

303. We recognize that communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.⁴⁶² While recent and reliable data are lacking, in the past the Commission has estimated that less than ten percent of residents on Tribal lands have access to broadband.⁴⁶³ Also, Tribal lands are often located in rural, high-cost areas, and present distinct connectivity challenges. Indeed, the National Broadband Plan observed that many Tribal communities face significant obstacles to the deployment of broadband infrastructure, including high build-out costs, limited financial resources that deter investment by commercial providers and a shortage of technically trained members who can undertake deployment and adoption planning.⁴⁶⁴ As a result, the National Broadband Plan noted that Tribes need substantially greater financial support than is presently available to them, and accelerating Tribal broadband will require increased funding.⁴⁶⁵ Setting aside a portion of the CAF support for use in Tribal lands may be one way to address these unique challenges and to ensure affordable access to broadband. We seek comment on whether we should reserve funds for these purposes, and, if so, how large a reserve we should set aside. We also seek comment on whether we should adopt any additional measures to ensure any funds reserved in this manner are used efficiently, in the event that few bidders compete for such funding. We further seek comment on whether any funds reserved for Tribal lands that remain unawarded should be treated any differently from unreserved funds that remain unawarded after the auction.⁴⁶⁶

304. As an alternative to, or possibly in addition to, setting aside funds to support broadband deployment on Tribal lands, we seek comment on whether we should provide bidding credits to bidders, including Tribally owned carriers, that propose to deploy to Tribal lands.

305. We have recognized that Tribes are inherently sovereign governments that enjoy a unique relationship with the federal government.⁴⁶⁷ And we have reaffirmed our policy to promote a government-to-government relationship between the Commission and federally recognized Indian Tribes.⁴⁶⁸ This relationship warrants a tailored approach that takes into consideration the unique characteristics of Tribal lands.⁴⁶⁹ We note that bidders (and ultimately, recipients) seeking to serve Tribal lands and Native communities will be required to comply with certain federal and Tribal land lease and access permitting processes. They will likely face challenges to deployment planning resulting from demographic conditions that lead to the very low broadband coverage rates on Tribal lands. Because bidders will need to engage directly with Tribal governments to address these requirements and to partner with Tribal anchor institutions, we seek comment on how the design of the program may properly include Tribal governments to ensure the efficient operation of the CAF on Tribal lands. We seek comment on how to

⁴⁶² See National Broadband Plan at 152 (citing *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Report and Order and Further Notice of Proposed Rule Making, 15 FCC Rcd 11974, 11978 (2000)).

⁴⁶³ See National Broadband Plan at 152.

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

⁴⁶⁶ See *infra* para. 346.

⁴⁶⁷ *Tribal Policy Statement*, 16 FCC Rcd 4078; see also National Broadband Plan at 146. The United States currently recognizes more than 565 American Indian Tribes and Alaska Native Villages. See *The Federally Recognized Indian Tribe List Act of 1994*, Pub. L. 103-454, 108 Stat. 4791 (1994) (Secretary of the Interior is required to publish in the Federal Register an annual list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians).

⁴⁶⁸ *Tribal Policy Statement*, 16 FCC Rcd at 4079-80.

⁴⁶⁹ National Broadband Plan at 146.

design the CAF program to address these issues and to promote the deployment of broadband to Tribal lands.

306. *Insular Areas.* We seek comment on whether we should reserve a defined amount of funds in the CAF for insular areas. Section 254 of the Act, which provides for the federal universal service program, specifically references the need for “insular” areas of the United States to have access to advanced services. The Commission has, to date, not defined the term “insular” areas in the context of the universal service program.⁴⁷⁰ In the *USF Reform NOI/NPRM*, however, we sought comment generally on whether unique circumstances in insular areas warrant a different approach to high-cost support for broadband service.⁴⁷¹ Several commenters contended that a different approach is needed because geographic, economic and social challenges present in insular areas serve as obstacles to deployment and adoption.⁴⁷² PRTC contends that the Commission should prioritize deployment in insular areas until they achieve the same level of penetration as other areas.⁴⁷³ PR Wireless urges that any reform of universal service must include a separate mechanism for insular areas.⁴⁷⁴ Setting aside funds to be specifically targeted to insular areas that trail national broadband coverage rates may be one way to help address these issues. Accordingly, we seek comment on whether we should reserve some funds in the first phase of the CAF for bidders seeking to serve insular areas, and, if so, how much. Is there sufficient evidence that such a set-aside is necessary or appropriate? In addition, we seek comment on how we should define “insular areas” in this context. We further seek comment on whether any funds reserved for insular areas that remain unawarded should be treated any differently from unreserved funds that remain unawarded after the auction.⁴⁷⁵

307. As an alternative to, or possibly in addition to, setting aside funds to support broadband deployment in insular areas, we seek comment on whether we should provide bidding credits to bidders that propose to deploy to insular areas.

7. Pre-existing Deployment Plans

308. The goal of the first phase of the CAF is to increase broadband deployment in unserved rural and high-cost areas, not to fund existing facilities or deployment to which a carrier has already committed to federal or state regulators. We seek comment on how to structure the program to avoid outcomes that would be inconsistent with that goal. We note, for example, that Frontier Communications, in connection with its acquisition from Verizon of almost 5 million lines in primarily rural and small-town

⁴⁷⁰ The Commission has previously proposed defining insular areas as “islands that are territories or commonwealths of the United States.” *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21233, para. 137 (1999). The Commission has never formally adopted that proposed definition, although it did, in 2005, seek to refresh the record on the issues raised in the 1999 NPRM. See *Federal-State Joint Board on Universal Service, High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Notice of Proposed Rulemaking, 20 FCC Rcd 19731, 19746-47, para. 34 (2005).

⁴⁷¹ *USF Reform NOI/NPRM*, 25 FCC Rcd at 6677, para. 50.

⁴⁷² See, e.g., Reply Comments of PR Wireless, Inc., WC Docket No. 10-90, GN Docket No. 09-51, at 4 (filed Aug. 11, 2010); Comments of Puerto Rico Telephone Company, Inc. (PRTC), WC Docket No. 10-90, GN Docket No. 09-51, at 5-7 (filed July 12, 2010). PRTC attributes the lack of broadband connectivity in Puerto Rico to a number of factors, including the extensive poverty in Puerto Rico, the island’s poor overall economic health, and the unique expenses of providing service in an isolated and tropical area like Puerto Rico. *Id.* at 9.

⁴⁷³ Reply Comments of Puerto Rico Telephone Company, Inc., WC Docket No. 10-90, GN Docket No. 09-51, at 3 (filed Aug. 11, 2010).

⁴⁷⁴ PR Wireless Aug. 11, 2010 Reply Comments at 4.

⁴⁷⁵ See *infra* para. 346.

areas, has committed to significantly extend broadband availability in its service areas.⁴⁷⁶ Should we, in addition, explicitly limit funding in the first phase of the CAF to “new,” or incremental, capacity or deployment to which the carrier has not already committed? How would we define “new” capacity or deployment? As of what date? How would we enforce such a requirement? We note that any limits we might impose in this regard would not be intended to preclude carriers from receiving support—if otherwise available—for deploying broadband beyond any commitments they have made to state or federal regulators. We propose below to ensure that we avoid funding through the CAF the deployment of broadband in an area where deployment is funded by other sources, such as the NTIA BTOP or RUS BIP programs.⁴⁷⁷

8. Public Interest Obligations for Phase I CAF

309. Above, we generally propose public interest requirements for all recipients (current high-cost recipients and CAF recipients) including coverage, deployment, reporting, and other obligations. The unique circumstances and purposes of the first phase of the CAF, however, could warrant some different obligations. To what extent should we adopt the same public interest obligations for the first phase of the CAF as for the CAF more generally, and to what extent we should adopt differing requirements? In this section, we highlight a few key proposed obligations.

310. *Broadband coverage.* We seek comment on the relative merits of our proposal to employ a Commission-established coverage requirement and the alternative of using a bidder-established coverage requirement in this context. Commission-established minimum coverage requirements may result in more ubiquitous service within each supported area as service would likely be required to reach more housing units within each area than would a bidder-established requirement, but may also result in service being supported in fewer areas as each area could require more support. The alternative approach of bidder-defined coverage requirements may result in new broadband service being made available in more housing units overall than a Commission-established requirement, but may also result in less extensive coverage in each area. In order to reduce their bids and increase their likelihood of winning support, bidders may target the housing units that can be reached with the least support within any area and not attempt to reach other units in the same area which would require more support. We seek comment on the respective merits and drawbacks of our proposal and the alternative. In particular, will one approach or the other better serve the public interest given the intent to provide a non-recurring infusion of funds intended to spur investment in areas requiring the least support, recognizing that support available would not be sufficient to reach all unserved areas nationwide? We also seek comment on what coverage requirement the Commission should establish if we decide to adopt that approach.

311. *Speed.* We propose that recipients of support in the first phase of the CAF be required to deploy broadband networks of at least 4 Mbps (actual) downstream and 1 Mbps (actual) upstream.⁴⁷⁸ We seek comment on this proposal and possible alternatives, such as 3 Mbps (actual) downstream and 768 kbps (actual) upstream.

312. We seek comment on whether we should require recipients of support during the first phase of the CAF to meet an evolving speed requirement, post-award, to account for changes in technology and consumer demand over time, and how that would impact willingness to participate in the auction or the bids offered. To provide sufficient clarity for bidders, should we specify that performance requirements will not be increased for a specified number of years, such as 3 years after the first receipt of

⁴⁷⁶ *Applications Filed by Frontier Communications Corporation and Verizon Communications, Inc. for Assignment or Transfer of Control*, WC Docket No. 09-95, Memorandum Opinion and Order, 25 FCC Rcd 5972, 6001 App. C (2010).

⁴⁷⁷ See *infra* para. 323.

⁴⁷⁸ See *supra* Section V.D.3 (discussing attributes of broadband and seeking comment on how to define and measure “actual” performance).

funding? How should our rules address the possibility that a recipient of support might not be able, because of technological limitations or other reasons, to meet new standards after the initial period? What are the cost implications of requiring recipients to meet an evolving speed standard? Should there be a process to adjust support amounts in the future, if higher speeds are required?

313. *Deployment and Duration.* We also seek comment on the appropriate duration of public interest obligations imposed on recipients. In the Public Interest Obligations section, we seek comment on requiring recipients to build out within a specified timeframe (e.g., three years) of their initial receipt of funding. Here, we propose that recipients of support during the first phase of the CAF build out within three years of their initial receipt of funding, and that obligations continue for a defined period, such as five years, following completion of the build out by the provider. We seek comment on these timeframes. We further seek comment on whether we should require that recipients meet a certain threshold of their coverage requirement, such as 50 percent within the bid area, by a milestone date, such as 18 months after the initial receipt of funding.

314. Given the ongoing nature of our reform efforts, we seek comment on whether, upon the completion of comprehensive universal service reform, recipients that ultimately receive long-term CAF support should be relieved of any obligations imposed as a result of receipt of funding in the first phase of the CAF, with those obligations being replaced by any public interest obligations imposed on long-term support recipients. Assuming a different provider begins receiving long-term support and complying with the public interest obligations for long-term support recipients, should the recipient of first-phase support be required to continue to comply with any still-applicable obligations, or should those obligations be phased out in these circumstances? We seek comment on these issues.

315. In addition, we seek comment on the role of states, territories, and Tribal governments in monitoring the public interest obligations of CAF recipients. Should states, territories, and Tribal governments be permitted to establish additional public interest obligations for CAF recipients? If so, how should those obligations be funded and enforced? We propose that if we permit such additional obligations to be imposed on those receiving support in the first phase of the CAF, we would require them to be promulgated before our deadline for submitting auction bids, so that potential bidders could take into account such requirements in formulating their bids. We seek comment on this proposal.

9. Support Eligibility Requirements

316. In this section, we seek comment on what minimum requirements we should impose on entities applying for support during the first phase of the CAF. We: (1) seek comment on whether we should require that an entity be designated (or have applied for designation) as an ETC pursuant to section 214(e) of the Act, by the state public utilities commission (PUC) (or the Commission, where the state PUC does not designate ETCs) in any area that it seeks to serve; (2) propose that an applicant must be a terrestrial wireline or wireless service provider and hold any necessary authority (or have applied for any necessary authority) to provide broadband in the geographic area it seeks to serve, as well as to hold any spectrum licenses necessary to provide the services proposed; and (3) propose to require that an entity certify that it has submitted all requested broadband deployment data as part of the State Broadband Data and Deployment program. We propose that, subject to these requirements, applicants be eligible to submit bids seeking support to deploy service in multiple unserved areas. Below, we seek comment on these minimum requirements, inquire whether other minimum standards are desirable, and solicit comment on other provider eligibility issues.

317. We propose a two-stage application process similar to the one we use in spectrum license auctions.⁴⁷⁹ Based on the eligibility requirements for support, we would require a pre-auction “short-

⁴⁷⁹ This is consistent with Qwest’s recommendation that any competitive bid process should include a prescreening process, a bidding period, a bid selection period, and a service delivery and reporting period that would include provider-of-last-resort obligations. Comments of Qwest Communications International, Inc. (Qwest), WC Docket No. 10-90, GN Docket No. 09-51, at 8-9 (filed July 12, 2010).

form” application to establish eligibility to participate in the auction, relying primarily on disclosures as to identity and ownership and applicant certifications, and perform a more extensive, post-auction review of the winning bidders’ qualifications based on required “long-form” applications. Such an approach should provide an appropriate screen to ensure participants are serious without being unduly burdensome. This would allow us to move forward quickly with the auction, which would speed the distribution of funding and ultimately the provision of broadband to currently unserved areas. We seek comment on the use of this proposal.

a. ETC Designation and Service Areas

318. As discussed above,⁴⁸⁰ section 254(e) of the Act provides that a carrier must be designated as an ETC to receive universal service support.⁴⁸¹ Above, we sought comment on whether we could or should forbear from imposing this requirement on recipients in general,⁴⁸² here, we seek comment on whether we could or should forbear from imposing this requirement on recipients of support in the first phase of the CAF, even if we do not forbear in a broader context.⁴⁸³ And if we do forbear from this requirement, what requirements should replace it?

319. Even if we do not forbear from the requirement in section 254(e) that universal service support recipients be designated as ETCs, we nevertheless may wish to permit entities to bid for support even if they have not yet been designated. We seek comment on allowing entities that have applied for designation as ETCs in the relevant area to participate in the reverse auction. Alternatively, or additionally, we could permit entities to apply for ETC designation on a contingent basis. We envision that applicants could identify areas for which they seek designation only if they win support for those areas. Applicants filing these conditional applications would thus be protected from finding themselves designated, and subject to the obligations that go along with being designated, in areas where they do not win support.⁴⁸⁴ Alternatively, we could require carriers to be designated as ETCs wherever they wish to bid prior to their participation in the auction. We seek comment on these proposals as well. Commenting parties should discuss whether the potential gain by allowing a larger pool of applicants through one or both of these proposals offsets any potential abuse and delay that could result if a non-ETC were to bid and win the auction, but then be deemed ineligible for support.

b. Authorization to Provide Required Services and Other Certifications

320. To participate in an auction and receive support, we propose that an entity be required to hold, or otherwise have access to, any required authorization to provide the required services. As an initial matter, we propose that entities currently authorized to operate in targeted unserved areas should be deemed to meet this requirement. We also seek comment on whether entities other than currently authorized providers should be eligible to participate if they have either applied for any necessary authorization or have entered into an agreement to obtain any necessary authorization (e.g., through an assignment, transfer of control, or leasing arrangement). For example, in the case of a wireless carrier, would a binding agreement for access to necessary spectrum be sufficient for eligibility? In the case of

⁴⁸⁰ See *supra* para. 88.

⁴⁸¹ 47 U.S.C. §§ 214(e), 254(e). If the relevant state commission lacks jurisdiction to designate a particular carrier an ETC, the Act gives that authority to the Commission. See 47 U.S.C. § 214(e)(6).

⁴⁸² See *supra* para. 89.

⁴⁸³ See 47 U.S.C. § 160(a).

⁴⁸⁴ Pursuant to 47 U.S.C. § 214(e)(1) and section 54.101(b) of the Commission’s rules, an ETC is obligated to provide all of the supported services defined in section 54.101(a) throughout the area for which it has been designated an ETC. Accordingly, if we do not permit conditional ETC applications, but instead require a carrier to be designated (or have applied for designation) as an ETC, at the time of an auction, in all areas for which it wishes to receive support, the carrier could find itself designated and obliged to provide services in areas where it does not receive any support.

Tribal lands, should entities be required to obtain authorization from Tribal governments to serve on their lands before becoming eligible for support? We seek comment on these issues.

321. Above, we seek comment on whether to limit eligibility to those states that have undertaken intrastate access charge reform.⁴⁸⁵ If we impose such a limit, should we require potential bidders to provide certification or documentation that such state action has occurred where they seek support?

322. We propose to limit participation in the auction to those applicants able to certify that they have submitted all requested broadband deployment data as part of the State Broadband Data and Deployment program. We note that parties that have not been requested to provide such data would be permitted to certify that they have provided all data requested, and that, because the SBDD program is ongoing, parties that have not previously responded to requests for broadband data would have an opportunity to provide requested data as part of that program before any auction for support was conducted. We seek comment on this proposal generally, and on whether such a limitation should apply to Tribal areas.

323. We propose to require additional applicant certifications to avoid funding the deployment of broadband in an area where broadband deployment is funded by other sources (i.e., other federal or state broadband grants to the same or other carriers in a given area).⁴⁸⁶ We seek comment on this proposal. Would a potential bidder have sufficient information to make a certification that no other carrier in a given area is receiving funding to extend facilities in the same geographic area? In addition, should we require applicants to demonstrate that they have the ability to meet accounting, financial, monitoring and reporting requirements?⁴⁸⁷ We seek comment on these issues and whether such requirements are appropriate for a competitive process. Parties providing suggestions should be specific and explain how the eligibility requirements would serve the ultimate goals of the CAF.

10. Competitive Award Process

324. In this section, we propose rules for and seek comment on certain elements of the auction process, including the application and bidding processes. Accordingly, as detailed in Appendix A, we propose rules that will provide some flexibility to choose among various methods of conducting the

⁴⁸⁵ See *supra* para. 297.

⁴⁸⁶ See, e.g., Comments of Florida Public Service Commission, GN Docket Nos. 09-47, 09-51, 09-137, at 4 (filed Dec. 15, 2009) (carriers should not be able to double dip from different federal agencies for the same project); Comments of US Cellular, GN Docket Nos. 09-47, 09-51, 09-137, at 15 (filed Dec. 7, 2009); Comments of CenturyLink, GN Docket Nos. 09-47, 09-51, 09-137, at 27-28 (filed Dec. 7, 2009); see also American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, 119 (providing that no area in which a broadband project is being funded through the Rural Utilities Service's Broadband Initiatives program may receive funding to provide broadband service under the Broadband Technology Opportunities Program). We note that NTIA and the Rural Utilities Service, in administering their respective broadband deployment initiatives under the American Recovery and Reinvestment Act of 2009, sought to prevent a single deployment from obtaining funding from both programs. See Department of Commerce, National Telecommunications and Information Administration, Broadband Technology Opportunities Program, Notice of Funds Availability and Solicitation of Applications, 75 Fed. Reg. 3795-96 (Jan. 22, 2010) (NTIA stating that it strongly recommends that applicants eligible for Rural Utilities Service loans or grants or those applicants whose projects sought to include a last mile service area that was at least 75 percent rural to apply for BIP funding; NTIA stating thereafter it would view such applications unfavorably and would not consider them a funding priority).

⁴⁸⁷ See Qwest July 12, 2010 Comments at 8.

bidding and procedures to use during the bidding.⁴⁸⁸ These rules are generally modeled on the Commission rules that govern the design and conduct of our spectrum license auctions.⁴⁸⁹

325. Although the rules we propose below establish the framework for conducting an auction, they do not necessarily by themselves establish the specific detailed procedures that will govern any auction process. We envision that the Commission will develop and provide notice to potential bidders of detailed auction procedures prior to conducting an auction. Specifically, we propose that, after establishing program and auction rules, the Commission release a Public Notice announcing an auction date, identifying areas eligible for support through the auction, and seeking comment on specific detailed auction procedures to be used, consistent with those rules. We further propose that the Commission release a subsequent Public Notice specifying the auction procedures, including dates, deadlines, and other details of the application and bidding process. Consistent with our existing practice for spectrum license auctions, we propose to delegate authority to the Wireline Competition Bureau and the Wireless Telecommunications Bureau to establish as outlined here, through public notices, the necessary detailed auction procedures prior to an auction, and to take all other actions needed to conduct any such auction. We seek comment on this proposal.

a. Short-Form Application

326. As noted above, we propose to use a two-stage application process similar to the one we use in spectrum license auctions.⁴⁹⁰ Under this proposal, we would require entities interested in participating in an auction to submit a pre-auction “short-form” application. After the auction, a more extensive review of the winning bidders’ qualifications through “long-form” applications would be conducted. We envision that both applications would be filed electronically, in a process similar to that used for spectrum license auctions. Here we seek comment on the specifics of the “short-form” application.

327. We propose that, in the short-form application, potential bidders must provide basic ownership information, including all real parties in interest and officers and directors of such parties, and certify their compliance with the eligibility requirements for obtaining support. We anticipate requiring disclosure of information consistent with our proposals in the *Broadband Data NPRM*.⁴⁹¹ For example, we anticipate requiring bidders to identify any partnerships with others to provide supported services and to state whether they will provide supported services using leased spectrum (identifying from whom it will be leased). This information will establish the identity of applicants and provide information that will aid in ensuring compliance with and enforcement of our rules. Also, a potential bidder would need to certify its qualifications to receive CAF support.⁴⁹² Finally, we propose that applicants be required to certify that they have and will comply with all applicable rules. We seek comment on these proposed short-form application requirements.

328. We seek comment on the extent to which we can minimize the reporting burden on applicants by allowing them to refer to ownership information already possessed by the Commission and either update the ownership information or certify that there have been no changes in the ownership information since it was last submitted to the Commission.

329. In addition, we propose that applicants be required to identify in their short-form applications the specific areas they might bid to serve. As in our spectrum license auctions, identifying an

⁴⁸⁸ See *infra* Appendix A.

⁴⁸⁹ Cf., 47 C.F.R. Part 1, Subpart Q.

⁴⁹⁰ See *supra* para. 317.

⁴⁹¹ See *Broadband Data NPRM*, FCC 11-14, paras. 100-104 (seeking comment whether the Commission should collect ownership and contact information).

⁴⁹² See *supra* Section VI.E.9.b.

area as one in which a bidder was potentially interested in serving would not commit the bidder to actually bidding for support for that area in the auction. However, the availability of this information could be helpful in ensuring compliance with our auction rules. We seek comment on this proposal and on any other information that we should require of applicants in the pre-auction stage that would help ensure a quick and reliable application process.⁴⁹³

330. We propose that applications to participate in an auction should be subject to review for completeness and compliance with our rules, and we envision a process similar to that used in spectrum license auctions. Specifically, after the application deadline, we would review the short-form applications. Once review is complete, we would publicly announce which short-form applications are deemed acceptable and which are deemed incomplete. Applicants whose short-form applications were deemed incomplete would be given a limited opportunity to cure defects and to resubmit corrected applications.⁴⁹⁴ As with spectrum license auctions, applicants would be able to make only minor modifications to their short-form applications.⁴⁹⁵ Major amendments would result in the application being dismissed.⁴⁹⁶ Following review of any resubmitted applications, we would make a second public announcement designating the applicants that have qualified to participate in auction. We seek comment on this application process.

b. Basic Auction Design

331. In a reverse auction, potential providers of a defined service or other benefit compete to provide it at the lowest bid. This approach can offer a relatively quick, simple, and transparent method of selecting parties that will provide a benefit for the lowest subsidy amount and setting the support those parties should be paid. There are a number of potential auction formats. We seek comment on the best auction design to maximize the deployment of broadband to housing units where there is currently no access to broadband for a fixed total amount of support. In addition to the likelihood of maximizing broadband deployment to currently unserved housing units, design considerations should include simplicity for both bidders and the Commission, transparency, and the minimization of opportunities for gaming.

c. Bidding Process

332. In discussing the public interest obligations of parties receiving support in the first phase of the CAF, we sought comment on the minimum coverage the Commission might require providers to offer in areas for which they receive support. We noted above that establishing minimum coverage requirements may maximize the number of housing units within supported areas where new broadband service would be deployed. We also described the alternative possibility of allowing bidders to establish their own coverage requirements by specifying the number of housing units to be passed in areas on which they bid. This alternative approach of bidder-defined coverage requirements may result in new broadband service being made available to more housing units overall than a Commission-established requirement, but may also result in less extensive coverage in each area. In this section, we seek comment on aspects of the bidding process related to our proposal and the alternative method of establishing coverage requirements in areas for which support is received.

333. Under our proposal that the Commission establish the minimum coverage that must be provided in an area, multiple bids for the same area would be offers to serve the same number of housing

⁴⁹³ We note that we propose below that the Commission have the discretion to determine how much, if any, information regarding short form applications should be made public. *See infra* para. 347.

⁴⁹⁴ *Cf.* 47 C.F.R. § 1.2105(b)(2).

⁴⁹⁵ *Id.* Major amendments would include, for example, changes in ownership of the applicant that would constitute an assignment or transfer of control.

⁴⁹⁶ In addition, applicants who fail to correct defects in their applications in a timely manner as specified by public notice would have their applications dismissed with no opportunity for resubmission. *Cf.* 47 C.F.R. § 1.2105(b)(3).

units (at minimum), and the bids could be compared simply based on their per-required-unit-covered subsidy amount, without needing to consider additional variables. We seek comment on such an approach.

334. Alternatively, bidders might be permitted to specify the minimum coverage they will provide in an area—i.e., the number of units they will commit to pass—in their bids. This would permit bidders to propose lower bids by selecting the units that they could reach within a given area with the lowest amount of support. We seek comment on how to best design an auction process incorporating bidder-specified coverage requirements consistent with our aims. How should the extent of coverage proposed by the bid be balanced with the amount of support sought by the bid?

335. In addressing the two coverage requirements we discuss above, we ask commenters to consider the relative merits and drawbacks of the different auction mechanisms that are necessitated by the different coverage requirements in light of our goals for the CAF in particular and universal service reform generally. The auction mechanism could be simpler if the Commission establishes minimum requirements.⁴⁹⁷ In contrast, allowing bidder-defined coverage would require that we take both bid amount and varying bidder-defined coverage numbers into account when determining winning bids, which would require a somewhat more complex mechanism.

336. Regardless of how the minimum coverage to be provided is established, we do not intend to discourage providers from providing coverage beyond the minimum in any area for which they receive support. Should winning bidders be able to receive additional support if they exceed their coverage requirements? If so, how should such additional support be calculated? Should the answers differ depending on which approach to coverage is adopted, and if so, how?

337. We also seek comment on whether we should use a single-round sealed bid format or a different format.

338. *Other criteria or bidding credits/penalties.* We propose to select winning bidders and award support based on bids that state a price at which the bidder would meet our minimum performance requirements for the number of housing (or other) units covered by the bid, ranking bids by price per unit covered. This approach simplifies the bidding and minimizes the administrative burden of conducting an auction.

339. As an alternative to considering units passed as alike as long as providers meet minimum performance requirements, we could permit bidders to commit to various quality adjustments—such as higher speeds, lower latency, mobility, or a better upgrade path—and take those quality adjustments into consideration when determining winning bidders. We also could take into account whether the bidder is the carrier of last resort for voice service. One way to do this is to adjust bid prices using specified weights for various criteria not related to housing units served. We seek comment on this proposal. Are there benefits to using multiple weighted criteria? If so, would such an approach be preferable to considering bids for minimum performance requirements? If commenters prefer the use of multiple criteria, they should specify the criteria and weights associated with such criteria.

340. Another approach to considering performance quality would be to use bidding credits to allow tradeoffs among coverage and certain performance requirements, such as speed, latency, mobility, or upgrade path. If so, which performance characteristics should be selected for credits? How would we determine the value of any performance characteristic? What data or other information, such as

⁴⁹⁷ A Commission-defined coverage requirement avoids the need to select among multiple bids that would provide coverage for different numbers of housing (or other) units within the same geographic area. We note that certain ways of implementing package bidding with a Commission-defined coverage requirement may create a need to select among multiple bids for packages of geographic areas that partially overlap. However, there are also ways to implement package bidding that could preclude this possibility or limit its effect. We seek comment elsewhere on the need for package bidding and alternative ways to implement it.

econometric studies on the value to consumers of speed, reduced latency, and other performance characteristics, could be used to set the size of the credit?⁴⁹⁸

341. Under either scenario—weighted criteria or bidding credits/penalties—should the rankings or bids be adjusted to reflect other differences, such as a commitment to setting the retail price below some maximum level or a usage cap above some minimum? How could we administer bidding credits or weighting criteria to provide preferences to carriers in Tribal lands, insular areas, or states that have undertaken intercarrier compensation reform? How would we monitor and enforce performance according to the criteria selected? We seek comment on these issues.

342. *Reserve prices.* We propose that the Commission reserve the discretion, prior to the auction, to establish area-specific reserve prices (on a per-unit or other basis), separate and apart from any maximum opening bids, and to elect whether or not to disclose those reserves. We seek comment on this proposal and the basis for determining such reserve prices.

343. *Aggregating service areas and package bidding.* We propose to provide that the Commission would have discretion to establish bidding procedures for any auction that would permit bidders to submit package bids on aggregations of census blocks, so that their bids may take into account scale and other essential efficiencies that block-by-block bidding may not permit.⁴⁹⁹ We seek comment on the extent to which such scale efficiencies are significant in this context, and if they are important, whether there are other auction designs that would better accommodate such concerns. For example, if bidders simply specify, in dollars, the subsidy required to serve a single defined number of housing units, a bidder might make several bids in overlapping areas, each bid taking into account the effects of any economies of scale that would be realized from winning support to deploy to that combination of census blocks. Alternatively, should we permit bidders to make flexible bids, expressing an offer in terms of a fixed price necessary to serve any housing units in some broad geographic area (defined by the bidder as an aggregation of census blocks) plus a separate price for each census block served (with the bidder specifying number of housing units passed) within that area? How would such contingent bids be treated in the winner-determination process we discuss above?

344. We seek comment generally on the use of package bidding. We propose that specific procedures for package bidding be among those determined as part of the process of establishing the detailed procedures for an auction. We expect that proposals for such procedures would consider how to implement package bidding consistent with our proposal to award support to at most one provider in a geographic area, without allowing geographic overlaps among packages to disqualify desirable bids. For this purpose, proposals might include limited package bidding, including permitting only predefined non-overlapping packages, permitting bidders to submit package bids on geographically adjacent census blocks, and/or the possibility of requiring that bidders submitting package bids also submit separate bids on the component blocks. We seek comment on all of these issues. We further seek comment on whether package-bidding procedures should include provisions permitting re-packaging of census blocks under certain circumstances, and, if so, what those provisions should be.

345. *Withdrawn bids.* The Commission has discretion, in developing procedures for its spectrum license auctions, to provide bidders limited ability to withdraw provisionally winning bids before the close of an auction. We propose that the Wireline Competition Bureau and the Wireless Telecommunications Bureau be delegated authority to determine any such procedures in the pre-auction process, including establishing bid withdrawal payments, when required.

⁴⁹⁸ See, e.g., Gregory Rosston, Scott J. Savage, and Donald M. Waldman, Household Demand for Broadband Internet Service, http://www.tprcweb.com/images/stories/2010%20papers/Rosston-Savage-Waldman_2010.pdf (last visited Feb. 9, 2011).

⁴⁹⁹ If a bidder were awarded support based on a package bid, it would still be required to meet the performance requirements for each census block in the package. For example, it would have to provide access to a specified percentage of the units in each census block if the Commission were to establish such a requirement.

346. *Funds remaining unawarded after auction.* We anticipate that some funds may remain unawarded after the last bid is accepted—for there to be no remaining funds, the last bid accepted would have to be priced precisely to exhaust all remaining funds. We seek comment on ways to address the issue of unawarded funds. Should we retain such funds for future auctions, use such funds to satisfy existing high-cost demand in the upcoming quarter, or should we choose some other alternative?

d. Information and Competition

347. In the interests of fairness and maximizing competition in the auction process, we propose to prohibit applicants competing for support from communicating with one another regarding the substance of their bids or bidding strategies.⁵⁰⁰ Information available in short-form applications or in the auction process itself might also be used to attempt to reduce competition. Accordingly, for spectrum license auctions, the Commission adopted rules providing it with discretion to limit public disclosure of auction-related information, for example by keeping non-public during the auction process certain information from applications and/or the bidding.⁵⁰¹ We propose to adopt similar rules for a CAF reverse auction and seek comment on this proposal. We recognize that some communication among potential bidders may be necessary for them to evaluate whether they wish to bid jointly. We seek comment on how to design our rules to permit communications necessary to enable joint or cooperative bids but to prohibit improper bid coordination or bid-rigging.

e. Auction Cancellation

348. As with the Commission's spectrum license auctions, we propose that the Commission's rules provide it with the discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including, but not limited to, natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding.⁵⁰² We seek comment on this proposal.

11. Post-auction Process and Administration of Phase I CAF

a. Post-auction Long-Form Application

349. We propose that, after bidding has ended, the Commission identify and notify the winning bidders and declare the bidding closed. We propose that, unless otherwise specified by public notice, a winning bidder be required to submit a long-form application within 10 business days after being notified that it is a winning bidder. We seek comment on the procedures that we should apply to a winning bidder that fails to submit a long-form application by the established deadline. Imposition of some deterrent measure, in addition to dismissal of the late-filed application, could deter auction participants from submitting insincere bids and serve as an incentive for winning bidders to timely submit their long-form applications. In the event a winning bidder does not timely file a long-form application, we propose that the funds that would have been provided to the applicant be offered in a subsequent auction, or, in the alternative, that such funds be restored to the initial auction pool and awarded to bidders that, but for the failed winning bid, would have themselves won support through the auction. We seek comment on these proposals.

350. We seek comment on the specific information and showings that should be required of winning bidders on the long-form application before they can be certified to receive support and before actual disbursements can be made to them.

⁵⁰⁰ Cf. 47 C.F.R. § 1.2105(c).

⁵⁰¹ Cf. 47 C.F.R. § 1.2104(h).

⁵⁰² Cf. 47 C.F.R. § 1.2104(i).

351. We propose that an applicant be required to confirm the ownership information provided in its pre-auction short-form application or to update that information, as appropriate.⁵⁰³ We seek comment on whether we should require applicants to provide any other ownership information.

352. We propose that, if we were to adopt a rule allowing an applicant to participate in the auction while its ETC designation status is pending, the applicant would be required in its long-form application to demonstrate its ETC status by, for example, providing a copy of its ETC designation order from the relevant state PUC. We seek comment on this proposal.

353. We seek comment on the information a winning bidder should be required to provide regarding the network it will deploy with that support. We propose that an applicant be required to include in its long-form application a detailed project description that describes the network, identifies the proposed technology or technologies, demonstrates that the project is technically feasible, and describes each specific development phase of the project (e.g., network design phase, construction period, deployment and maintenance period). We seek comment on this proposal.

354. *Certifications.* We seek comment on the certifications that should be required of a winning bidder. We propose that, prior to receiving support, an applicant be required to certify to the availability of funds for all project costs that exceed the amount of support to be received from the CAF and certify that it will comply with all program requirements.

355. We further seek comment on whether we should require applicants to show that they have the demonstrated financial and management resources to operate a network capable of providing the required broadband services.⁵⁰⁴ Should we require applicants to provide a business plan that shows their proposed project is economically sustainable?

356. *Guarantee of Performance.* We propose that a winning bidder should be required to post financial security as a condition to receiving support in the first phase of the CAF to ensure that it has committed sufficient financial resources to meeting the program obligations associated with such support under the Commission's rules. In particular, we seek comment on whether all winning bidders should be required to obtain an irrevocable standby letter of credit (LOC) no later than the date on which the bidder's long-form application is submitted to the Commission. We also seek comment on whether, alternatively, only certain applicants that do not meet specified criteria should be subject to this requirement, and if so, what those criteria should be. For example, should we establish criteria, based on bond rating, market capitalization, or debt/equity ratios (combined with minimum levels of available capital) that, if not met, would make an LOC necessary? Would such a requirement unnecessarily preclude providers that otherwise might be able to satisfy the obligations of the CAF from seeking to participate?

357. We seek comment on how to determine the amount of the LOC necessary to ensure uninterrupted construction of a network, as well as the length of time that the LOC should remain in place. For example, the amount of the LOC could be determined on the basis of an estimated annual budget that could accompany the build-out schedule required as part of the long-form applications, or we could simply require a specific dollar figure for the LOC in an amount that would ensure that construction could proceed for a given amount of time. Should the amount of an initial LOC, or a subsequent LOC, also ensure the continuing maintenance and operation of the network? Under what circumstances should the participant be required to replenish the LOC?

⁵⁰³ See *supra* para. 327.

⁵⁰⁴ See Qwest July 12, 2010 Comments at 8; Affidavit of Trevor R. Roycroft, Ph.D. on behalf of the National Association of State Utility Consumer Advocates, Maine Office of Public Advocate, Office of the Ohio Consumers' Counsel, Pennsylvania Office of Consumers Advocate, and the Utility Reform Network (Trevor R. Roycroft, Ph.D. July 12, 2010 Affidavit), WC Docket No. 10-90, GN Docket No. 09-51, at 44 (filed July 12, 2010).

358. We also seek comment on what events would constitute a default by the recipient of support that would allow a draw on the entire remaining amount of the LOC. Further, in the event of bankruptcy, the LOC should be insulated from claims other than the draws authorized for the construction and operation of the network. We seek comment on provisions we might adopt to provide these safeguards.⁵⁰⁵

359. We seek comment on any additional safeguards we might adopt to protect against breaches by recipients of their promise to build out their networks in a timely manner. For example, should construction delays, failure to deliver service meeting specified performance characteristics speeds, and failure to comply with other public interest obligations constitute a default that would allow a draw on the LOC?

360. As an alternative to a Letter of Credit, we seek comment on whether we should require a winning bidder to guarantee completion of construction by obtaining a performance bond covering the cost of network construction and operation. Such a requirement would be similar to that which the Commission has imposed as a condition on satellite licenses.⁵⁰⁶ We also seek comment on the types of requirements that bond issuers might impose and whether such requirements would be so unduly burdensome as to restrict the number of carriers that might be able to bid for support. We also seek comment on the relative merits of performance bonds and LOCs and the extent to which performance bonds, in the event of the bankruptcy of the support recipient, might frustrate our goal of ensuring timely build-out of the network. We also seek comment on whether there are other protections that the Commission should reasonably seek to ascertain the financial viability of the winning bidder, and ensure construction of the network and its subsequent operation.

b. Disbursing Support

(i) Support Payments

361. We propose that each party receiving support would receive funds over time as performance milestones are reached. We seek comment on what funding milestones would be most appropriate. For example, we could distribute fifty percent of the support associated with a census block (or aggregation of blocks) once the application for support is granted, and then expect to distribute the remaining funds in two equal increments, the first after fifty percent of the buildout was completed and the second following full deployment. Consistent with the requirements of the Antideficiency Act⁵⁰⁷ discussed below, although we would fully expect that any funds not paid immediately would be paid if certain conditions are met, we note that such payments cannot be guaranteed. The Commission's obligation to pay the remainder of the support amount would be contingent upon issuance of a notice that: (1) funds are available; and (2) the Commission has determined that the recipient has complied with all program requirements. In the example of a milestone plan given above, a party might satisfy this last condition with respect to the second increment of funding by filing a report demonstrating compliance with 50 percent of the coverage requirement and the party's continued financial viability, and then might

⁵⁰⁵ For example, we could require, as a condition of receiving support, that a winning bidder first provide the Commission with a legal opinion letter that would state, subject only to customary assumptions, limitations and qualifications, that in a bankruptcy proceeding under Title 11 of the United States Code, in which the winning bidder is the debtor, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the winning bidder's bankruptcy estate (or the bankruptcy estate of any other bidder-related entity requesting the issuance of the LOC) under 11 U.S.C. § 541.

⁵⁰⁶ See, e.g., 47 C.F.R. §§ 25.137, 25.165.

⁵⁰⁷ See 31 U.S.C. §§ 1341, 1517; OMB Circular No. A-11, Preparation, Submission and Execution of the Budget § 145, App. G (July 21, 2010).

obtain its third increment of funding by filing a report demonstrating that it has met 100 percent of its coverage requirement.⁵⁰⁸ We seek comment on this proposal.

362. We propose to structure the CAF in a manner that would assure compliance with the Antideficiency Act, which requires the Commission to collect funds before they may be obligated.⁵⁰⁹ Such compliance is currently assured under the terms of an exemption, scheduled to expire December 31, 2011,⁵¹⁰ which permits the Commission to obligate certain universal service funds before they are collected. We seek comment, however, on how to assure compliance in the event the exemption is permitted to lapse or expire.

363. Are there particular steps the Commission could take in designing the CAF to enable recipients to meet current requirements for treatment of capital investment for tax purposes, which may minimize tax liabilities in the year funds are disbursed? We note, for example, that in certain circumstances, the Internal Revenue Service treats governmental payments to private parties for the purpose of making capital investments to advance public purposes as contributions to capital under section 118 of the Internal Revenue Code. Such treatment allows recipients to reduce payments from income, but reduces depreciation deductions in future years. Both NTIA's BTOP grants and RUS's BIP grants have been treated as contributions to capital.⁵¹¹

364. We also seek comment on the interplay between existing high-cost support for rate-of-return carriers and CAF support for rate-of-return carriers and other providers in rate-of-return territories. With respect to rate-of-return carriers that win CAF support, consistent with section 32.2000(a)(2) of the Commission's rules, we propose that such carriers be prohibited from including such infrastructure in their revenue requirement as a way to increase support under the existing high-cost mechanisms.⁵¹² We seek comment on this proposal.

(ii) Support Liabilities

365. We seek comment on the extent to which parties qualifying to receive support should be liable in the event that they are unable to provide broadband service pursuant to the requirements of the CAF. As discussed above, we propose that applicants qualifying for support be able to receive initial payments in advance of providing such service to finance the deployment of facilities to serve customers in the area. Should parties receiving such support be required to repay support if they fail to provide the intended service? For example, should we use a sliding scale for reclaiming support based on failure to serve housing units passed?

366. We propose to require carriers to acknowledge and agree that support is contingent upon completion (or substantial completion) of the build out in accordance with specified performance requirements. Should they be subject to additional liabilities and/or security requirements (such as letters of credit or performance bonds) to provide them with proper incentives to perform and to protect the CAF in case they fail to perform as required? Should the Commission require affiliates, such as parent

⁵⁰⁸ Because we propose below to delegate to the Wireline Competition Bureau and the Wireless Telecommunications Bureau the authority to determine the method and procedures by which parties submit documents and information required to receive support, we do not propose here specific filing procedures for these reports.

⁵⁰⁹ See 31 U.S.C. §§ 1341, 1517; OMB Circular No. A-11, Preparation, Submission and Execution of the Budget § 145, App. G (July 21, 2010).

⁵¹⁰ Universal Service Antideficiency Temporary Suspension Act, Pub. L. 108-494, 118 Stat. 3986 (2004) as most recently amended in the Continuing Appropriations and Surface Transportation Extensions Act, 2011, Pub. L. 111-322, 124 Stat. 3518, 3520 (2010).

⁵¹¹ See Rev. Proc. 2010-34, 2010-41 I.R.B. 426.

⁵¹² 47 C.F.R. § 32.2000(a)(2).

corporations or entities within the same larger enterprise, to be responsible if the recipient fails to meet its obligations? If so, how should we define the level or nature of affiliation that would create this responsibility? Is there a level of service short of the full service sought that ought to offset the supported parties' liabilities? We seek comment on these issues.

367. We note that the Commission's rules provide that the Commission will generally not act on any application, petition, or request by an entity that owes money to the Commission.⁵¹³ We seek comment on whether bidders that are found to have failed to meet their obligations relating to the program should similarly be ineligible for Commission action until they can demonstrate that they are in compliance or obtain a waiver.

c. Audits and Compliance

368. Consistent with the discussion below,⁵¹⁴ we intend to require all recipients of CAF funding to comply with audits and record retention requirements. We seek comment on this proposal. Are there fewer, more, or different requirements we should consider for recipients of support in the first phase of the CAF?

369. Section 254(e) requires that a carrier shall use "support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁵¹⁵ How should the Commission ensure that support from the CAF is used for the purposes for which it was intended as required by section 254(e)? We seek comment on requiring additional information from the recipients concerning how the funds were used and specifically what information should be submitted.⁵¹⁶

370. We generally seek comment below on what procedures we should put in place to ensure that CAF support recipients provide the services they have committed to provide.⁵¹⁷ We similarly intend to confirm that recipients of support in the first phase of the CAF are satisfying their obligations under the program, such as by conducting inspections in the field. We seek comment on whether either state commissions or RUS could play a role in confirming deployment. For instance, hundreds of smaller telephone companies are currently RUS borrowers, and required to report to RUS on their use of funds. What information-sharing mechanisms between the Commission and RUS would facilitate our ability to confirm deployment? We seek comment on what kinds of verification procedures are appropriate in this context. Should they differ from the verification procedures we adopt for the CAF? If so, how?

d. Delegation of Authority

371. To implement the various requirements we adopt for applicants and recipients of CAF support, we propose to delegate to the Wireline Competition Bureau and the Wireless Telecommunications Bureau the authority to determine, subject to existing legal requirements such as the rules of the Office of Management and Budget, the method and procedures for applicants and recipients to submit appropriate information. This delegation of authority to the bureaus would authorize modification, as necessary, of existing FCC forms and the creation, if necessary, of new FCC forms to implement the rules we adopt in this proceeding.

⁵¹³ See 47 C.F.R. § 1.1910(b)(2).

⁵¹⁴ See *infra* Section VIII.

⁵¹⁵ 47 U.S.C. § 254(e).

⁵¹⁶ See *infra* para. 475.

⁵¹⁷ See *infra* para. 477.

F. Targeting Support

372. Today, incumbent ETCs are designated to serve an entire service area, regardless of whether there is a need for support in a particular wire center⁵¹⁸ Our current rules effectively average costs across a geographic area, to varying degrees. For high-cost loop, local switching, and interstate common line support—which are the primary programs for smaller, rate-of-return companies—there is no requirement that support be targeted to specific areas within the study area. In contrast, the two programs primarily used by price cap companies do target funding to specific areas within the study area. IAS is targeted to density zones of greatest need within a study area, and high-cost model support is targeted to particular wire centers within a study area.⁵¹⁹

373. Averaging costs between high- and low-cost areas always has been a key element of providing universal service support to help ensure that all Americans have access to telephone service. By averaging costs across study areas, e.g., in the case of high-cost loop support, or across states, in the case of high-cost model support, low-cost lines in a given area help to support high-cost lines in the same study area or state. Some commenters have argued, however, that support should be targeted at a more granular level.⁵²⁰

374. Below, we seek comment on two distinct proposals to target support more directly to areas that are uneconomic to serve, which could be implemented in conjunction with the reforms proposed above. The first, disaggregating support, would shift support within study areas to those portions that are more costly to serve but would not change overall support levels for incumbents. The second, redrawing study areas, could alter which areas receive support, the size of those areas, and support levels for those areas.

1. Disaggregating Support

375. First, we propose to target support more directly to the areas of greatest need by requiring rural carriers to disaggregate support within existing study areas beginning in 2012. Section 54.315 of the Commission's rules today allow incumbents to disaggregate support, but such disaggregation is optional.⁵²¹ We recognize that disaggregation of support would not alter the total amount of support that an incumbent LEC would receive in a given study area. Mandatory disaggregation of support while we develop and implement measures to transition more fully to the CAF should, however, facilitate our ability to identify those areas most in need of ongoing support in the future. Pending the phase-down of competitive ETC support as proposed above, disaggregation could also reduce existing competitive ETC support by better identifying only those areas that do require support to provide services.

376. In 2001, in the *Rural Task Force Order*, the Commission adopted three paths for the geographic disaggregation and targeting of rural high-cost loop support at or below the study area level.⁵²² When the Commission established the ICLS mechanism in the 2001 *MAG Order*, it determined that rate-of-return carriers should have the option of choosing one of the same three paths to disaggregate ICLS as

⁵¹⁸ A service area may encompass many wire centers. A “service area” generally means a geographic area established by a State commission or the Commission “for the purposes of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and States . . . establish a different definition of service area for such company.” 47 U.S.C. § 214(e)(5).

⁵¹⁹ Under the rules for high-cost model support, which is generally provided to the larger, price-cap companies, eligibility for support is determined by comparing the statewide average cost per line (calculated through a forward looking cost model) to a national average cost per line, but then such support is targeted to particular wire centers in an eligible state that have forward-looking costs in excess of the benchmark.

⁵²⁰ See, e.g., USTA July 12, 2010 Comments at 12-13; Windstream July 12, 2010 Comments at 31.

⁵²¹ 47 C.F.R. § 54.315.

⁵²² See *Rural Task Force Order*, 16 FCC Rcd at 11302-09, paras. 144-64.

well, and amended its rules accordingly.⁵²³ The Commission explained that the disaggregation and targeting of portable ICLS would ensure that support is used for its intended purpose, consistent with section 254(e) of the Act.⁵²⁴ Disaggregation would allow incumbent carriers to target explicit support to regions within a study area that cost relatively more to serve, ensuring that a competitive entrant receives the targeted support only if it also serves the high-cost region.⁵²⁵ At the same time, it would prevent the competitive entrant from receiving greater support than needed to serve relatively low-cost regions, which, if permitted, would give the competitive carrier a potential price advantage over the incumbent.⁵²⁶

377. In the *MAG Order*, the Commission also required rate-of-return carriers to select identical disaggregation zones for all forms of high-cost support based on embedded costs.⁵²⁷ In addition, carriers were required to allocate the same ratio of high-cost loop support and ICLS to each disaggregation zone and base their disaggregation plans on cost.⁵²⁸ Because the high-cost loop and ICLS mechanisms “each support loop costs and therefore share similar cost structures,” the Commission could “see no reason why such support should be allocated differently in different disaggregation zones.”⁵²⁹

378. Few incumbent carriers took advantage of these disaggregation options. We now seek comment on applying the Commission’s rules for the geographic disaggregation and targeting of portable high-cost universal service support below the study area level adopted in the *Rural Task Force Order*, and subsequently extended to ICLS in the *MAG Order*, to all current high-cost support mechanisms.⁵³⁰ Specifically, we propose to require rural carriers that receive high-cost loop support to disaggregate such support under one of two approaches, as explained below.⁵³¹ In addition, consistent with our existing disaggregation rules and policies, we also propose to require carriers to disaggregate their ICLS.

379. Specifically, consistent with section 54.315 of the Commission’s rules, we propose two options for disaggregation: A carrier may disaggregate either in accordance with a plan approved by the appropriate regulatory authority,⁵³² or by self-certifying to the appropriate regulatory authority a disaggregation plan of up to two cost zones per wire center that are reasonably related to the cost of providing service within each zone.⁵³³ Consistent with the *Rural Task Force Order* and the *MAG Order*,

⁵²³ See *MAG Order*, 16 FCC Rcd at 19674-78, 19748-49, paras. 143-150, App. A; 47 C.F.R. § 54.315(a).

⁵²⁴ See *MAG Order*, 16 FCC Rcd at 19674, para. 143; 47 U.S.C. § 254(e); see also *Rural Task Force Order*, 16 FCC Rcd at 11302, para. 145.

⁵²⁵ See *MAG Order*, 16 FCC Rcd at 19674, para. 144.

⁵²⁶ See *id.*

⁵²⁷ See *id.* at 19675, para. 146 & n.401. Forward-looking high-cost model support received by non-rural rate-of-return carriers is not subject to disaggregation under section 54.315, but such support is (and hold-harmless support was) targeted to wire centers under sections 54.309 and 54.311. See 47 C.F.R. §§ 54.309, 54.311, 54.315(a).

⁵²⁸ See *MAG Order*, 16 FCC Rcd at 19676, para. 147.

⁵²⁹ See *id.* Carriers are permitted to use a different allocation ratio for local switching support. See *id.*

⁵³⁰ See *Rural Task Force Order*, 16 FCC Rcd at 11302-09, paras. 144-64; *MAG Order*, 16 FCC Rcd at 19674-78, paras. 143-150; 47 C.F.R. § 54.315.

⁵³¹ Under the *MAG Order*’s Path One, carriers could choose not to disaggregate support. See 47 C.F.R. § 54.315(b). Path One was intended to address those instances where a carrier concluded that, given the demographics, cost characteristics, and location of its study area, and the lack of a realistic prospect of competitive entry, disaggregation is not economically rational. See *MAG Order*, 16 FCC Rcd at 19675, para. 145.

⁵³² This is Path Two under our current rules. See *MAG Order*, 16 FCC Rcd at 19675, para. 145; 47 C.F.R. § 54.315(c).

⁵³³ Under Path Three, a carrier could also self-certify a disaggregation plan that complies with a prior regulatory determination. See *MAG Order*, 16 FCC Rcd at 19675, para. 145; 47 C.F.R. § 54.315(d).

carriers' disaggregation plans would be subject to the general requirements governing all disaggregation plans.⁵³⁴

380. By providing carriers with the option of self-certifying a disaggregation plan, our proposal here differs from our previous disaggregation rules in one notable respect. For study areas where a competitive ETC had been designated prior to the effective date of the disaggregation rules, an incumbent carrier could elect to self-certify a disaggregation plan only to the extent that it was self-certifying a plan that had already been approved by the state.⁵³⁵ The Commission was concerned at the time that permitting the incumbent to self-certify to a disaggregation plan in such circumstances might result in the anti-competitive targeting of support.⁵³⁶ Based on our experience since this rule was adopted, we believe that the safeguards and procedural remedies in our current rules, along with the additional safeguards we propose here, will adequately protect against anti-competitive targeting.

381. The Commission designed the self-certification requirements adopted in the *MAG Order* to help ensure that the disaggregation plans would not be anti-competitive. When submitting information in support of self-certification, an incumbent carrier was required to provide USAC with publicly available information that allows competitors to verify and reproduce the algorithm used to determine zone support levels, and also demonstrate that the underlying rationale was reasonably related to the cost of providing service in each cost zone.⁵³⁷ Carriers also were required to submit to USAC maps in which the boundaries of the designated disaggregation zones of support are clearly specified, which USAC makes available for public inspection.⁵³⁸ In addition, the Commission found that limiting self-certifying carriers to a maximum of two zones below the wire center level minimizes the incentives to disaggregate in a manner that does not accurately reflect cost differences.⁵³⁹ Finally, a self-certified plan was subject to challenge by interested parties before the appropriate regulatory authority on the grounds that it is anti-competitive and does not comply with the self-certification requirements.⁵⁴⁰

382. We propose to retain these safeguards under a mandatory disaggregation requirement and seek comment on this proposal. We propose that carriers must submit data in a geographic information systems (GIS)-standard format, such as, for example, an ESRI file geodatabase.⁵⁴¹ We also seek comment on whether carriers that have already chosen to disaggregate should be required to refile their disaggregation maps with USAC.

383. In addition to complying with the safeguards in the Commission's current rules, we propose carriers be required to serve the competitive ETCs in its area at the time it files with USAC its self-certification and supporting material, including the maps. Competitive ETCs are required to file disaggregated line count data, so timely service of this information would facilitate implementation of disaggregated support.⁵⁴² Nevertheless, some time lag between the filing of a disaggregation plan by an incumbent and the distribution of disaggregated support amounts by USAC to both incumbents and

⁵³⁴ See *Rural Task Force Order*, 16 FCC Rcd at 11307, paras. 159-160; *MAG Order*, 16 FCC Rcd at 19677, para. 149.

⁵³⁵ See *Rural Task Force Order*, 16 FCC Rcd at 11305-06, para. 155; 47 C.F.R. § 54.315(a).

⁵³⁶ See *Rural Task Force Order*, 16 FCC Rcd at 11305, para. 155. When the Commission adopted this restriction, competitive ETCs had been designated in rural study areas only "in a few limited instances." *Id.*

⁵³⁷ See *Rural Task Force Order*, 16 FCC Rcd at 11308, para. 161; 47 C.F.R. § 54.315(d)(2).

⁵³⁸ See 47 C.F.R. § 54.315(f)(4). Carriers disaggregating under Path Two also are required to file maps with USAC.

⁵³⁹ See *Rural Task Force Order*, 16 FCC Rcd at 11306, para. 157.

⁵⁴⁰ See *id.* at 11305, para. 152. We are not aware of any disaggregation plan that has been challenged as anti-competitive.

⁵⁴¹ See Esri, <http://www.esri.com/> (last visited Feb. 9, 2011).

⁵⁴² See 47 C.F.R. § 54.307(b).

competitive ETCs is necessary to provide sufficient time for competitive ETCs to also disaggregate their lines. Accordingly, we propose that disaggregated line count data filed pursuant to sections 36.611, 36.612, and 54.307 of the Commission's rules would not be used to determine per line support amounts until the second filing deadline after the effective date of this proposed rule.⁵⁴³ This period of time would also provide competitive ETCs the opportunity to assess the competitive impact of a carrier's disaggregation plan and, if warranted, file a petition seeking modifications to the plan with the state regulatory commission.⁵⁴⁴ We invite comment on the above proposal.

2. Redrawing Study Areas

384. Second, we seek comment on whether we should begin a process in the near term to establish new service areas that would be eligible for ongoing support under the CAF in stage two of our comprehensive reform. Although we do not expect to disburse ongoing support under the CAF for a number of years, states would need time to complete proceedings to redraw study area boundaries. We seek comment on whether we should take steps to encourage states to redraw existing study area boundaries to create more narrowly targeted service areas for purposes of the CAF by a specified date, and what actions we may take if states decline to do so. Should the Commission require such proceedings as a precondition of carriers receiving CAF support in a particular state? Would such a requirement unfairly burden states that lack resources to undertake such proceedings? To what extent can we impose a deadline on states to complete such proceedings? In addition, should the Commission specify minimum federal criteria for new CAF support areas, such as requiring that new CAF support areas meet minimum size or population specifications?

385. What are the advantages and disadvantages of creating new geographic areas to be supported through the CAF? For example, would there be a benefit to carving out of study areas the portions that states determine do not need support (e.g., due to the presence of unsubsidized competition)?⁵⁴⁵ Would there be a benefit to re-sizing study areas—either to split up large study areas to target support at a more granular level or to consolidate smaller study areas under common ownership within a given state? For example, CTIA has proposed that we “require ILECs with multiple study areas in a given state to combine those study areas at the parent company level within each state before support is calculated.”⁵⁴⁶

386. If there is a process to redraw study areas, should we also require all current ETCs to reapply for ETC designation by a specified date for purposes of receiving funding in the future? We seek comment on how such a process could be integrated with the provision of ongoing support, whether through currently existing or subsequently reformed mechanisms. In view of technological and marketplace changes, and given the reforms we propose in this Notice, it could provide ETCs a timely opportunity to reassess where they wish to continue serving as an ETC. If so, what should that date be?

⁵⁴³ See 47 C.F.R. §§ 36.611, 36.612, 54.307(c).

⁵⁴⁴ See 47 C.F.R. § 54.315(d)(5).

⁵⁴⁵ *C.f.* National Cable & Telecommunications Association, Reducing Universal Service Support in Geographic Areas that are Experiencing Unsupported Facilities-Based Competition, Petition for Rulemaking, GN Docket No. 09-51 and WC Docket No. 05-337, at i (filed Nov. 5, 2009) (NCTA Petition for Rulemaking) (proposing that “the Commission establish procedures to reduce the amount of universal service support provided to carriers in those areas of the country where there is extensive, unsubsidized facilities-based voice competition and where government subsidies no longer are needed to ensure that service will be made available to consumers.”); Universal Service Reform Act of 2010, H.R. 5828, 111th Cong. (2010).

⁵⁴⁶ Comments of CTIA – The Wireless Association®, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, at 19 (filed July 12, 2010).

Alternatively, we note that carriers are permitted to relinquish ETC designations in any areas served by more than one ETC.⁵⁴⁷ Should the Commission adopt rules to streamline the relinquishment process?

387. We also seek comment on issues related to the geographic scope of ETC obligations and ETC designations. Current ETC obligations apply throughout a designated service area regardless of whether support is actually provided to an ETC operating within the designated service area.⁵⁴⁸ To what extent could we limit ETC obligations to the targeted geographic areas for which an ETC receives support, under both the existing high-cost programs as well as the proposed CAF, consistent with section 214(e)?⁵⁴⁹ Alternatively, should ETCs be allowed to modify their ETC designation to cover only a portion of the geographic area they currently serve today, in order to better target support to the areas that need it most? If carriers become ETCs for purposes of CAF support in only portions of a state, what are the implications for the low income program, and should we establish a separate Low-Income only ETC designation for that program to ensure continued access to Lifeline for households living in urban areas?⁵⁵⁰

388. We recognize that by determining the need for support in smaller areas, total support levels in some areas may increase because there would be little or no cross-subsidy from lower cost areas within the carrier's service area. The more we disaggregate areas for support, the higher per-unit costs will be in some areas. On the other hand, disaggregating areas for support should reduce inefficiencies in some areas and better align universal service funding with need. As we discuss the proposals for long-term reform below, we acknowledge the tradeoffs between averaging over larger areas, which may result in supporting areas that do not need support, and targeting support to small pockets of high need, which may result in support levels that exceed any anticipated budget.

G. Pending Proceedings and Other Issues

389. The Commission previously has recognized the need for universal service reform, and has sought comment on various proposals for comprehensive reform of the high-cost support mechanisms.⁵⁵¹ Although these pending proceedings were initiated prior to the National Broadband Plan, for a number of years, many commenters have identified problems with the current high-cost support programs, and some submitted proposals that would redirect high-cost support toward supporting broadband.⁵⁵² During the development of the National Broadband Plan, interested parties continued to refine and submit proposals for comprehensive high-cost reform directed to broadband deployment.⁵⁵³

⁵⁴⁷ 47 U.S.C. § 214(e)(4).

⁵⁴⁸ See *supra* para. 88 (describing ETC obligations).

⁵⁴⁹ AT&T Dec. 6, 2010 *Ex Parte* Letter, at 1; see also 47 U.S.C. § 214(e).

⁵⁵⁰ See AT&T July 12, 2010 Comments at 18.

⁵⁵¹ See, e.g., *Comprehensive Reform FNPRM*, 24 FCC Rcd 6475; *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 Rule 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 Notice*); *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*).

⁵⁵² See, e.g., Comments of AT&T, Inc., WC Docket No. 05-337, CC Docket No. 96-45 (filed April 17, 2008).

⁵⁵³ See, e.g., Comments of CenturyLink, Consolidated Communications, Frontier Communications Corp., Iowa Telecommunications Services, Inc., and Windstream Communications, Inc., Comments in re NBP PN #19, at 1-2 (filed Dec. 7, 2009) (Broadband Now Plan); Letter from Stuart Polikoff, OPASTCO to Marlene Dortch, FCC, in re NBP PN #19, GN Docket No. 09-51, WC Docket Nos. 05-337, 06-122, 03-109, CC Docket Nos. 96-45, 01-91 (filed Dec. 8, 2009) (OPASTCO Plan); Comment Sought on the National Cable & Telecommunications Association Petition for Rulemaking to Reduce Universal Service High-Cost Support Provided to Carriers in Areas Where There (continued....)

We seek comment on these and other relevant proposals in the record as we consider the near-term reforms we propose above and the long-term vision for the Connect America Fund we outline below, and invite parties to update their proposals as appropriate.

390. *Broadband Now Plan.* In 2009, a group of mid-sized carriers submitted the Broadband Now Plan, which proposed, among other things, to provide “targeted, incremental support that would be dedicated to deployment of broadband facilities in high-cost areas that are currently unserved or have access only to service at speeds slower than 6 Mbps”; condition receipt of such support on “making private investment equal to at least \$800 per household without access to broadband (and \$50 per household with access to broadband, but at less than 6 Mbps throughput); and “[i]ncrease the efficiency of universal service by calculating support on a more granular wire center level and awarding that wire center support in a competitively neutral manner that would permit a provider that required less targeted support to step forward and receive support in place of the incumbent (while then assuming carrier of last resort obligations for that wire center).”⁵⁵⁴ We seek comment on whether and how these recommendations could be operationalized in the context of the reforms proposed herein.

391. *NCTA Petition for Rulemaking.* Also in 2009, NCTA filed a petition for rulemaking proposing that “the Commission establish procedures to reduce the amount of universal service support provided to carriers in those areas of the country where there is extensive, unsubsidized facilities-based voice competition and where government subsidies no longer are needed to ensure that service will be made available to consumers.”⁵⁵⁵ Consistent with that proposal, we seek comment above, in the discussion on redrawing study areas, on “whether there would be a benefit to carving out of study areas the portions that states determine do not need support (e.g., due to the presence of unsubsidized competition).”⁵⁵⁶ Here we seek more focused comment on how the presence of unsubsidized competition should be factored into our proposals generally. For instance, should we eliminate universal service in any study area where there is 100% coverage by an unsubsidized voice provider? Should we create a rebuttable presumption that universal service support is unnecessary in those study areas where at least 95% of the households can get service from an unsubsidized competitor?⁵⁵⁷ How would such a process impact an incumbent that may have outstanding loan obligations and/or be subject to state-mandated carrier of last resort obligations? If federal universal service for the incumbent in that situation were eliminated, should that carrier also be relieved of carrier of last resort obligations? What mechanisms should be in place to make sure that consumers throughout the area continue to have service? For instance, should the unsubsidized competitor be required to serve the entire area? Should support levels be modified for the incumbent that continues to serve those lines where there is no unsubsidized competitor? We also seek comment on whether and how to rationalize funding in circumstances in which a single company operates two or more networks in the same area (e.g., telecommunications and cable plant, or wireline and wireless networks).

392. *Non-regulated Revenues.* Several parties have suggested that when calculating universal service support levels, the Commission should take into account unregulated as well as regulated

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is Extensive Unsubsidized Facilities-Based Voice Competition. GN Docket No. 09-51, WC Docket No. 05-337, RM-11584, Public Notice, 24 FCC Rcd 14394 (Wireline Comp. Bur. 2009).

⁵⁵⁴ See Broadband Now Plan at 1.

⁵⁵⁵ NCTA Petition for Rulemaking at i. See also Universal Service Reform Act of 2010, H.R. 5828, 111th Cong. (2010).

⁵⁵⁶ See *supra* para. 385.

⁵⁵⁷ The NCTA petition estimated that, based on then available information, recipients of funding in areas where there was 95% or greater coverage by an unsubsidized voice provider collectively received \$109 million in high-cost support.

revenues.⁵⁵⁸ In its comments in response to the *USF Reform NOI/NPRM*, NASUCA argued that “[c]urrent [universal service] funding levels continue to reflect erroneous assumptions that voice services alone are provided over the supported carrier’s network.”⁵⁵⁹ Likewise, NCTA has argued that when considering need for ongoing support, the FCC should consider whether incumbent carrier costs, including costs attributable to provider of last resort obligations imposed under state law, cannot be recovered through the regulated and unregulated services provided over the network.⁵⁶⁰ We seek comment on how to ensure that universal service is not inappropriately subsidizing non-regulated services or excessively subsidizing carriers that have the ability to recover additional non-regulated revenues as a result of their deployment of subsidized local loops. We seek comment on the proposal to include all revenues (including broadband revenues) when evaluating the rate of return revenue requirement.

393. *Interstate Common Line Support for Price Cap Converts.* We also note that several carriers that converted to price cap regulation since the adoption of the *CALLS Order* do not receive IAS in certain study areas, but instead receive another form of support for interstate costs, known as ICLS, on a frozen per-line basis.⁵⁶¹ In 2010, these carriers received frozen ICLS disbursements of approximately \$239 million, or an average of \$4.85 per line eligible for ICLS per month.⁵⁶² In granting the waivers necessary for these carriers to convert to price cap regulation, the Commission acknowledged that the waivers would be subject to any future reform of price cap regulation, intercarrier compensation, or universal service.⁵⁶³ Verizon has suggested that frozen ICLS for those price cap companies should be phased down on the same schedule as IAS, while Windstream has argued that doing so would be contrary to good policy.⁵⁶⁴ We do not propose to transition frozen ICLS to the CAF at this time, but we seek comment on Verizon’s suggestion.

394. *Freezing ICLS for Rate-of-Return Companies.* In the April 2010 *USF Reform NOI/NPRM*, the Commission sought comment on capping ICLS on a per line basis.⁵⁶⁵ We seek more focused comment here on whether, in order to restrain the growth of ICLS in the near term while we undertake more comprehensive universal service reform, we should cap ICLS either per line or per study area for rate-of-return companies on an interim basis (e.g., for two years), to take effect in 2012. Such a temporary cap could enable us to move more efficiently to transition all funding to the Connect America Fund over the longer term.

⁵⁵⁸ See, e.g., Comcast Comments in re NBP PN #19, filed Dec. 7, 2009, at 3–4; New Jersey Division of Rate Counsel Comments in re NBP PN #19, filed Dec. 7, 2009, at 7–8; Letter from Ben Scott, Free Press to Marlene H. Dortch, Secretary, FCC, GN Docket No. 09-51 (Jan. 19, 2010) (need for high cost should be based on forward-looking infrastructure and total revenue earning potential); *Discussion Draft of the Universal Service Reform Act of 2009: Hearing Before the Subcomm. on Communications, Technology and the Internet of the H. Comm. on Energy and Commerce*, 111th Cong. (2009) (statement of The Hon. Ray Baum, Comm’r, Oregon Public Utility Commission), available at <http://go.usa.gov/Yec>.

⁵⁵⁹ See Comments of NASUCA, et. al. on NOI, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337 at ii, 6 (Filed July 12, 2010).

⁵⁶⁰ See NCTA Petition for Rulemaking; see also Sprint Comments in re *National Cable and Telecommunications Association Petition for Rulemaking To Reduce Universal Service High-Cost Support Provided To Carriers In Areas Where There Is Extensive Unsubsidized Facilities-based Voice Competition*, WC Docket No. 05-337, GN Docket No. 09-51, RM-11584, filed Jan. 7, 2010, at 7 (FCC must recognize that USF recipients derive revenues from broadband and video services delivered over common network).

⁵⁶¹ See, e.g., *Windstream Price Cap Conversion Order*, 23 FCC Rcd at 5302-04, paras. 19-22.

⁵⁶² See 2010 Disbursement Analysis (forthcoming); USAC High-Cost Disbursement Tool.

⁵⁶³ See, e.g., *Windstream Price Cap Conversion Order*, 23 FCC Rcd at 5299, para. 10.

⁵⁶⁴ Verizon July 12, 2010 Comments at 17; Reply Comments of Windstream Communications, Inc, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, at 37-40 (filed Aug. 11, 2010)

⁵⁶⁵ *USF Reform NOI/NPRM*, 25 FCC Rcd at 6679-80, paras. 55-56.

395. *Middle Mile Costs.* A number of parties have suggested that middle mile costs are a significant component of the costs of serving customers in rural areas.⁵⁶⁶ The National Broadband Plan observed that “[i]t is not clear whether the high costs of middle-mile connectivity in rural areas are due solely to long distances and long population density, or also reflect excessively high special access prices as some parties have alleged.”⁵⁶⁷ We seek comment on whether to modify our universal service rules to provide additional support for middle mile costs. If we were to do so, how could we ensure that support is provided for middle mile circuits that are offered on rates, terms, and conditions that are just and reasonable? Further, we observe that in the absence of universal service support for middle mile costs, some small carriers have cooperatively developed regional networks to provide lower cost, higher capacity backhaul capability. What effect would middle mile support have on incentives for small carriers to continue to seek such efficiencies?

396. *Separations.* As also noted below, in a separate proceeding the Federal-State Joint Board on Separations is evaluating reform of the jurisdictional separations process.⁵⁶⁸ We seek comment on how our proposed reforms may affect or be affected by the existing separations process and any future separations reform. We also note that one party has “urged the Commission to make clear that as it transforms its universal service objectives from plain old telephone service to broadband, it will treat loops used to provide broadband as exclusively interstate.”⁵⁶⁹ We seek comment on this suggestion.

397. *Accelerated Transition for Rate-of-Return Territories.* Below we seek comment on an alternate path for rate-of-return territories over the longer term that would provide ongoing support based on actual investment, while moving to an incentive regulation framework.⁵⁷⁰ This could include capping and shifting interstate common line support to an incentive regulation framework that would establish support amounts periodically (such as every five years) to generate an appropriate forward-looking return for an efficient carrier for the investments at issue, implementing a more rigorous process to examine whether investment is used and useful, and re-examining the current 11.25 percent interstate rate of return.⁵⁷¹ Under what circumstances would it be appropriate to accelerate the transition, and adopt such measures impacting rate-of-return companies in the near term? We also seek comment on whether to allow carriers to opt-in to any of the reforms on an accelerated timeframe. We generally emphasize that we intend to monitor progress in extending broadband under the near-term reforms discussed above, and we reserve the right to move more quickly to the long-term reforms set forth below.

⁵⁶⁶ Per-megabit costs can vary significantly for small rural providers. During development of the National Broadband Plan, the National Exchange Carrier Association reported that the price its members pay for a 45 Mbps DS3 connection ranges from \$50–\$375 per month. National Exchange Carrier Association Comments in re NBP PN# 11, filed Nov. 4, 2009, at 4. See also National Telecommunications Cooperative Association Comments in re NBP PN #11, filed Nov. 20, 2009, at 5-13 (asserting that total middle-mile cost will rise as Internet demand increases, and small rural providers have per Mbps middle-mile costs higher than the larger providers).

⁵⁶⁷ National Broadband Plan at 143 (citations omitted).

⁵⁶⁸ See *infra* para. 563; see *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 24 FCC Rcd 6162, 6167–69, paras. 15–20 (2009) (*2009 Jurisdictional Separations Referral Order*). See also *Federal-State Joint Board on Separations Seeks Comment on Proposal for Interim Adjustments to Jurisdictional Separations Allocation Factors and Category Relationships Pending Comprehensive Reform and Seeks Comment on Comprehensive Reform*, CC Docket No. 80-286, Public Notice, 25 FCC Rcd 3336 (2010) (*2010 Jurisdictional Separations Public Notice*).

⁵⁶⁹ See AT&T Dec. 6, 2010 *Ex Parte* Letter.

⁵⁷⁰ See *infra* Section VII.C.3.

⁵⁷¹ See *id.*

VII. LONG-TERM VISION FOR THE CONNECT AMERICA FUND

398. In the second stage of our comprehensive reform package, we propose to provide all funding through the Connect America Fund, which will provide ongoing support to enable Americans to access robust, affordable IP-based networks that are capable of providing both high-quality voice service and broadband Internet access service. The goal is to transition all remaining high-cost funding, e.g., high-cost loop support, interstate common line support, and high-cost model support, to the Connect America Fund.

399. In this section, we first seek comment on how many providers the CAF should support per high-cost geographic area and how to address situations where no firm is willing to provide service in a particular area. Similarly, we ask whether any funding is appropriate in an area if high-quality voice service and broadband Internet access services are provided today by a provider without universal service support. Next, we discuss how to size the CAF and how the CAF interrelates with our other universal service programs, which work together to ensure universal service. We then conclude with a discussion of alternative approaches for determining appropriate amounts of ongoing CAF support that would replace all existing high-cost funding.

400. Under one option, in each part of the country requiring ongoing universal service support, the Commission would hold a competitive, technology-neutral bidding mechanism to select the firm to receive support for serving the area and take on all broadband and voice service obligations. Under another option, the Commission would offer the current voice carrier of last resort (likely an incumbent telephone company) a right of first refusal to serve the area as the broadband and voice provider of last resort for an ongoing amount of annual support based on a cost model. If the provider refuses this offer, the Commission would award ongoing support through a competitive, technology-neutral bidding mechanism, in which the current voice carrier of last resort could participate. Under either approach, all support for carriers operating in high-cost areas would come from the CAF. This funding would replace all other explicit support as well as all implicit subsidies from intercarrier compensation rates, as described in the next section.

401. In the alternative, we seek comment on limiting the full transition to the CAF to a subset of geographic areas, such as those served by price cap companies, while continuing to provide ongoing support based on reasonable actual investment to smaller, rate-of-return companies. Should we take this approach, we seek comment on possible changes to the current rate-of-return system beyond those discussed in the previous section, including capping and shifting interstate common line support to an incentive regulation framework that would establish support amounts periodically (such as every five years) to generate an appropriate forward-looking return for an efficient carrier for the investments at issue, implementing a more rigorous process to examine whether investment is used and useful, and re-examining the current 11.25 percent interstate rate of return.

A. Supported Providers

402. The National Broadband Plan recommended that there should be at most one – whether fixed or mobile – subsidized provider of broadband service per geographic area, noting that subsidizing duplicate, competing networks would impose significant burdens on consumers.⁵⁷² We seek comment on that recommendation.

403. By providing support to at most one provider in a given high-cost area, we should be able to maximize the reach of available funds to extend broadband service. We are committed to controlling the size of the universal service fund. At the same time, some commenters have suggested that our long-term goal should be to ensure comparable service for both fixed and mobile services. For example, the Rural Cellular Association argues that “[n]ew universal service mechanisms must take into account the

⁵⁷² See National Broadband Plan at 145.

fact that wireless is now the dominant mode of voice communications.”⁵⁷³ AT&T proposed that the Commission “shift legacy competitive ETC support to an Advanced Mobility Fund, where it would remain until there were no more areas unserved by mobile wireless broadband and voice service.”⁵⁷⁴ In addition, several associations representing small rural carriers support funding one fixed and one mobile provider in each geographic area.⁵⁷⁵ We seek comment on proposals to support both fixed and mobile networks under the CAF, rather than funding only one provider in any given area.

404. To the extent we provide separate, ongoing support for mobility within the CAF, we seek comment on possible changes to the way support is determined for competitive ETCs, including an alternative to the current identical support rule. Specifically, we seek comment on designing an alternative mechanism – tailored to the business models and cost structures of mobile wireless providers to provide sufficient but not excessive support – that would promote the deployment of mobile services in areas for which service would not otherwise be practical.

405. We seek comment on two potential funding options. First, we seek comment on the use of a model to determine high-cost support for wireless carriers. Specifically, should we develop a model to estimate the appropriate levels of support associated with provision of mobile service in specific geographic areas and provide support based on those estimates? If we were to adopt such an approach, we propose a simplified model, which could rely solely on density as an input, or could incorporate a small number of other inputs such as topography or distance from a population center. We seek comment on this approach. We seek comment regarding how to limit model-based support to a single competitive ETC for each geographic area, or how to limit support to the extent multiple competitive ETCs are designated in a particular area.

406. Second, we seek comment on using reverse auctions to determine support for competitive ETCs only. We note that the Commission has previously sought comment on the use of reverse auctions to distribute high-cost universal service support.⁵⁷⁶ In that proceeding, several commenters proposed that reverse auctions should be used to determine support for competitive ETCs only.⁵⁷⁷ We ask commenters to refresh the record in that proceeding with specific emphasis on using reverse auctions only for mobile wireless competitive ETCs.

407. To the extent we create long-term alternatives within the CAF for mobile carriers, we propose to limit support under such a mechanism to one wireless competitive ETC per geographic area. We seek comment on this proposal, and specifically how it could be implemented and whether support should be provided to some other number of mobile wireless carriers. To the extent we were to fund only one mobile wireless provider in a given geographic area, should we require that provider to share infrastructure, such as cell towers, with other non-supported wireless providers?

408. To the extent we decide to support a single provider through the CAF, we seek comment on whether (and if so, how) that would impact the operation or effectiveness of the Commission’s E-rate,

⁵⁷³ Comments of Rural Cellular Association, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 05-337, at 20 (filed July 12, 2010) (citing Morgan Stanley research indicating that the total number of mobile Internet users will surpass the total number of desktop Internet users by 2014).

⁵⁷⁴ AT&T July 12, 2010 Comments, at 23.

⁵⁷⁵ See Letter from Glenn Brown, Rural Associations, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45, 01-92, 99-68, 80-286, WC Docket Nos. 06-122, 05-337, 04-36, Attach. (filed Nov. 15, 2010). The Rural Associations include NECA, NTCA, OPASTCO, and WTA.

⁵⁷⁶ *Reverse Auctions Notice*, 23 FCC Rcd 1495.

⁵⁷⁷ See, e.g., Comments of Embarq, WC Docket No. 05-337, CC Docket No. 96-45, at 14-19 (filed April 17, 2008); Comments of the Oklahoma Corporation Commission, WC Docket No. 05-337, CC Docket No. 96-45, at 13-17 (filed April 17, 2008); Comments of the United States Telecom Association, WC Docket No. 05-337, CC Docket No. 96-45, at 19-26 (filed April 17, 2008).

Rural Health Care, and low-income programs. For instance, would funding only one CAF provider per geographic area, at most, reduce the number of carriers that bid to provide services to schools, libraries, and health care providers eligible for funding from the E-rate or Rural Health Care programs? Should we designate “Lifeline Only” ETCs to ensure that all low-income consumers have access to the low-income program?⁵⁷⁸

409. We also seek comment on whether any funding is appropriate in an area if high-quality voice service and broadband Internet access services are provided today by an operator without universal service support. If long-term funding is based on census blocks, how should we establish that an area is served today by an unsubsidized provider? Is the existence of unsubsidized competition today a reliable indicator that future funding will not be necessary? How can we ensure that the unsubsidized provider will continue to provide an evolving level of voice and broadband services? We seek comment on whether model-based support or a reverse auction approach would sufficiently avoid providing support to areas in which no funding is necessary due to existing unsubsidized service.

410. We also seek comment on how to address situations where no entity wishes to serve an area. Section 214(e)(3) provides that “[i]f no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) . . . to an unserved community,” the Commission or a state commission, as appropriate, “shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community . . . and shall order such carrier or carriers to provide such service.”⁵⁷⁹ If the Commission makes broadband a supported service, should the Commission or a state commission require a particular provider (wireline or wireless) to provide broadband service in all areas? What factors should be applied in determining which provider is “best able to provide” supported broadband service? What relative roles should the Commission and the states play in determining which carriers are best able to provide the supported services in unserved areas? We seek comment on whether a consistent, national approach is necessary to further the universal service goals of the Act or to provide certainty to eligible entities regarding the possible application of this important provision.

411. To the extent we ultimately provide ongoing support to only one provider in each geographic area where support is available, we seek comment on whether there should be exceptions to the rule that only one provider should receive ongoing CAF support. For example, we seek comment above on whether any reduction in competitive ETC support should include an exception for carriers serving Tribal lands.⁵⁸⁰ We seek comment on whether there are unique circumstances in Tribal lands and Alaska Native Regions that would require ongoing funding of more than one provider, after the CAF is fully implemented. If commenters believe that unique circumstances require ongoing funding for multiple providers in those areas, they should provide detailed explanation, data and analysis to support their contentions.

B. Sizing the Federal Commitment to Universal Service

412. The Commission has had a long-standing commitment to providing support that is sufficient but not excessive.⁵⁸¹ 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.”⁵⁸² The

⁵⁷⁸ See AT&T Dec. 6, 2010 *Ex Parte* Letter.

⁵⁷⁹ *Id.* § 214(e)(3).

⁵⁸⁰ See *supra* note 4.

⁵⁸¹ See *2010 Order on Remand*, 25 FCC Rcd at 4088, para. 29 (concluding that a determining the sufficiency of support must also take into account the Commission’s generally applicable responsibility to be a prudent guardian of the public’s resources).

⁵⁸² *Alenco*, 201 F.3d at 620-21.