounted access to broadband services. Third, we broaden and stabilize our universal service contribution base through equitable and non-discriminatory contributions. Fourth, having placed our universal service fund on solid footing, we now take the long-overdue step of moving toward uniform intercarrier compensation rates that provide efficient incentives for the investment in and use of broadband networks. Finally, our approach minimizes disruptions to carriers and safeguards universal service for consumers by adopting sensible transition plans and ensuring that universal service is used to support service in high-cost areas, not carriers' dividends.

II. REFORM OF HIGH-COST UNIVERSAL SERVICE SUPPORT

4. Today we take a monumental step toward our goal of ensuring that broadband is available to all Americans. We do this by requiring that all recipients of high-cost support offer broadband Internet access service to all customers within their supported areas as a condition of receiving future support. Taking this action will promote the deployment of broadband Internet access service to all areas of the nation, including high-cost, rural, and insular areas where customers may not currently have access to such services. In particular, as a condition of receiving continued high-cost support, we will require all incumbent local exchange carriers (LECs) to commit to offer broadband Internet access service within five years to all customers in study areas where the incumbent LECs receive high-cost support. Competitive eligible telecommunications carriers (ETCs) likewise will be required to commit to offer broadband Internet access services to all customers in their service areas within five years to continue to receive high-cost support, which will be distributed based on the competitive ETCs' own costs. Competitive ETCs that do not make this commitment will not be eligible to receive high-cost support; incumbent LECs that do not make this commitment will gradually lose their high-cost support, as this support will be awarded via reverse auction to an ETC who will meet carrier of last resort obligations and will commit to offering broadband Internet access to all customers in the entire study area within ten years. With these reforms, we take great strides toward ensuring that all Americans, regardless of where they live, will have broadband Internet access service available to them, without increasing the size of the high-cost fund.

[3] We thus conclude that there is a compelling need to proceed with comprehensive reform at this time, as we describe below. *See, e.g.*, *infra* Parts II.A, III.A, IV.A, and V.B. Given that we have notice and an extensive record, going back in some cases seven years, we are unpersuaded by commenters proposing that we delay reform to seek further comment, or that we issue a Further Notice of Proposed Rulemaking on questions beyond those raised in Part VI. *See, e.g.*, Letter from Ray Baum, Chairman, NARUC Communications Committee, to Chairman Kevin J. Martin, et al., FCC, CC Docket Nos. 01-92, 80-286, WC Docket Nos. 08-152, 04-32, 06-122, WT Docket No. 05-194 at 2 (filed Oct. 21, 2008) (NARUC Oct. 21, 2008 *Ex Parte* Letter); Letter from Jeffery S. Lanning, Embarq, to Chairman Kevin J. Martin, et al., FCC, CC Docket Nos. 01-92, 99-68, WC Docket No. 04-36 at 2 (filed Oct. 28, 2008) (Embarq Oct. 28, 2008 *Ex Parte* Letter); Letter from Eric N. Einhorn, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 99-68, WC Docket Nos. 06-122, 07-135, 08-152 at 1 (filed October 27, 2008) (Windstream Oct. 27, 2008 *Ex Parte* Letter).

A. Background

5. The 1996 Act amended the Communications Act of 1934 (the Act) with respect to the provision of universal service.[4] Congress sought to preserve and advance universal service, while at the same time opening all telecommunications markets to competition.[5] Section 254(b) of the Act directs the Federal-State Joint Board on Universal Service (Joint Board) and the Commission to base policies for the preservation and advancement of universal service on several general principles, plus other principles that the Commission may establish.[6] Among other things, section 254(b) directs that there should be specific, predictable, and sufficient federal and state universal service support mechanisms; quality services should be available at just, reasonable, and affordable rates; and access to advanced telecommunications and information services should be provided in all regions of the nation.[7]

6. The Commission implemented the universal service provisions of the 1996 Act in the 1997 *Universal Service First Report and Order*.[8] In considering methods to determine universal service support in rural, insular, and high-cost areas, the Commission examined the use of competitive bidding, and identified several advantages of competitive bidding as a method for allocating high-cost universal service support.[9] First, the Commission found that "a compelling reason to use competitive bidding is its potential as a market-based approach to determining universal service support, if any, for any given area."[10] Second, "by encouraging more efficient carriers to submit bids reflecting their lower costs, another advantage of a properly structured competitive bidding system would be its ability to reduce the amount of support needed for universal service."[11] Despite these advantages, the Commission determined that the record at the time was insufficient to support adoption of a competitive bidding mechanism.[12] Moreover, the Commission found it unlikely that competitive bidding mechanisms would be useful at that time because there likely would be no competition in a significant number of rural, insular, or high-cost areas in the near future.[13] The Commission, therefore, declined to adopt a competitive bidding mechanism at that time, but found that competitive bidding warranted further consideration as a potential

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[4] 47 U.S.C. § 254 (added by the 1996 Act).

[5] 47 U.S.C. § 254.

[6] *See* 47 U.S.C. § 254(b).

[7] 47 U.S.C. § 254(b)(1), (2), (5).

[8] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8780–88, paras. 1–20 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

[9] *Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320.

[10] *Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320 (agreeing with the Joint Board). The Commission also agreed with the Joint Board that "competitive bidding is consistent with section 254, and comports with the intent of the 1996 Act to rely on market forces and to minimize regulation." *Id.* at 8951, para. 325.

[11] *Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320 ("In that regard, the bidding process should also capture the efficiency gains from new technologies or improved productivity, converting them into cost savings for universal service.").

[12] *See Universal Service First Report and Order*, 12 FCC Rcd at 8949–50, paras. 322–23. Only GTE had proposed a detailed competitive bidding plan, which it characterized as an outline rather than a final proposal. *See* GTE's Comments in Response to Questions, CC Docket No. 96-45, Attach. 1 (filed Aug. 2, 1996).

[13] *See Universal Service First Report and Order*, 12 FCC Rcd at 8950, para. 324.

mechanism for determining levels of high-cost support in the future.[14]

7. Pursuant to section 254(e) of the Act, an entity must be designated as an eligible telecommunications carrier (ETC) to receive high-cost universal service support.[15] ETCs may be incumbent LECs, or non-incumbent LECs, which are referred to as "competitive ETCs."[16] Under the existing high-cost support distribution mechanism, incumbent LEC ETCs receive high-cost support for their intrastate services based on their costs.[17] Competitive ETCs, on the other hand, receive support for each of their lines based on the per-line support the incumbent LEC receives in the service area.[18] This support to competitive ETCs is known as "identical support." The Commission's universal service high-cost support rules do not distinguish between primary and secondary lines; therefore, high-cost support may go to a single end user for multiple connections.[19] Further, the Commission's rules may result in multiple competitors in the same high-cost area receiving identical per-line support.

8. High-cost support for competitive ETCs has grown rapidly over the last several years, which has placed extraordinary pressure on the federal universal service fund.[20] In 2001, high-cost universal service support totaled approximately $2.6 billion.[21] By 2007, the amount of high-cost support had grown to approximately $4.3 billion per year.[22] In recent years, this growth has been due mostly to increased support provided to competitive ETCs, which pursuant to the identical support rule receive

[14] *See Universal Service First Report and Order*, 12 FCC Rcd at 8948, para. 320.

[15] 47 U.S.C. § 254(e). The statutory requirements for ETC designation are set out in section 214(e) of the Communications Act of 1934, as amended (Communications Act or Act). 47 U.S.C. § 214(e).

[16] *See* 47 C.F.R. § 54.5 ("A 'competitive eligible telecommunications carrier' is a carrier that meets the definition of 'eligible telecommunications carrier' below and does not meet the definition of an 'incumbent local exchange carrier' in § 51.5 of this chapter.").

[17] Non-rural incumbent LEC ETCs receive support for their intrastate supported services based on the forward-looking economic cost of providing the services. 47 C.F.R. § 54.309. Rural incumbent LEC ETCs receive support based on their loop costs, as compared to a national average. 47 C.F.R. Part 36, sbpt. F; 47 C.F.R. § 54.305. Incumbent LEC ETCs that serve study areas with 50,000 or fewer lines receive support based on their local switching costs. 47 C.F.R. § 54.301. Additionally, incumbent LEC ETCs that are subject to price cap or rate-of-return regulation receive interstate access support based on their revenue requirements. 47 C.F.R. Part 54, sbpts. J, K.

[18] 47 C.F.R. § 54.307(a).

[19] *See Universal Service First Report and Order*, 12 FCC Rcd at 8828–30, paras. 94–96.

[20] Support for the fund derives from assessments paid by providers of interstate telecommunications services and certain other providers of interstate telecommunications. *See* 47 C.F.R. § 54.706. Fund contributors are permitted to, and almost always do, pass those assessments though to their end-user customers. *See* 47 C.F.R. § 54.712. Fund assessments paid by contributors are determined by applying the quarterly contribution factor to the contributors' contribution base revenues. In the second quarter of 2007, the contribution factor reached 11.7%, which is the highest level since its inception. *See Proposed Second Quarter 2007 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 5074, 5077 (OMD 2007). The contribution factor has since declined to 11.4% in the fourth quarter of 2008. *Proposed Fourth Quarter 2008 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 08-2091 (OMD 2008).

[21] *See* FCC, UNIVERSAL SERVICE MONITORING REPORT, tbl. 3.2 (2007) (2007 UNIVERSAL SERVICE MONITORING REPORT), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-279226A1.pdf.

[22] UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, 2007 ANNUAL REPORT 43 (2007) (USAC 2007 ANNUAL REPORT), *available at* http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2007.pdf.

high-cost support based on the incumbent LEC's per-line support. Competitive ETC support, in the six years from 2001 through 2007, has grown from under $17 million to $1.18 billion—an annual growth rate of over 100 percent.[23] This "funded competition" has grown significantly in a large number of rural, insular, or high-cost areas; in some study areas, more than 20 competitive ETCs currently receive support.[24]

9. To address the growth in competitive ETC support, the Joint Board recommended an interim cap on the amount of high-cost support available to competitive ETCs, pending comprehensive high-cost universal service reform. The Commission adopted this recommendation in 2008.[25]

10. For the past several years, the Joint Board and the Commission have been exploring ways to reform the Commission's high-cost program. In the most recent high-cost support comprehensive reform efforts, the Joint Board issued a recommended decision on November 20, 2007.[26] The Joint Board recommended that the Commission address reforms to the high-cost program and make "fundamental revisions in the structure of existing Universal Service mechanisms."[27] Specifically, the Joint Board recommended that the Commission should: (1) deliver high-cost support through a provider of last resort fund, a mobility fund, and a broadband fund[28]; (2) cap the high-cost fund at $4.5 billion, the approximate level of 2007 high-cost support[29]; (3) reduce the existing funding mechanisms during a transition period[30]; (4) add broadband and mobility to the list of services eligible for support under section 254 of the Act[31]; (5) eliminate the identical support rule[32]; and (6) "explore the most appropriate auction mechanisms to determine high-cost universal service support."[33]

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[23] 2007 UNIVERSAL SERVICE MONITORING REPORT at tbl. 3.2; USAC 2007 ANNUAL REPORT at 45.

[24] *See* USAC Quarterly Administrative Filings for 2008, Fourth Quarter (4Q) Appendices, HC03—Rural Study Areas with Competition—4Q2008, *available at* http://www.usac.org/about/governance/fcc-filings/2008/Q4/HC03%20-%20Rural%20Study%20Areas%20with%20Competition%20-%204Q2008.xls (showing 24 competitive ETCs in the study area of incumbent LEC Iowa Telecom North (study area code 351167), and 22 competitive ETCs in the study area of incumbent LEC Iowa Telecom Systems (study area code 351170)).

[25] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No.96-45, Recommended Decision, 22 FCC Rcd 8998, 8999–9001, paras. 4–7 (JB 2007) (*Interim Cap Recommended Decision*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*). As recommended by the Joint Board, the Commission capped competitive ETC support for each state. *Interim Cap Recommended Decision*, 22 FCC Rcd at 9002, para. 9; *Interim Cap Order*, 23 FCC Rcd at 8846, paras. 26–28. The Commission set the cap at the level of support competitive ETCs were eligible to receive during March 2008. *Interim Cap Order*, 23 FCC Rcd at 8850, para. 38.

[26] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477 (JB 2007) (*Comprehensive Reform Recommended Decision*).

[27] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, para. 1.

[28] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20480–81, para. 11.

[29] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20484, para. 26.

[30] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20484, para. 27.

[31] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20481–82, paras. 12–18.

[32] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20486, para. 35.

[33] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, paras. 1–6.

11. On January 29, 2008, the Commission released three notices of proposed rulemaking addressing proposals for comprehensive reform of high-cost universal service support.[34] In the *Identical Support NPRM*, the Commission sought comment on the Commission's rules governing the amount of high-cost universal service support provided to competitive ETCs.[35] It tentatively concluded that the Commission should eliminate the identical support rule.[36] The Commission also tentatively concluded that support to a competitive ETC should be based on the competitive ETC's own costs of providing the supported services, and it sought comment on how the support should be calculated, the reporting obligations to be applied, and whether the Commission should cap such support at the level of the incumbent LEC's support.[37] In the *Reverse Auctions NPRM*, the Commission tentatively concluded that reverse auctions offer several potential advantages over current high-cost mechanisms and sought comment on whether they should be used as the disbursement mechanism to determine the amount of high-cost universal service support for ETCs serving rural, insular, and high-cost areas, and it sought comment on how to implement reverse auctions for this purpose.[38] The Commission also sought comment on a number of specific issues regarding auctions and auction design.[39] The Commission also released the *Joint Board Comprehensive Reform NPRM*, seeking comment on the Joint Board's *Comprehensive Reform Recommended Decision* and incorporating by reference the *Identical Support NPRM* and the *Reverse Auctions NPRM*.[40] The discussion that follows represents our response to the Joint Board's *Comprehensive Reform Recommended Decision*, pursuant to section 254(a)(2).[41]

B. Discussion

12. Today we comprehensively reform the high-cost universal service support mechanism, and take steps to ensure that broadband Internet access service is deployed quickly to all areas of the country, including rural and insular areas. The steps we take today will provide certainty to providers as to the levels of support available to them in providing supported services and broadband Internet access service to all customers within the supported areas. This will assist providers in creating business plans to deploy services in currently unserved areas and will ensure efficiency in the deployment of services to these areas. Specifically, we are defining the level of high-cost support available to providers that commit to offer broadband to all customers within a service area. Support in incumbent LEC service areas will be

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[34] *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1467 (2008) (*Identical Support NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1495 (2008) (*Reverse Auctions NPRM*); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Notice of Proposed Rulemaking, 23 FCC Rcd 1531 (2008) (*Joint Board Comprehensive Reform NPRM*) (collectively the *High-Cost Reform NPRMs*).

[35] *Identical Support NPRM*, 23 FCC Rcd at 1468, para. 1.

[36] *Identical Support NPRM*, 23 FCC Rcd at 1468, para. 1.

[37] *Identical Support NPRM*, 23 FCC Rcd at 1473–78, paras. 12–25.

[38] *Reverse Auctions NPRM*, 23 FCC Rcd at 1495, para. 1.

[39] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500–12, paras. 10–50.

[40] *Joint Board Comprehensive Reform NPRM*, 23 FCC Rcd at 1531, para. 1.

[41] 47 U.S.C. § 254(a)(2). Pursuant to that section, the Commission shall complete any proceeding to implement a Joint Board recommendation within one year after receiving it. The Commission has acted on the *Comprehensive Reform Recommended Decision* prior to the November 20, 2008 one-year statutory deadline.

set at the total amount of high-cost support disbursed to the incumbent LEC ETC in December 2008 on an annualized basis. Incumbent LEC ETCs will continue to receive this level of support if they commit to offer broadband Internet access services to all customers within the service area within five years. If an incumbent LEC does not make this broadband commitment for a particular service area, the support will be transitioned to the winning bidder of a reverse auction that will commit to deploy broadband throughout the service area within ten years, and to take on carrier of last resort obligations. Competitive ETCs will receive high-cost support, based on their own costs as compared to the relevant high-cost support thresholds, so long as they, too, commit to offer broadband Internet access service to all customers in their service areas within five years. While ensuring that broadband Internet access service is made available to customers in rural and high-cost areas, we also cap the overall size of the high-cost mechanism to protect customers in all areas of the nation from increasing universal service contribution assessments.

13. The requirements that we adopt for disbursement of high-cost universal service support do not apply to providers operating in Alaska, Hawaii, or any U.S. Territories and possessions.[42] We find that these areas have very different attributes and related cost issues than do the continental states.[43] For this reason, we are exempting providers in Alaska, Hawaii and U.S. Territories or possessions from the high-cost support requirements and rules adopted herein, and we will address them in a subsequent proceeding.[44]

1. Controlling the Growth of the High-Cost Fund

14. Consistent with the recommendation of the Joint Board, we cap the total amount of high-

[42] Providers operating in U.S. Territories and possessions, such as Puerto Rico and Guam, are not subject to the high-cost support requirements adopted in this order. *See* Letter from Earl Comstock, Comstock Consulting LLC, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-377 at 1 (dated Oct. 15, 2008) (asking the Commission to recognize the higher costs and lower income levels in Puerto Rico in any reform efforts it may take); Letter from Eric N. Votaw, Vice President-Marketing & Regulatory, GTA Telecom, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 99-68, 96-45, WC Docket No. 05-337 at 1–2 (filed Oct. 24, 2008) (asking the Commission to recognize that Guam's costs are higher than the continental United States and that Guam should be treated separately, along with Alaska and Hawaii, for reform purposes).

[43] *E.g.*, *Verizon Commc'ns, Inc., Transferor, and América Móvil, S.A. de C.V., Transferee*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, 22 FCC Rcd 6195, 6211, para. 36 (2007) (*Verizon/América Móvil Transfer Order*) (describing "difficult to serve terrain and dramatic urban/rural differences" in Puerto Rico); *Integration of Rates and Services for Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83-1376, Supplemental Order Inviting Comments, 4 FCC Rcd 395, 396, paras. 7–8 (1989) (*Rates and Services Integration Order*) (describing the unique market conditions and structure in Alaska); Letter from Brita D. Strandberg, Counsel for General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket No. 05-337 at 2 (Oct. 3, 2008) (discussing Alaska's particular service needs and network architecture).

[44] *Cf. The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, IB Docket No. 06-123, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8842, 8860, para. 47 (2007) (*Policies and Service Rules for the Broadcasting-Satellite Service Order*) ("The Commission is committed to establishing policies and rules that will promote service to all regions in the United States, particularly to traditionally underserved areas, such as Alaska and Hawaii, and other remote areas.").

cost universal service support.[45] As the Joint Board recognized, high-cost support currently accounts for more than half of total federal universal service support.[46] Since 1997, when the Commission implemented the universal service requirements of section 254 of the Act, high-cost support has increased by 240 percent.[47] Although, earlier this year, we took an initial step to address high-cost fund growth by capping support to competitive ETCs, that cap was an interim, emergency measure, pending a closer examination of the steps necessary to achieve comprehensive reform.[48] Many commenters have urged the Commission to cap the overall amount of high-cost support, rather than limiting the cap only to competitive ETCs.[49] Although other commenters oppose the adoption of a cap on the total amount of high-cost support or on the amount of support available to incumbent LEC ETCs,[50] we find that, to manage the high-cost support mechanism effectively, we must control its growth, and that capping support in the manner discussed below will provide specific, predictable, and sufficient support to preserve and advance universal service.[51]

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[45] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, 20481, 20484, paras. 2, 11, 26.

[46] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20484, para. 26. In 2007, total federal universal service disbursements amounted to approximately $6.95 billion. Of that amount, approximately $4.29 billion, 62%, was disbursed as high-cost support. USAC 2007 ANNUAL REPORT at 51.

[47] *See* 2007 UNIVERSAL SERVICE MONITORING REPORT at 3-14, tbl. 3.1 (high-cost support in 1997 was approximately $1.26 billion, compared with approximately $4.29 billion in 2007). Even taking into account the fact that additional interstate support mechanisms, Interstate Access Support (IAS) and Interstate Common Line Support (ICLS), were created in 2000 and 2001, respectively, high-cost support has still increased by more than 45%, from approximately $2.94 billion in 2002 to its current level of approximately $4.29 billion. *Id.*

[48] *See Interim Cap Order*, 23 FCC Rcd at 8834, para. 1.

[49] *See* CenturyTel *High-Cost Reform NPRMs* Comments at 18 (existing high-cost support mechanisms should be frozen at the study area level or on a statewide basis to provide funding certainty and encourage investment); Chinook *High-Cost Reform NPRMs* Comments, Attach. at 5–6 (any cap on universal service support should apply to all ETCs, including incumbent LECs); Connecticut Dep't of Pub. Util. Control *High-Cost Reform NPRMs* Comments at 5 (supporting a cap on high-cost support set at the 2007 level); Florida PSC *High-Cost Reform NPRMs* Comments at 2 (supporting the recommendation to cap the overall size of the high-cost fund); Information Technology Industry Council (ITI) *High-Cost Reform NPRMs* Comments at 7 (an overall cap should be applied to control the size of the high-cost mechanism); NCTA *High-Cost Reform NPRMs* Comments at 19 (the Joint Board's proposal to cap the overall size of the high-cost mechanism is "a welcome dose of fiscal responsibility"); National Consumer Law Center *Joint Board Comprehensive Reform NPRM* Comments at 2–3 (supporting the Joint Board's proposal to cap the overall high-cost fund); Verizon/Verizon Wireless *High-Cost Reform NPRMs* Comments at 2–3, 6–9 (Commission should cap the overall high-cost fund).

[50] *See* Frontier *High-Cost Reform NPRMs* Comments at 6–7; JSI *High-Cost Reform NPRMs* Comments at 6; Montana Telecommunications Ass'n *High-Cost Reform NPRMs* Comments at 21–22; NECA *High-Cost Reform NPRMs* Comments at 17–20; TCA *High-Cost Reform NPRMs* Comments at 10–11; TDS *High-Cost Reform NPRMs* Comments at 8–9; Missouri Small Telephone Company Group (MSTC) *High-Cost Reform NPRMs* Reply at 5–7; Utah Rural Telecom Ass'n *High-Cost Reform NPRMs* Reply at 5.

[51] 47 U.S.C. § 254(b)(5); *see* CenturyTel *High-Cost Reform NPRMs* Comments at 18; Comcast *High-Cost Reform NPRMs* Comments at 3, 11; Florida PSC *High-Cost Reform NPRMs* Comments at 8–9; National Consumer Law Center *Joint Board Comprehensive Reform NPRM* Comments at 2; NCTA *High-Cost Reform NPRMs* Comments at 4–6; New Jersey Division of Rate Counsel *High-Cost Reform NPRMs* Comments at 52–54; Oregon PUC *High-Cost Reform NPRMs* Comments at 2–3; Sprint Nextel *High-Cost Reform NPRMs* Comments at 3; USTelecom *High-Cost Reform NPRMs* Comments at 2; Verizon/Verizon Wireless *High-Cost Reform NPRMs* Comments at 7; New Jersey Division of Rate Counsel *High-Cost Reform NPRMs* Reply at 64–65; Sprint Nextel *High-Cost Reform NPRMs* Reply at 8–9; State Commissioners *High-Cost Reform NPRMs* Reply at 2; Texas Office of Public Utility Counsel

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15. We find it necessary to cap the high-cost mechanism as a first step toward fulfilling our statutory obligation to create specific, predictable and sufficient universal service support mechanisms.[52] As the United States Court of Appeals for the Fifth Circuit held in *Alenco*: "[t]he agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service."[53] The *Alenco* court also found that "excessive funding may itself violate the sufficiency requirements,"[54] and the United States Court of Appeals for the Tenth Circuit has stated that "excessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in [section] 254(b)(1)."[55] Given the excessive growth in high-cost support, we find it necessary to cap this mechanism to ensure that unsubsidized users who contribute to the fund are not harmed by excessive subsidization.

16. Therefore, we take several steps to limit the growth of high-cost support. First, we cap the overall high-cost fund at the total amount of high-cost support disbursed by the Universal Service Administrative Company (USAC) for December 2008 on an annualized basis, net of any prior or past period adjustments. Although we agree with the Joint Board's recommendation to cap the high-cost mechanism, rather than set such a cap at the 2007 level of high-cost support as the Joint Board recommended, we find it is more appropriate to set the cap at the level of support disbursed by USAC in December 2008 on an annualized basis. Furthermore, we freeze each incumbent LEC ETC's individual, annual high-cost support at the amount of support, on a lump sum basis, that the ETC received in December 2008 annualized, net of any prior or past period adjustments, on a study area or service area basis.[56]

17. As discussed below, we also eliminate the identical support rule for competitive ETCs. Competitive ETCs' support levels will be based on their costs as compared to the relevant high-cost support mechanism benchmarks, and frozen at the amount of support, on a lump sum basis, that the competitive ETC received in 2008 on a study area basis.[57]

18. Consistent with section 254(b)(5) of the Act, we find that capping high-cost support in this manner will enable ETCs to predict the specific level of support that they will receive should they

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Joint Board Comprehensive Reform NPRM Reply at 2; Virgin Mobile *High-Cost Reform NPRMs* Reply at 3–4. The Commission has already implemented caps on the schools and libraries and rural health care universal service mechanisms. *Universal Service First Report and Order*, 12 FCC Rcd at 9054, 9140, paras. 529, 704 (establishing a $2.25 billion annual cap for the schools and libraries mechanism and a $400 million annual cap for the rural health care mechanism); *see also* 47 C.F.R. §§ 54.507(a), 54.623(a).

[52] 47 U.S.C. § 254(b)(5); *see also Universal Service First Report and Order*, 12 FCC Rcd at 9054, 9140, paras. 529, 704.

[53] *Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 620–21 (5th Cir. 2000) (*Alenco*).

[54] *Alenco*, 201 F.3d at 620.

[55] *Qwest Commc'ns Int'l Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005).

[56] Pursuant to section 214(e)(5) of the Act, the term "service area" is used to refer to the geographic area established by a state commission or this Commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5). For a rural telephone company, section 214(e)(5) states that "service area" shall mean the rural company's "study area" unless and until the Commission and the states establish a different definition of service area for such company. *Id.* In this order, we use the terms "service area" and "study area" interchangeably. Nothing in this order is meant to change any redefinitions of service area previously established by the Commission and/or the state commissions.

[57] *See infra* paras. 53–56.

choose to participate in the program.[58] To the extent that an incumbent LEC ETC determines that it cannot offer broadband Internet access service throughout its service area at the specified level of support, as discussed below, that particular study area will be deemed an "Unserved Study Area," and we will conduct a reverse auction to determine the entity capable of meeting our service requirements and the amount of support to provide for that area. In fact, through the reverse auction process, it will be the bidders, not the Commission, that determine how much support they would need to offer service. Finally, as discussed below, if the reverse auction process does not yield a winning bidder, the Commission will reexamine whether it needs to take further action with regard to this situation, should it arise.

2. Conditioning Support on Offering Broadband Internet Access Service

19. The broadband era is here. Those of us who have broadband Internet access service use it to communicate, to work, to get vital information, to be educated, and to be entertained. Broadband Internet access service—a novelty at the time of the passage of the 1996 Act—is now mainstream. Yet some Americans still lack access to this vital service, and as Commissioner Copps has said, "does America at the beginning of the 21st century become technologically stagnant or the leader of the Digital Age? For me, the answer to that question depends in some significant measure upon whether we succeed in bringing high-speed, high-value broadband and an open Internet to all Americans . . . rural as well as urban folks . . . ."[59]

20. Today, we modify our high-cost support system fundamentally to spur deployment and ensure that all Americans have access to broadband. Specifically, we make offering broadband Internet access service a condition of being eligible to receive high-cost support. As we explain below, we will require all incumbent LECs to certify whether or not they will commit to offering broadband Internet access throughout their supported study areas in five years.[60] Those who make that commitment will continue to receive their current levels of support. Existing competitive ETCs likewise will have the opportunity to commit to offering broadband Internet access service throughout their supported service areas, and will be eligible to receive high-cost support based on their actual costs. Auction winners, as well, must commit to offering broadband Internet access service throughout their supported areas as a

[58] 47 U.S.C. § 254(b)(5).

[59] Remarks of Commissioner Michael J. Copps, Pike & Fischer's Broadband Policy Summit IV, Washington, DC (June 12, 2008), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-282890A1.pdf.

[60] *See supra* note 56 (explaining use of the terms "study area" and "service area" in this order). We understand the concern of commenters who point out the need for more granular information on broadband availability. *See Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20481, para. 13; *see also* Comcast *High-Cost Reform NPRMs* Comments at 13–16; GCI *High-Cost Reform NPRMs* Comments at 34–36; NCTA *High-Cost Reform NPRMs* Comments at 20; New Jersey Rate Counsel *High-Cost Reform NPRMs* Comments at 21–22; New York State PSC *Joint Board Comprehensive Reform NPRM* Comments at 1, 5–6; TCA *High-Cost Reform NPRMs* Comments at 11–12; USTelecom *High-Cost Reform NPRMs* Comments at 36; Embarq *High-Cost Reform NPRMs* Reply at 8–10. The Commission has recently undertaken a major effort to gather more specific and granular data about broadband subscribership and availability. *See Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9708–09, paras. 34–35 (2008) (*Broadband Data Gathering Order*) (seeking comment on, among other things, adopting a national broadband mapping program). We believe our refined broadband data gathering program will help all of us better assess where our broadband availability needs are greatest. For purposes of implementing the broadband deployment program of this order, we ask incumbent LECs to identify where they will and will not commit to broadband availability, thus identifying where we need to proceed to a reverse auction.

condition of receiving even initial support. In other words, all ETCs are subject to the same basic obligation—to offer broadband Internet access throughout their supported service areas. We also explain the obligations related to this condition, including carrier-of-last-resort-type obligations.

21. We believe that imposing this condition on the receipt of high-cost support is fully consistent with and indeed promotes Congress's overall objectives as stated in section 254 of the Communications Act and section 706 of the 1996 Act.[61] Section 254(b)(2) of the Act instructs the Commission to base policies for the advancement of universal service on the principle that "[a]ccess to *advanced* telecommunications *and information services* should be provided in all regions of the Nation."[62] Similarly, section 254(b)(3) states that "[c]onsumers . . . in rural, insular, and high-cost areas, should have access to . . . *advanced* telecommunications and *information services*, that are reasonably comparable to those services provided in urban areas and that are available at rates charged for similar services in urban areas."[63] Indeed, Congress even established the definition of universal service as "an *evolving* level of telecommunications services . . . taking into account advances in telecommunications and information technologies and services."[64] We believe that imposing a broadband condition on receipt of high-cost support advances the general purposes of section 254 of the Act as just described and also advances Congress's objective stated in section 706 of the 1996 Act to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans."[65] We also see no reason why conditioning the receipt of high-cost support on offering broadband Internet access service is not permissible under the Commission's authority to promulgate general rules related to universal service.[66]

22. *Broadband Internet Access As a Condition to Receiving High-Cost Support.* Consistent

[61] 47 U.S.C. §§ 157 nt, 254. Some commenters suggest that adding broadband Internet access service to the list of "supported services" would be inconsistent with section 254(c)(1) of the Act because broadband Internet access service is an information service, not a telecommunications service. *See* SouthernLINC *High-Cost Reform NPRMs* Comments at 30–31; Verizon/Verizon Wireless *High-Cost Reform NPRMs* Comments at 31–32; SouthernLINC *High-Cost Reform NPRMs* Reply at 42–43; Sprint Nextel *High-Cost Reform NPRMs* Reply at 16–17. Using the universal service program to ensure universal broadband availability, however, is fully consistent with the statute as explained above. In addition, section 254(c)(2) provides that "[t]he Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms." 47 U.S.C. § 254(c)(2). The Joint Board did just that in the *Comprehensive Reform Recommended Decision*, in which it recommended that we add broadband Internet access service to the list of services eligible for support under section 254. *See Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20491, para. 56. In this order, we achieve the Joint Board's goal by conditioning receipt of federal high-cost support on an ETC's commitment to offer broadband Internet access service throughout its service area, but we do not add broadband Internet access service to the list of universal service supported services.

[62] 47 U.S.C. § 254(b)(2) (emphasis added).

[63] 47 U.S.C. § 254(b)(3) (emphasis added).

[64] 47 U.S.C. § 254(c)(1) (emphasis added).

[65] 47 U.S.C. §§ 157 nt, 254.

[66] The Commission has previously considered imposing conditions on the receipt of high-cost support. *See Universal Service First Report and Order*, 12 FCC Rcd at 8831, para. 98. And of course, today's recipients of high-cost support must comply with many obligations that are not explicitly spelled out in the statute. For example, to be designated as an ETC, an applicant must demonstrate that it has back-up power. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6382, para. 25 (2005) (*ETC Designation Order*).

with the objectives of sections 254 and 706 as just described, all ETCs must offer broadband Internet access service to all customers in their supported service areas as a condition of receiving universal service high-cost support. Since the Commission adopted universal service rules in response to the 1996 Act, broadband Internet access service has evolved into a critical service for American consumers. The importance of this evolution is reflected in Congress's recent finding that "[t]he deployment and adoption of broadband technology has resulted in enhanced economic development and public safety for communities across the Nation, improved heath care and education opportunities, and a better quality of life for all Americans, [and] [c]ontinued progress in the deployment and adoption of broadband technology is vital to ensuring that our Nation remains competitive and continues to create business and job growth."[67] The majority of consumers who use broadband Internet access service today rely on it for telework, access to banking services, interaction with government, entertainment, shopping, access to news and other information, and so many other uses.[68] Broadband Internet access plays a special role in rural areas, reducing the burdens of distance.[69] For example, high-speed connections to the Internet allow children in rural areas to have access to the same information as school children in urban areas. Telemedicine networks made possible by broadband Internet access service also save lives and improve the standard of healthcare in sparsely populated, rural areas that may lack access to the breadth of medical expertise and advanced medical technologies available in other areas.[70] Broadband service also enables the sharing of critical, time-sensitive information with first responders, government officials, and health care providers, thereby improving the government's ability to provide a comprehensive and cohesive response to a public health crisis in coordination.[71]

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[67] Broadband Data Improvement Act, Pub. L. No. 100-385, 122 Stat. 4096, § 102(1)–(2) (2008).

[68] A recent survey finds that, compared to Internet users with dial-up service at home, those with broadband service at home are far more likely to engage in 14 different types of Internet-related activities on a typical day. These activities include using an online search engine, checking for weather reports, getting news, visiting a state or local government Web site, obtaining job information, watching a video, and downloading a podcast. The daily use of a search engine, for example, is reported by 57% of the broadband users as compared to only 26% of the dial-up users. *See* JOHN B. HORRIGAN, PEW INTERNET & AMERICAN LIFE PROJECT, HOME BROADBAND ADOPTION 2008 at 19 (2008) (2008 PEW BROADBAND ADOPTION STUDY), *available at* http://www.pewinternet.org/pdfs/PIP_Broadband_2008.pdf.

[69] For example, the California Broadband Task Force Report finds broadband service critical to expanding job opportunities for rural residents. It observes, for example, that broadband has facilitated the use of "homeshoring," or the use of home-based workers for providing customer service, instead of requiring employees to adhere to a strict work schedule at a centralized location. This report also finds that broadband offers farmers better access to market information and allows them to expand their potential customer base. *See* FINAL REPORT OF THE CALIFORNIA BROADBAND TASK FORCE at 13 (Jan. 2008) (CALIFORNIA 2008 BROADBAND REPORT), *available at* http://www.calink.ca.gov/taskforcereport/.

[70] *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111, 11112, para. 5 (2006); *see also* SUSANNAH FOX, PEW INTERNET & AMERICAN LIFE PROJECT, THE ENGAGED E-PATIENT POPULATION at 1 (2008) (finding that home broadband users are twice as likely as home dial-up users to do health research on a typical day), *available at* http://www.pewinternet.org/pdfs/PIP_Health_Aug08.pdf.

[71] A recent report to Congress concludes that "[m]odern broadband communications networks and applications present an enormous opportunity to radically improve the manner in which emergency information is shared by health officials. Broadband services enable bandwidth intensive information such as video, pictures, and graphics to be transmitted faster and in a more reliable and secure manner." JOINT ADVISORY COMMITTEE ON COMMUNICATIONS CAPABILITIES OF EMERGENCY MEDICAL AND PUBLIC HEALTH CARE FACILITIES, REPORT TO CONGRESS 2 (Feb. 4, 2008), *available at* http://energycommerce.house.gov/Press_110/JAC.Report_FINAL%20Jan.3.2008.pdf.

23. Despite the advances in broadband technology and the deployment of infrastructure to accommodate higher bandwidth speeds, ubiquitous broadband availability does not exist throughout the nation—especially for those consumers in rural areas.[72] In March 2008, the Commission's most recent data revealed that more than half of the households in the United States now subscribe to a high-speed service provider and at least one high-speed service provider is providing service in excess of 200 kbps in at least one direction in 99.9 percent of zip codes in the country.[73] The broadband subscription rate is much lower in rural areas, however. A 2008 survey finds that the percentage of rural households subscribing to broadband service is only 38 percent—well below the 57 percent and 60 percent subscription rates found in urban and suburban areas, respectively.[74] This survey concludes that the lack of broadband availability very likely accounts for some of this disparity.[75] Moreover, this conclusion is consistent with the results of residential surveys in several states.[76] We find that making the offering of broadband Internet access service a condition of receiving universal service high-cost support can bring this critical service to the remainder of Americans who await its deployment.[77] In addition, doing so will further the objective of section 254(b)(3) that consumers in rural, insular, and high-cost areas have access

[72] *See, e.g.*, Cellular South *High-Cost Reform NPRMs* Comments at 10; *see also generally* 2008 PEW BROADBAND ADOPTION STUDY at 11–12.

[73] *See* FCC, HIGH-SPEED SERVICES FOR INTERNET ACCESS: STATUS AS OF DECEMBER 31, 2006, tbl. 15 (2007), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280906A1.pdf.

[74] *See* 2008 PEW BROADBAND ADOPTION STUDY at 3–4. The survey was conducted by phone from April 8, 2008 to May 11, 2008 among 2,251 American adults, 1,153 of whom were broadband users. *Id.*

[75] Pew acknowledges that the participants in its 2008 survey may report incorrectly as to whether broadband service is available where they live. 2008 PEW BROADBAND ADOPTION STUDY at 11. Pew nonetheless concludes that "the fact that rural residents are more likely to report that broadband isn't available where they live indicates that infrastructure availability comes into play in broadband adoption. Some 28% of rural adult Americans without home high-speed say broadband isn't available where they live, in contrast to 22% of non-rural Americans without broadband who say this. Moreover, 24% of dial-up users in rural areas say having the service available where they live would prompt a switch to broadband; this compares to the 14% figure for all respondents." *Id.* at 11–12.

[76] In Ohio, a March 2008 survey of 1,200 residents found broadband service available in 96% of urban homes but in only 79% of rural homes. *See* CONNECT OHIO TECHNOLOGY ASSESSMENT: EXECUTIVE SUMMARY at 2 (June 27, 2008), *available at* http://connectoh.org/_documents/Res_OHExecutiveSummary06252008_FINAL.pdf. In California, a state-commissioned task force recently found that approximately 500,000 California households, or almost 1.4 million California residents, are unable to subscribe to broadband service with a speed of at least 500 kbps. The task force identified 1,975 communities without broadband service and concluded that many California communities do not have access to the higher broadband speeds. *See* CALIFORNIA 2008 BROADBAND REPORT at 33. In Tennessee, a July 2007 survey of 1,787 residents having dial-up service at home found that 36% of them did not subscribe to broadband service because it was unavailable to their homes. *See* CONNECTED TENNESSEE, TENNESSEE RESIDENTIAL CONSUMERS at 22 (2007), *available at* http://www.connectedtn.org/_documents/CTResidentialSurvey100107.FINAL.pdf.

[77] We disagree with commenters who suggest that it is premature or ill-advised to require all ETCs to offer broadband because, as discussed below, we do so in a manner that does not increase the size of the high-cost fund. *See, e.g.*, SouthernLINC *High-Cost Reform NPRMs* Comments at 30; Sprint Nextel *High-Cost Reform NPRMs* Comments at 16–17; USTelecom *High-Cost Reform NPRMs* Comments at 33–34; Western Telecomms. Alliance (WTA) *High-Cost Reform NPRMs* Comments at 73; SouthernLINC *High-Cost Reform NPRMs* Reply at 41. Similarly, we disagree with commenters who argue that government action at the current time would be wasteful as the market is already taking steps to reach currently underserved areas. *See, e.g.*, NCTA *High-Cost Reform NPRMs* Comments at 19–20; SouthernLINC *High-Cost Reform NPRMs* Comments at 30; SouthernLINC *High-Cost Reform NPRMs* Reply at 42. We cannot wait indefinitely for the benefits of broadband to reach all Americans.

to advanced telecommunications and information services that are reasonably comparable to those services provided in urban areas and that are available at rates charged for similar services in urban areas.[78]

a. Definition of Broadband Internet Access Service

24. For purposes of satisfying the condition to receive high-cost support, we adopt a definition of broadband Internet access service that focuses on the end user's experience, without regard to the types of facilities, protocols, or other technologies used to deliver that experience. Broadband Internet access service is therefore defined as an "always on" service that combines computer processing, information provision, and computer interactivity with data transport, enabling end users to access the Internet and use a variety of applications, at speeds discussed elsewhere in this order.[79] We refer specifically to broadband Internet access service—an information service—and not to broadband transmission alone because our goal is to ensure that all Americans have access to the Internet.[80]

b. Broadband Internet Access Service Obligations

25. Section 254(b)(1) instructs the Commission to base policies for the advancement of universal service on the principle that quality services should be offered at just, reasonable, and affordable rates.[81] Below we provide requirements for offering broadband Internet access service as a condition of receiving universal service high-cost support. In sum, all ETCs must offer broadband Internet access service, along with all supported services, to all customers throughout their service areas by the end of a five- or ten-year build-out period consistent with the requirements of this order.

26. Except as described just below, an ETC may offer broadband Internet access service using any technology, or combination of technologies, that meets the requirements for speed set forth in this order. An ETC may also combine services provided over its own facilities with those provided over another provider's facilities pursuant to agreement. Indeed, there may be service areas where it is more economic to offer broadband Internet access service via one technology than another and we explicitly provide for even a single provider to take advantage of the inherent benefits of different technologies for different areas.[82] Furthermore, an ETC can combine a common carrier offering of broadband transmission[83] with the information processing capabilities described above,[84] so long as what the end user receives is in fact broadband Internet access service.

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[78] See 47 U.S.C. § 254(b)(3).

[79] *See infra* paras. 28, 45, 52; *see also Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853, 14860–61, para. 9 (2005) (*Wireline Broadband Internet Access Order*), *aff'd sub nom. Time Warner Telecom, Inc. v. FCC*, 507 F.3d 205 (3d Cir. 2007).

[80] As explained below, nothing in this order changes the choice that providers have today to offer broadband transmission on a common carrier basis. *See infra* para. 26.

[81] 47 U.S.C. § 254(b)(1).

[82] Thus, we are not favoring wireline technology over another. *But see* Virgin Mobile *High-Cost Reform NPRMs* Reply at 5–6.

[83] *See Wireline Broadband Internet Access Order*, 20 FCC Rcd at 14900–01, paras. 89–90 (giving providers of wireline broadband Internet access the choice to offer broadband transmission on a common carrier basis or a non-common carrier basis).

[84] *See supra* para. 24.

27. An ETC cannot use satellite broadband technology to meet its obligations under this order, however, absent a waiver from the Commission. We are concerned that broadband Internet access service provided via satellite differs from broadband Internet access provided over other technologies in two important ways. First, satellite-provided broadband Internet access service is subject to latency due to the amount of time it takes a signal to travel between the satellite and the user.[85] Latency ranges from a quarter of a second to almost a second, making the use of applications that require a very fast response difficult or impossible, and substantially degrading the quality of other applications like voice over Internet protocol.[86] Second, satellite-provided broadband Internet access service is subject to degradation due to weather events ("rain fade") to a greater degree than other wireless technologies.[87] For these reasons, we find that satellite-provided broadband Internet access service cannot be the primary means by which we serve rural America. We recognize, however, that for certain customers, satellite-provided broadband may be the only economic means of reaching them. Therefore, ETCs may apply to the Commission for a waiver to be able to meet their commitments under this order by offering broadband Internet access service via satellite to certain customers, based on a specific, detailed showing that there is no other economic option for serving those customers.[88] If the Commission grants such a waiver with regard to particular customers, that waiver may be transferred if a different ETC becomes subject to the obligation to offer broadband to those customers.

3. Incumbent LECs' Commitment to Offer Broadband

28. As discussed above, as a condition of receiving federal high-cost universal service support, all ETCs must offer broadband Internet access service.[89] Therefore, incumbent LECs receiving

[85] *See, e.g.*, COMPUTER SCIENCE AND TELECOMMUNICATIONS BOARD, NATIONAL RESEARCH COUNCIL, BROADBAND: BRINGING HOME THE BITS 145 (2002) (BRINGING HOME THE BITS); BroadbandInfo.com, Inside the World of Satellite Broadband, BroadbandInfo.com, http://www.broadbandinfo.com/satellite/intro-to-satellite.html (last visited Nov. 3, 2008) (stating that because the satellites providing broadband signals orbit the earth approximately 22,300 miles above the surface, there is a lag time between the sending and receiving of the satellite broadband signal).

[86] *See* BRINGING HOME THE BITS 145 (explaining that for Internet telephony, the delay can cause a real degradation in usability); Jon Norwood, Overview of Satellite Internet—Comparing the Main Features of Broadband Satellite (Oct. 17, 2006), *available at* http://www.velocityguide.com/satellite/satellite-internet-comparison.html (last visited Oct. 24, 2008) (stating that signal delay to a satellite ranges from around 500 to 900 milliseconds, and that this latency can render any software that requires real-time user input problematic at best); BroadbandInfo.com, Inside the World of Satellite Broadband, *available at* http://www.broadbandinfo.com/satellite/intro-to-satellite.html (last visited Oct. 24, 2008) (stating that for certain broadband Internet real-time applications, such as e-gaming, the latency is enough to cause severe interference with the application).

[87] *See, e.g.*, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, Second Report, 15 FCC Rcd 20913, 20938, para. 59 (2000) (explaining that areas subject to extreme rain or snow may have difficulty receiving satellite signals in those conditions, and describing it as a limitation to satellite Internet last-mile facilities); *see also* Howstuffworks.com, How Does Satellite Internet Operate?, http://computer.howstuffworks.com/question606.html (last visited Oct. 24, 2008) (explaining that, as for satellite TV, heavy rains can affect reception of Internet signals); Skycasters, Broadband Satellite Internet: 99.44% System Reliability, http://www.skycasters.com/satellite-internet-service-specs/system-reliability.html (last visited Oct. 31, 2008) (explaining that rain fade is a short duration period during which the loss of satellite service occurs when intense storm cells are located directly between the satellite and the satellite dish).

[88] If the Commission grants a waiver allowing the use of satellite service, the ETC may not charge a higher price to customers served by satellite than it charges to customers served by another broadband technology.

[89] *See supra* paras. 19–27.

high-cost support must certify to the Commission, for each study area[90] for which they receive high-cost support, whether or not they will offer broadband Internet access service to all customers within that study area, consistent with the requirements of this order, within five years of the due date of their commitment.[91] This certification must include a commitment to offer broadband Internet access service with download speeds equal to or greater than 768 kbps and upload speeds greater than 200 kbps.[92]

29. Incumbent LECs that file a certification for a particular study area indicating that they will offer broadband Internet access service under the terms specified in this order will continue to receive their current levels of high-cost support for that study area, which will be deemed a "Committed Study Area." We specify the precise benchmarks that the incumbent LEC must meet over the five-year build-out period, and the consequences for failure to do so, below.[93]

30. As discussed above, we freeze each incumbent LEC ETC's individual high-cost support at the amount of support, on a lump sum basis, the ETC received in December 2008 annualized, net of any prior or past period adjustments, on a study area or service area basis.[94] Incumbent LEC ETCs committing to offer broadband Internet access service within a study area consistent with the requirements of this order will continue to receive the frozen high-cost support amount for that study area.[95]

31. Study areas for which incumbent LECs either certify that they will not offer broadband in five years as described herein, or for which the incumbent LECs fail to file any certification at all, will be deemed "Unserved Study Areas." For these areas, the Commission will conduct a reverse auction as

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[90] *See supra* note 56 (explaining the use of the terms "study area" and "service area" in this order).

[91] The Wireline Competition Bureau (Bureau) will release a public notice at a future date specifying the manner and due date of the certification. Other reporting, monitoring, and milestone requirements are set forth below. *See infra* paras. 57–63.

[92] This tier of broadband is similar to the tier described as "Basic Broadband Tier 1" in our *Broadband Data Gathering Order*. *See Broadband Data Gathering Order*, 23 FCC Rcd at 9700–01, para. 20 & n.66.

[93] *See infra* paras. 57–63.

[94] *See supra* para. 16.

[95] Some incumbent LECs assert that they will not be able to commit to provide broadband Internet access service to all customers within their study areas at the frozen level of support. *See, e.g.,* Letter from Eric N. Einhorn, V.P. Federal Government Affairs, Windstream, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, 99-68, WC Docket Nos. 05-337, 06-122, 08-152, 07-135, at 3 (filed Oct. 27, 2008); Letter from Gregory J. Vogt, Counsel for CenturyTel, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 99-68, 96-45, WC Docket No. 05-337, at 2 (filed Oct. 20, 2008); Letter from Daniel Mitchell, Vice President Legal & Industry, NTCA, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, WC Docket Nos. 05-337, 04-36, at 1-2 (filed Oct. 28, 2008). First, to the extent incumbent LECs cannot build out their networks to provide broadband to all customers in their study areas, they may seek a waiver to provide service via satellite technology, as discussed above. Second, universal service support is not meant to subsidize high-cost carriers, but rather it is meant to support customers in high-cost areas. *See Alenco*, 201 F.3d at 620 ("The Act only promises universal service, and that is a goal that requires sufficient funding of customers, not providers. So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications services, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well."). Therefore, if an incumbent LEC cannot provide broadband service at the frozen support levels, support will go to a reverse auction winning bidder who can provide such service at or below that level on a more efficient basis. Finally, as discussed below, to the extent that a reverse auction does not produce a winning bidder, the Commission will reexamine support to that study area.

described below, awarding high-cost support to a bidder that will commit to take on carrier of last resort obligations and to offer broadband Internet access service throughout the study area.

4. Reverse Auctions for Study Areas Unserved by Broadband

32. The Joint Board recommended that the Commission's universal service goals include universal availability of broadband Internet service at affordable and comparable rates for all rural and non-rural areas.[96] While we are not adopting the Joint Board's recommendation to create a separate broadband fund, we agree with the Joint Board's goal that broadband Internet access service should be universally and affordably available. We are therefore allowing incumbent LECs and competitive ETCs receiving high-cost support to continue to receive such support if they commit to offer broadband services throughout their supported service areas by the end of a five-year build-out period. We anticipate, however, that in some study areas, the incumbent LEC may decline to make that commitment. For these Unserved Study Areas, we will conduct a reverse auction for the right to receive high-cost support.[97]

33. We sought comment in our *Reverse Auctions NPRM* on the merits of using reverse auctions, a form of competitive bidding, to decide how much high-cost support to provide to ETCs serving rural, insular, and high-cost areas.[98] In a reverse auction, support generally would be determined by the lowest bid to serve the auctioned area.[99] We conclude that using a reverse auction method for identifying both the recipient of high-cost support for an Unserved Study Area, as well as the amount of support, is appropriate because the winning bid should approach the minimum level of subsidy required to achieve our universal service goals.[100] In contrast, a support mechanism based on cost or on a cost model provides no incentive for an ETC to provide supported services at the minimum possible cost.[101] In addition, a reverse auction provides a fair and efficient means of eliminating or reducing the subsidization of multiple ETCs in a given region.[102] For these reasons, we find that a reverse auction offers advantages over the current high-cost support distribution mechanisms and we adopt a reverse

[96] *See Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20491–92, paras. 56–62.

[97] Many commenters, in particular those representing rural telephone companies, opposed the use of reverse auctions to award high-cost support to carriers of last resort in rural areas. *See, e.g.*, OPASTCO *Reverse Auctions* Comments at 16–21; NTCA *Reverse Auctions* Comments at 30–46. Under the measures we adopt today, reverse auctions will be conducted only in study areas for which the incumbent LEC receiving high-cost support has not committed to offer broadband Internet access service.

[98] *See Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 10.

[99] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 11.

[100] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 11; *see* Connecticut Dep't of Pub. Util. Control *High-Cost Reform NPRMs* Comments at 7 (supporting reverse auctions as a means of controlling and reducing the size of the universal service fund, while putting the burden on providers to estimate bid amounts); Comcast *High-Cost Reform NPRMs* Comments at 7 (noting that the use of reverse auctions could reduce the size of the high-cost fund significantly).

[101] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 11; *see* Letter from Grover Norquist, Americans for Tax Reform, to Marlene Dortch, Secretary, FCC, CC Docket No. 96-45, WC Docket No. 05-337 at 1 (filed Apr. 14, 2008) (arguing that reverse auctions will create incentives to invest in rural communities and will not finance and subsidize wasteful carriers).

[102] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500, para. 11.

auction plan, as discussed below.[103]

34. To implement the reverse auctions, there are several issues that must be addressed. We describe in this part: (1) the geographic area to be auctioned; (2) the reserve price for the reverse auction; (3) what a winning bidder will receive; (4) how the winning bidder will be selected; and (5) the qualifications a bidder must demonstrate before it may participate in a reverse auction.

a. Geographic Area

35. In the *Reverse Auctions NPRM*, we sought comment on whether we should use the study area[104] as the geographic area for reverse auctions.[105] We observed that high-cost support today is generally based on the wireline incumbent LEC's study area.[106] We tentatively concluded that the wireline incumbent LEC's study area would be the appropriate geographic area on which to base reverse auctions.[107] We adopt our tentative conclusion that the study area is the best geographic area to use for several reasons. First, if we allowed bidders to bid to provide service in smaller geographic areas, we would encourage bidders to bid on areas that are easier or cheaper to serve, leaving our most difficult-to-serve populations still without broadband service.[108] Conversely, if we required bidders to bid on even larger geographic areas, we might discourage bidders from entering the auction because of the difficulty in committing to serve an even larger area. Although some commenters oppose using the incumbent LEC's study area,[109] use of the study area is consistent with the area we ask incumbent LECs to consider in making their commitments. Finally, selecting smaller geographic areas for auction would increase the number of auctions to be held, potentially delaying the conduct of the auction and, therefore, the

[103] Although several rural LEC commenters oppose the use of reverse auctions to distribute high-cost support, as discussed above, incumbent LECs will not be required to participate in a reverse auction to receive support, so long as they commit to deploy broadband throughout their study areas. *See, e.g.*, ATA *High-Cost Reform NPRMs* Comments at 13–15 (opposing the use of reverse auctions); Alexicon *Reverse Auctions NPRM* Comments at 2–3 (opposing reverse auctions for rural LECs).

[104] A study area is a geographic segment of an incumbent LEC's telephone operations. Generally, a study area corresponds to an incumbent LEC's entire service territory within a state. *Direct Communications Cedar Valley, LLC and Qwest Corporation Joint Petition for Waiver of the Definition of "Study Area" of the Appendix-Glossary of Part 36 of the Commission's Rules, Petition for Waiver of Section 69.2(hh) and 69.605(c) of the Commission's Rules*, CC Docket No. 96-45, Order, 20 FCC Rcd 19180, 19181, para. 2 (WCB 2005). Section 54.207 of the Commission's rules provides that a rural telephone company's service area will be its study area "unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of this Act, establish a different definition of service area for such company." 47 C.F.R. § 54.207(b); 47 U.S.C. § 214(e)(5). As discussed above, we use the terms "study area" and "service area" interchangeably in this order. *See supra* note 56.

[105] *See Reverse Auctions NPRM*, 23 FCC Rcd at 1503, para. 20.

[106] *Reverse Auctions NPRM*, 23 FCC Rcd at 1503, para. 20

[107] *Reverse Auctions NPRM*, 23 FCC Rcd at 1504, para. 21.

[108] Thus, we disagree with commenters' arguments that we should hold auctions for small geographic areas, such as counties, census block groups, or zip codes. *See, e.g.*, Comcast *High-Cost Reform NPRMs* Comments at 9; NCTA *High-Cost Reform NPRMs* Comments at 16; SouthernLINC *High-Cost Reform NPRMs* Comments at 24–25; TracFone *High-Cost Reform NPRMs* Comments at 6.

[109] *See, e.g.*, Comcast *High-Cost Reform NPRMs* Comments at 8–9; NCTA *High-Cost Reform NPRMs* Comments at 16; SouthernLINC *High-Cost Reform NPRMs* Comments at 25; TracFone *High-Cost Reform NPRMs* Comments at 5.

deployment of broadband to unserved areas.[110] For these reasons, we conclude that the study area is the best available geographic area to consider for the auction. We will conduct a reverse auction for each study area for which the incumbent LEC receiving high-cost support has not committed to offer broadband Internet access service pursuant to the requirements explained above (Unserved Study Areas).[111]

b. Reserve Price

36. In the *Reverse Auctions NPRM*, we noted that we should establish a reserve price—a maximum level of high-cost support that participants in the auction would be allowed to place as a bid.[112] We observed that a reserve price that is set too low is likely to discourage bidders from participating, while one that is set too high raises the possibility of providing too much support.[113] We conclude that the reserve price should be the amount of high-cost support that the incumbent LEC would have been entitled to receive had it committed to offer broadband Internet access service within the study area.[114]

37. We set the reserve price in each study area at the incumbent LEC's current level of high-cost support for several reasons. First, we are capping the overall high-cost fund at its current level. Setting a reserve price will help ensure that overall high-cost funding remains within this amount, because the high-cost funding for each Unserved Study Area will merely be transferred to another ETC, not increased. In addition, setting a reserve price at this level will ensure that, even in reverse auctions for particular Unserved Study Areas that do not garner many bids, those bids will be made by providers who are confident that they can assume all the obligations of the carrier of last resort,[115] as well as the new broadband service obligations, and provide service more efficiently than the incumbent LEC.[116] Indeed, we expect that bidders frequently will offer to provide service using newer and more efficient technologies than the incumbent LEC uses today. For these reasons, we set the reserve price at the level described above.

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[110] *See* Ohio PUC *Reverse Auctions NPRM* Comments at 6–7 (generally agreeing that the incumbent LEC's study area is the appropriate geographic area on which to base reverse auctions because further disaggregation could add cost and delays, and increase the opportunity for creamskimming).

[111] *See supra* paras. 19–31.

[112] *Reverse Auctions NPRM*, 23 FCC Rcd at 1509, para. 36.

[113] *Reverse Auctions NPRM*, 23 FCC Rcd at 1509, para. 36.

[114] *See* SouthernLINC *High-Cost Reform NPRMs* Comments at 22 n.63 ("The Commission would start bidding at current support levels."). As discussed above, each incumbent LEC ETC's individual high-cost support is frozen at the amount of support, on a lump sum basis, the ETC received in December 2008 annualized, net of any prior or past period adjustments, on a study area basis. *See supra* paras. 16, 30.

[115] Carrier of last resort obligations for incumbent LECs are a matter of state law. Under section 214(e)(6), when the state lacks jurisdiction, the Commission shall make the public interest determination on whether to designate a carrier an ETC. 47 U.S.C. § 214(e)(6). The ETC requirements include a requirement to provide supported services throughout the service area. 47 U.S.C. § 214(e)(1).

[116] Some commenters oppose setting the reserve price at current incumbent LEC levels, or setting any reserve price. *See* OPASTCO *High-Cost Reform NPRMs* Comments at 19–20; MSTC Group *High-Cost Reform NPRMs* Comments at 17–18; North Dakota PSC *High-Cost Reform NPRMs* Comments at 5. We find that setting the reserve price at the incumbent LEC support level will provide certainty to bidders and enable bidders with more efficient technologies to provide broadband in areas where incumbent LECs do not commit to do so. Furthermore, as discussed below, if a reverse auction provides no winner, the Commission will examine the need for further action. *See infra* para. 47.

c. Auctioned Support

38. For Unserved Study Areas, we will auction the award of high-cost support to provide all supported services to the entire Unserved Study Area, on a carrier of last resort basis, consistent with the requirements of this order. The maximum annual award amount will be equal to the amount of the winning bid (Award Amount), paid out as described in more detail below as certain geographic areas are built out.[117]

39. The Award Amount is conditioned on the winning bidder providing all supported services as a carrier of last resort, as the incumbent LEC does today under state law, and meeting the ETC requirements set forth in the *ETC Designation Order*.[118] Competitive ETCs are currently required to provide supported services throughout their service area, even though they may not be, under state law, the carrier of last resort.[119] In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6).[120] The Commission requires that applicants seeking ETC designation from this Commission demonstrate the following: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) that it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4).[121] We find that the universal service obligations in the *ETC Designation Order* will apply to all competitive ETCs winning reverse auctions; in addition, the auction winner must accept all of the carrier of last resort obligations of the incumbent LEC for that study area, whether such obligations are imposed on the LEC pursuant to state or federal law.

40. In addition to the *ETC Designation Order* requirements, we add two additional requirements to competitive ETCs winning reverse auctions. First, they must, as a condition of receiving the Award Amount, offer broadband Internet access service to all customers within the Unserved Study Area. Second, competitive ETCs winning reverse auctions must offer supported services at a retail price comparable to the retail price charged by the incumbent LEC in that same study area for the same or equivalent service.[122] In this manner, we ensure that competitive ETCs receiving high-cost support will continue to make supported services at least as affordable and available as they are today.

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[117] A competitive ETC that currently serves all or a portion of an Unserved Study Area will not receive high-cost support for the same service area as both a winning bidder and based upon a showing of its own costs. If a competitive ETC that already receives high-cost support within this study area wins the auction, it will lose its existing high-cost support for particular geographic areas as it begins to receive its Award Amount for those areas.

[118] *ETC Designation Order*, 20 FCC Rcd 6371. Section 214(e)(6) of the Act gives the Commission authority to designate carriers as ETCs when those carriers are not subject to the jurisdiction of a state commission. 47 U.S.C. § 214(e)(6). The requirements in the *ETC Designation Order* currently apply only to Commission-designated ETCs, although the Commission, in that order, encouraged state commissions to adopt similar requirements. *ETC Designation Order*, 20 FCC Rcd at 6372, 6379, paras. 1, 19.

[119] *See* 47 U.S.C. § 214(e)(1).

[120] *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20.

[121] *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20; 47 U.S.C. § 214(e)(4).

[122] In adopting this requirement, we are not setting any specific rates, nor does this requirement conflict with the states' jurisdiction over intrastate rates. Instead, we are conditioning the receipt of federal universal service support on an ETC's provision, on a voluntary basis, of rates comparable to the incumbent LEC's for equivalent services.

41. We recognize that a transition mechanism is needed to shift high-cost support from the incumbent LEC currently receiving it to another ETC that wins an Award Amount. A flash cut would be harmful in at least two ways. First, the incumbent LEC would immediately lose support upon which it may rely to maintain supported services as a carrier of last resort to consumers today. It is possible that removing support from the incumbent LEC would, in some cases, jeopardize its provision of services to some users. In addition, granting a full Award Amount immediately to a winning ETC would provide little incentive for the competitive ETC to build out new facilities to difficult-to-serve areas until the last possible moment, as in many cases those areas will be the most expensive to serve. As a result, we conclude that, prior to the initiation of an auction, the incumbent LEC for the Unserved Study Area will be required to identify the distribution of support by geographic area for purposes of the auction and the transfer of support to the winning bidder. As the winning ETC builds out to those geographic areas and certifies that it complies with all its obligations under this order for that area, it will receive high-cost support for that portion of the Unserved Study Area, and the incumbent LEC will no longer receive such support for that area.[123] As the winning bidder takes on carrier of last resort obligations and obtains high-cost support for an area, the incumbent LEC will no longer receive high-cost support for that area and will be relieved of its carrier of last resort obligations at both the state and federal levels. We require winning auction bidders to comply fully with all the requirements of this order by the end of a ten-year build-out period.

42. Finally, we address the question of transferability of the Award Amount. We conclude that auction winners may transfer their right to the Award Amount. This transfer could take one of several forms—an auction winner could be purchased by another entity, the winner could sell assets used to provide the supported services, or the auction winner could transfer just the right to the Award Amount itself. The transferee will, in all events, step into the shoes of the auction winner and will be responsible for meeting all obligations as if it had been the original auction winner. Any such transfer, however, must be authorized by the Commission before it is consummated.

d. Selecting a Winning Bid

43. In the *Reverse Auctions NPRM*, we sought comment on whether the reverse auction should award high-cost support to a single winner or to multiple winners.[124] We observed that if only one winner receives support, this could provide a fair and efficient means of eliminating the subsidization of multiple ETCs in a region, particularly in areas in which costs are prohibitive.[125] We tentatively concluded that universal service support auctions should award high-cost support to a single winner.[126] We now conclude that the single winner format will provide the most effective mechanism for determining the support amount sufficient to meet the universal service goals in any given area.[127] We

[123] The amount of support to be awarded to the winning bidder could be less than the amount of support received by the incumbent LEC for that same area. The transfer of support will be based on the amount of support, relative to support for the entire study area, received by the incumbent LEC for the area to be transferred; that same relative percentage will be used to calculate the amount of award support the auction winner should receive for the same area. In no event will an incumbent LEC who is not an auction winner continue to receive support for an area once an auction winner begins to receive support for that same area.

[124] *Reverse Auctions NPRM*, 23 FCC Rcd at 1501, para. 13.

[125] *Reverse Auctions NPRM*, 23 FCC Rcd at 1501, para. 14.

[126] *Reverse Auctions NPRM*, 23 FCC Rcd at 1501, para. 14

[127] *See, e.g.*, Florida PSC *High-Cost Reform NPRMs* Comments at 4–5; New York PSC *Identical Support and Reverse Auctions NPRMs* Comments at 2–3; Verizon/Verizon Wireless *High-Cost Reform NPRMs* Comments at 21–22, App. at 12. We disagree with commenters who support multiple winner auctions. *See, e.g.*, Alltel *High-Cost*

(continued....)

therefore adopt our tentative conclusion to select one winner in each reverse auction.

44. As we have explained above, in requiring the offering of broadband Internet access service as a condition of receiving high-cost support, one of our main goals is to ensure that all Americans have access to affordable, quality broadband services.[128] Achieving this goal will require careful selection of the winning bidder for a particular Unserved Study Area. As explained in more detail below, the winning bidder will be the one who commits to offer the highest speed of broadband service—throughout the entire Unserved Study Area—at a bid amount that is equal to or less than the reserve price (the incumbent LEC's current high-cost support amount). In so doing, we work towards making quality, technologically advanced broadband services available to all Americans, including those in difficult- or expensive-to-serve areas, rather than settling for lesser broadband service for those Americans who live in high-cost areas. We acknowledge that, in many cases, the winning bid will not be the cheapest one. But we believe that encouraging bidders to offer better broadband services at or below a set reserve price will help us achieve our broadband goals, while keeping an appropriate limit on the amount of high-cost support disbursed to achieve that goal.

45. For purposes of our reverse auction, we establish three tiers of broadband service. We will use the term "Basic Broadband Tier 1" to refer to service with download speeds equal to or greater than 768 kbps but less than 1.5 mbps, and upload speeds greater than 200 kbps. We will use the term "Broadband Tier 2" to refer to service with download speeds equal to or greater than 1.5 mbps and less than 3 mbps, and upload speeds greater than 200 kbps. We will use the term "Broadband Tier 3" to refer to service with download speeds equal to or greater than 3 mbps, and upload speeds greater than 200 kbps.[129]

46. We will evaluate bids as follows: for any Unserved Study Area, a bidder will submit a bid to commit to offering a service falling within Basic Broadband Tier 1, Broadband Tier 2, or Broadband Tier 3 to all customers in the Unserved Study Area. To qualify for an award, the bid must be equal to or less than the reserve price—that is, equal to or less than the amount of high-cost support received by the incumbent LEC for that Unserved Study Area.[130] The bidder need not specify a specific speed to which it will commit in any of the three tiers, but it must disclose in which tier its proposed service will fall. The bid amount will be an amount of high-cost support to provide all supported services in the Unserved Study Area as carrier of last resort, subject to all the requirements of this order, including the condition to offer broadband throughout the Unserved Study Area. The winning bid will be selected through a two-step process. First, we will identify the highest speed tier for which there is a valid bid. If there is only one bid for that tier, then that is the winning bid. If there are multiple bids within that tier, then the winning bid will be the lowest price bid within that tier.[131]

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Reform NPRMs Comments at 40–41; Atlantic Tele-Network *Identical Support and Reverse Auctions NPRMs* Comments at 13. We find that supporting a single auction winner is a more efficient means of ensuring the provision of broadband Internet access in areas where the incumbent LEC has determined that the costs of serving all customers in the area is prohibitive.

[128] *See supra* paras. 19–23.

[129] These terms are similar, but not identical, to terms used in our latest *Broadband Data Gathering Order*. *See Broadband Data Gathering Order*, 23 FCC Rcd at 9700–01, para. 20 & n.66.

[130] *See supra* paras. 16–36.

[131] For example, assume the Commission conducted a reverse auction for an Unserved Study Area with a reserve price of $5 and received four bids: $1 to offer Basic Broadband Tier 1, $2 to offer Broadband Tier 2, $3 to offer Broadband Tier 3, and $4 to offer Broadband Tier 3. In that scenario, the winning bid amount would be $3 to offer Broadband Tier 3.

47. If a particular reverse auction produces no winner, the study area will be identified as a truly high-cost study area. The fact that there is no winning bidder may indicate that the reserve price was set at too low an amount of support. The Commission will reexamine any such study area to determine whether the frozen high-cost support amount is sufficient, and, if it is not, the Commission will determine what further actions should be taken to ensure that the study area is served by a provider that will meet the broadband commitment and carrier of last resort requirements. For example, the Commission may consider disaggregating the study area on a wire center basis for reverse auction purposes, or increasing the amount of high-cost support set as the reserve price for the study area.[132] To ensure continued service to customers during the limited period of time in which the Commission examines these issues, the existing incumbent LEC will continue to have all carrier of last resort and ETC obligations, and will continue to receive high-cost support frozen at its current level pending transfer of such support to the winning bidder of the reverse auction.

e. Bidder Qualifications

48. We adopt a number of conditions that bidders must meet before they can participate in any auction. We adopt these requirements to help ensure that any bidder who wins an auction will be capable of meeting the commitments that flow from being a winning bidder.

49. First, we require that a bidder be an ETC, certified by the Commission or by a state. In the *Reverse Auctions NPRM*, we tentatively concluded that an auction bidder must be an ETC covering the relevant geographic area prior to participating in the auction.[133] We hereby adopt that tentative conclusion. Winning bidders must be designated as ETCs before receiving high-cost support pursuant to sections 214 and 254 of the Act; therefore, requiring bidders to receive this designation prior to participating in an auction entails only a small additional burden. This burden is offset by the potential delay in deploying broadband Internet access service that would result while a non-ETC winning bidder seeks and obtains ETC designation.[134] We note that ETCs are not required to provide all supported services with their own facilities.[135] ETCs may enter into contracts with other entities to provide some supported services in part or all of the study area.

50. As a general matter, in our spectrum auctions we require an upfront payment to deter frivolous or insincere bidding.[136] In the reverse auctions we adopt today, we are not requiring an upfront payment. Instead, we are requiring participants to demonstrate to the Commission a capability to meet

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[132] *See* Free Press Oct. 24, 2008 *Ex Parte* Letter at 12 (arguing that, if a study area receives no winning bidder in a reverse auction, then the study area should be disaggregated).

[133] *Reverse Auctions NPRM*, 23 FCC Rcd at 1500–01, para. 12; *see also, e.g.*, Florida PSC *High-Cost Reform NPRMs* Comments at 5; Indiana Util. Reg. Comm'n *High-Cost Reform NPRMs* Comments at 12; MSTC Group *High-Cost Reform NPRMs* Comments at 12; Verizon/Verizon Wireless *High-Cost Reform NPRMs* Comments, App. at 8.

[134] For this reason, we disagree with commenters who argue that we should not require bidders to be ETCs. *See* GCI *High-Cost Reform NPRMs* Comments at 89; Consumers Union (CU) et al. *High-Cost Reform NPRMs* Reply at 17.

[135] Pursuant to section 214(e)(1)(A) of the Act, a common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area either by using its own facilities or by using a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC). 47 U.S.C. § 214(e)(1)(A).

[136] *See, e.g.*, *Auction of LPTV and TV Translator Digital Companion Channels Scheduled for November 5, 2008*, AU Docket No. 08-22, Public Notice, DA 08-1944, para. 53 (WTB 2008).

the milestone requirements. This showing will include, for example, evidence of financial resources with which to undertake the construction or upgrading of facilities necessary to offer broadband Internet access service. In addition, in areas where the bidder does not currently offer telecommunications services, we will require the bidder to submit a plan demonstrating the timetable for building the necessary facilities and obtaining any required permits.

5. Competitive Eligible Telecommunications Carriers

a. Background

51. In the *Identical Support NPRM*, the Commission tentatively concluded that it should eliminate the current identical support rule for competitive ETCs, because the rule bears no relationship to the amount of money competitive ETCs have invested in rural and other high-cost areas of the country.[137] In that notice, the Commission tentatively concluded that a competitive ETC should receive high-cost support based on its own costs, which better reflect real investment in rural and other high-cost areas of the country, and which create greater incentives for investment in those areas.[138] Because a competitive ETC's per-line support is based solely on the per-line support received by the incumbent LEC, rather than its own network investments in an area, the competitive ETC has little incentive to invest in, or expand, its own facilities in areas with low population densities, thereby contravening the Act's universal service goal of improving the access to telecommunications services in rural, insular and high-cost areas.[139] Instead, competitive ETCs have a greater incentive to expand the number of subscribers, particularly those located in the lower-cost parts of high-cost areas, rather than to expand the geographic scope of their networks. As discussed above, the Joint Board recommended elimination of the identical support rule; we agree with the Joint Board and adopt this recommendation and our tentative conclusion.[140] Under the new high-cost support mechanism that we adopt today, competitive ETCs will be eligible to receive support based on their own costs as compared to the relevant support benchmarks, contingent upon a commitment to offer broadband Internet access service to all customers in a service area within five years.[141]

b. Certification by Existing Competitive ETCs

52. As discussed above, as a condition of continuing to receive federal high-cost universal

[137] *Identical Support NPRM*, 23 FCC Rcd at 1470, para. 5; *see, e.g.*, Embarq *High-Cost Reform NPRMs* Comments at 10 ("It is logically inconsistent to compensate a carrier for serving 'high-cost' areas when there is no evidence–in the form of cost studies, filings, or model results—that the areas being supported are indeed 'high-cost' for that carrier."); Frontier *High-Cost Reform NPRMs* Comments at 4 (asserting that identical support is merely a subsidy to competitive ETCs, "and there is no basis to tell whether consumers are getting any [u]niversal [s]ervice benefits whatsoever" from subsidizing competitive ETCs in this manner).

[138] *Identical Support NPRM*, 23 FCC Rcd at 1470, para. 5.

[139] *See* 47 U.S.C. § 254(b)(3); Alabama PSC *High-Cost Reform NPRMs* Comments at 3 ("The identical support rule provides little incentive for ETCs to invest in building their own facilities in rural areas with low population densities because their support currently is based solely on the per-line support received by the incumbent, instead of investment in the network.").

[140] *Comprehensive Reform Recommended Decision*, 22 FCC Rcd at 20478, para. 5 (recommending elimination of the identical support rule, which "bears little or no relationship to the amount of money competitive ETCs have invested in rural and other high-cost areas of the country").

[141] The calculation of support provisions in this Part apply to competitive ETCs that do not receive high-cost support as the result of winning a reverse auction. Support for winning auction bidders, including competitive ETCs, will be based on the bid amount, as discussed above. *See supra* paras 43–47.

service support, incumbent LEC ETCs must offer broadband Internet access service to all customers in their service areas within five years.[142] Similarly, to be eligible to receive high-cost support on a going-forward basis, competitive ETCs must also certify that they will offer broadband Internet access service to all customers within a supported service area, consistent with the requirements of this order, within five years of the due date of their commitment.[143] Consistent with the certification required of incumbent LEC ETCs, competitive ETC certifications must include a commitment to offer broadband Internet access service with download speeds equal to or greater than 768 kbps and upload speeds greater than 200 kbps.[144] Failure to make this commitment or to meet the milestones and requirements established herein shall result in loss of ETC status for the service area.

c. Calculation of Support

53. We adopt our tentative conclusion in the *Identical Support NPRM* that competitive ETCs should receive high-cost support based on their own costs.[145] We are not persuaded by arguments that, by requiring competitive ETCs to demonstrate that their own costs exceed a high-cost threshold as a condition of receiving universal service support, we will be placing undue administrative burdens on the competitive ETCs and providing incentives for them to maximize their costs.[146] Instead, we find that competitive ETCs should demonstrate eligibility for high-cost support in the same manner as incumbent LEC ETCs, based on their costs, as this will better reflect competitive ETCs' investment in their service areas.[147] Specifically, we require competitive ETCs to file cost information for the total costs of a service area, from which will be developed a cost per line. Spectrum costs are not included for purposes of

[142] *See supra* para. 28.

[143] The Bureau will release a public notice at a future date specifying the manner and due date of the certification. Other reporting, monitoring, and benchmark requirements are set forth below. *See infra* paras. 57–63.

[144] This tier of broadband is similar to the tier described as "Basic Broadband Tier 1" in our *Broadband Data Gathering Order*. *See Broadband Data Gathering Order*, 23 FCC Rcd at 9700–01, para. 20 & n.66.

[145] *Identical Support NPRM*, 23 FCC Rcd at 1470, para. 5.

[146] *See* GCI *High-Cost Reform NPRMs* Comments at 5, 40, 65–67; Oregon PUC *High-Cost Reform NPRMs* Comments at 5; Rural Cellular Ass'n (Rural Cellular) *Identical Support and Reverse Auctions NPRMs* Comments at 2; USCellular *High-Cost Reform NPRMs* Comments at 7, 38–40; USTelecom *High-Cost Reform NPRMs* Comments at 16; Wyoming Office of Consumer Advocate (Wyoming OCA) *Identical Support NPRM* Comments at 2; SouthernLINC *High-Cost Reform NPRMs* Reply at 13.

[147] Many commenters favor basing competitive ETCs' support on their own costs. *See* ATA *High-Cost Reform NPRMs* Comments at 3; Alexicon *Identical Support NPRM* Comments at 3–4; CenturyTel *High-Cost Reform NPRMs* Comments at 21–22; Connecticut Dept. of Pub. Util. Control *High-Cost Reform NPRMs* Comments at 2–3; Embarq *High-Cost Reform NPRMs* Comments at 10; Iowa Telecomm. Ass'n (ITA) *Identical Support NPRM* Comments at 3–4; Independent Tel. and Telecomms. Alliance (ITTA) *Identical Support NPRM* Comments at 23–24; John Staurulakis, Inc. (JSI) *High-Cost Reform NPRMs* Comments at 3; Kansas Rural Indep. Tel. Companies *Identical Support NPRM* Comments at 4; Missouri PSC *Identical Support NPRM* Comments at 5; Montana Telecomms. Ass'n *High-Cost Reform NPRMs* Comments at 12; NECA *High-Cost Reform NPRMs* Comments at 22–26; NTCA *High-Cost Reform NPRMs* Comments at 19–23; OPASTCO *High-Cost Reform NPRMs* Comments at 12–13; PetroCom License Corp. *Identical Support NPRM* Comments at 2–3; Qwest *High-Cost Reform NPRMs* Comments at 7; Rural Indep. Competitive Alliance (RICA) *High-Cost Reform NPRMs* Comments at 13–15; Rural Iowa Independent Tel. Ass'n (RIITA) *High-Cost Reform NPRMs* Comments at 2–3; Telcom Consulting Assoc., Inc. (TCA) *High-Cost Reform NPRMs* Comments at 13–15; Texas Statewide Tel. Coop., Inc. (Texas Statewide) *High-Cost Reform NPRMs* Comments at 10; Utah Rural Telecom Ass'n (URTA) *High-Cost Reform NPRMs* Comments at 8; WTA *High-Cost Reform NPRMs* Comments at 22–26.

calculating a cost per line.[148] We will then apply the same benchmarks that are applied to incumbent LECs' costs to determine whether the competitive ETCs qualify to receive high-cost support. In the case of a competitive ETC providing service in a non-rural service area, the cost per line would be compared to the benchmark threshold for support calculated by the High-Cost Proxy Model.[149] For a competitive ETC providing service in a rural service area, support will be determined by comparing the competitive ETC's cost per loop incurred to provide the supported services to the same national average cost per loop used to determine incumbent LEC support for the same service area.[150]

54. Because a competitive ETC may have few or no lines when it first receives its ETC designation, performing a calculation of per-line costs at the initial time of market entry likely would result in a considerable upward bias in the resulting amount. Similarly, a competitive ETC that has not gained customers in high-cost areas would have low line counts, skewing upward its costs per line. Conversely, a competitive ETC that has successfully gained customers will have lower costs per line due to the larger number of lines over which to spread its costs. To correct this issue, rather than relying on the competitive ETCs' line counts to determine per-line costs, we will use the same line counts used to determine the incumbent LEC cost per line for the same service area.

55. Consistent with the freeze on incumbent LEC high-cost support based on December 2008 support levels, we will use December 2008 as the base period for both the incumbent LEC lines used to determine the competitive ETCs' per-line costs, and for the benchmarks against which the competitive ETCs' costs will be compared for high-cost support purposes. Once the competitive ETC has demonstrated that its costs exceed the relevant benchmark, that competitive ETC will be entitled to continue to receive support for the relevant service area, frozen at the amount of support, on a lump sum basis, that the competitive ETC received in 2008. If a competitive ETC does not commit to the broadband build-out requirements set forth herein, or does not demonstrate that its costs exceed the relevant benchmark, it shall no longer be entitled to receive support.

56. If no competitive ETC elects to show its own costs in a particular study area, we will conduct a reverse auction to award support to a broadband mobility provider. The reserve price for such auction shall be the largest amount of high-cost support received by a competitive ETC in the study area in 2008. There shall be no interim support in such study area to an existing competitive ETC that does not commit to the broadband requirements pending the completion of the reverse auction.[151]

6. Build-Out Milestones and Monitoring, Compliance, and Enforcement

57. We find that a rigorous monitoring, compliance and enforcement program is necessary to ensure that all ETCs receiving high-cost support adhere to their obligation to offer broadband Internet access service throughout their supported service areas by the end of their respective build-out periods. We therefore establish build-out requirements to monitor providers' progress toward their build-out commitment. Specifically, and as described in detail below, we require each provider receiving high-cost

[148] We agree with ITA that such costs do not represent a direct investment in facilities and infrastructure for purposes of providing supported services in high-cost areas. *See* ITA *Identical Support NPRM* Comments at 3 (spectrum costs represent investment in an intangible asset with an indefinite life rather than a direct investment in facilities with a limited useful life).

[149] *See* 47 C.F.R. § 54.309.

[150] *See* 47 C.F.R. §§ 36.613, 36.622(c).

[151] We also note that, consistent with our capping the high-cost fund and the provisions herein freezing both incumbent LEC and competitive ETC support at the study area level, we keep in place the interim cap on competitive ETC support adopted in the *Interim Cap Order*.