

be collected to fund a mechanism that has already been established. Broadly speaking, all of the rule changes that the Commission has implemented since the 1996 Act, including those adopted in this Order, have been to effectuate the general statutory directive that consumers should have access to telecommunication and information services in rural and high cost areas. As such, the entire collection of rules can be viewed as the “high-cost mechanism,” and the specific existing programs, as well as the Connect America Fund that we establish today, are part of that high-cost mechanism.

556. To read the statute in any other way would create significant administrative issues that we cannot believe Congress would have intended. How would the Commission—or a court—decide whether a modified mechanism is a new, not-yet-established mechanism (which could not provide support until new funds are collected for it), or whether the modifications are minor enough such that the mechanism, although different, is still the mechanism that was already established? We do not believe that Congress intended either the Commission or a court to be required to wrestle with such questions, which serve no obvious congressional purpose. Alternatively, any change, no matter how minor, could transform the mechanism into one that was not-yet-established. Interpreting the statute in that way would similarly serve no identifiable congressional purpose, but would serve only to slow down and complicate reforms to support mechanisms that the Commission determines are appropriate to advance the public interest.⁹²⁰ Significantly in this regard, Congress in section 254 specifically contemplated that universal service programs would change over time;⁹²¹ reading the statute the way these commenters suggest would add unnecessary burdens to that process.

2. Setting Quarterly Demand to Meet the \$4.5 Billion Budget

557. *Background.* In the *USF-ICC Transformation NPRM*, the Commission sought comment on setting an overall budget for the CAF such that the sum of the CAF and any existing high-cost support mechanisms (however modified in the future) in a given year are equal to current funding levels. The Commission noted its commitment to controlling the size of the federal universal service fund.⁹²²

558. In response, a broad cross-section of interested stakeholders, including consumer groups, state regulators, current recipients of funding, and those that do not currently receive funding, agreed that the Commission should establish a budget for the overall high-cost program, with many urging the Commission to set that budget at \$4.5 billion per year.⁹²³ Some argue that we should adopt a hard cap to ensure that budget is not exceeded.⁹²⁴

⁹²⁰ For example, it is not clear whether such a reading of the statute would require the Commission to segregate Universal Service Fund contributions received before and after a rule change, so as to prevent disbursements of pre-reform contributions based on the new rules.

⁹²¹ See 47 U.S.C. § 254(b)(7), (c)(1)-(2).

⁹²² *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4679-81, paras. 412-14.

⁹²³ State Members *USF/ICC Transformation NPRM* Comments at 11 (proposing to limit fund size to current amount in 2010); Letter from Walter B. McCormick, Jr., United States Telecom Ass’n, Robert S. Quinn, Jr., Senior Vice President—Federal Regulatory, AT&T, Melissa Newman, Vice President—Federal Regulatory Affairs, CenturyLink, Michael T. Skrivan, Vice President—Regulatory, FairPoint Communications, Kathleen Q. Abernathy, Chief Legal Officer and Executive Vice President—Regulatory and Government Affairs, Frontier, Kathleen Grillo, Senior Vice President—Federal Regulatory Affairs, Verizon, Michael D. Rhoda, Senior Vice President—Government Affairs, Windstream, Shirley Bloomfield, Chief Executive Officer, National Telecommunications Cooperative Association, John Rose, President, OPASTCO, Kelly Worthington, Executive Vice President, Western Telecommunications Alliance, to Chairman Genachowski, Commissioner Copps, Commissioner McDowell, and Commission Clyburn, at 2 (filed Jul. 29, 2011). (Submitted attached to Letter from Jonathan Banks, USTelecom, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket Nos. 05-337, 07-135, 10-90; GN Docket No. 09-51; CC Docket No. 96-45; WC Docket No. 06-122; CC Docket Nos. 99-200, 96-98, 99-68; WC Docket No. (continued...))

559. *Discussion.* As described above, we conclude that for years 2012-2017, contributions to fund high-cost support mechanisms should not exceed \$4.5 billion on an annualized basis.⁹²⁵ Various parties have submitted proposed budgets into the record suggesting that the Commission could maintain an overall \$4.5 billion annual budget by collecting that amount in the near term, projecting that actual demand will be lower than that amount, and using those funds in subsequent quarters to address actual demand that exceeds \$1.125 billion.⁹²⁶ We are persuaded that, on balance, it would be appropriate to provide greater flexibility to USAC to use past contributions to meet future program demand so that we can implement the Connect America Fund in a way that does not cause dramatic swings in the contribution factor. We now set forth our general instructions to USAC on how to implement our \$4.5 billion budget target.

560. First, beginning with the quarterly demand filing for the first quarter of 2012, USAC should forecast total high-cost universal service demand as no less than \$1.125 billion, *i.e.*, one quarter of the annual high-cost budget.⁹²⁷ To the extent that USAC forecasts demand will actually be higher than that amount, USAC should reflect that higher forecast in its quarterly demand filing.⁹²⁸ USAC should no longer forecast total competitive ETC support at the original interim cap amount, as previously instructed,⁹²⁹ but should forecast competitive ETC support subject to the rules we adopt today.⁹³⁰

561. Second, consistent with the newly revised section 54.709(b) of our rules, we instruct USAC not to make prior period adjustments related to high-cost support if actual contributions exceed demand. Excess contributions shall instead be credited to a new Connect America Fund reserve account, to be used as described below.

562. Third, beginning with the second quarter of 2012, we direct USAC to use the balances accrued in the CAF reserve account to reduce high-cost demand to \$1.125 billion in any quarter that would otherwise exceed \$1.125 billion.

563. We expect the reforms we adopt today to keep annual contributions for the CAF and any existing high-cost support mechanisms to no more than \$4.5 billion. And through the use of incentive-based rules and competitive bidding, the fund could require less than \$4.5 billion to achieve its goals in future years. However, if actual program demand, exclusive of funding provided from the CAF or *Corr* (Continued from previous page) _____

04-36 at 4 (filed July 29, 2011)) (Joint Letter) (proposing \$4.5 billion); ABC Plan, Attach. 1, at 1-2 (proposing \$4.5 billion).

⁹²⁴ NCTA *USF/ICC Transformation NPRM* Comments at 4.

⁹²⁵ See *supra* paras. 121-126. The Commission's budget for contributions includes all contributions that support disbursements to the various high-cost programs. However, actual disbursements may exceed this amount as the Commission disburses funds from the reserve account created in the *Corr Wireless Order*, 25 FCC Rcd at 12862, para. 20. See also *infra* paras. 564-567 (providing direction to USAC relating to the *Corr Wireless Order* reserve account).

⁹²⁶ ABC Plan, Attach. 1, at 1-2.

⁹²⁷ Recognizing that USAC will submit its first quarter 2012 demand filing on October 31, 2011, we direct USAC to file an updated high-cost demand filing upon the effective date of these rules.

⁹²⁸ If high-cost demand actually exceeds \$1.125 billion, no additional funds will accumulate in the reserve account for that quarter and, consistent with our third instruction below, the reserve account will be used to constrain the high-cost demand in the contribution factor.

⁹²⁹ See *Corr Wireless Order*, 25 FCC Rcd at 12862 para. 21.

⁹³⁰ Specifically, USAC shall forecast competitive ETC demand as set by the frozen baseline per study area as of year end 2011, as adjusted by the phase-down in the relevant time period. See *supra* paras. 512-532.

Wireless reserve accounts, for CAF and existing high-cost mechanisms exceed an annualized \$4.5 billion over any consecutive four quarters, this situation will automatically trigger a process to bring demand back under budget. Specifically, immediately upon receiving information from USAC regarding actual quarterly demand, the Wireline Competition Bureau will notify each Commissioner and publish a Public Notice indicating that program demand has exceeded \$4.5 billion over the last four quarters. Then, within 75 days of the Public Notice being published, the Bureau will develop options and provide to the Commissioners a recommendation and specific action plan to immediately bring expenditures back to no more than \$4.5 billion.

3. Drawing Down the *Corr Wireless* Reserve Account

564. *Background.* As noted above, pursuant to the *Corr Wireless Order*, the Commission instructed USAC to place certain excess contributions associated primarily with the Verizon Wireless and Sprint phase-down commitments in a broadband reserve account over a period of 18 months, ending in February 2012⁹³¹ We intend to allow the waiver to lapse at that time, without any further extensions or early termination.

565. *Discussion.* In order to wind down the current broadband reserve account, we provide the following instructions to USAC.

566. First, we direct USAC to utilize \$300 million in the *Corr Wireless* reserve account to fund commitments that we anticipate will be made in 2012 to recipients of the Mobility Fund Phase I to accelerate advanced mobile services.⁹³² We also direct USAC to use the remaining funds and any additional funding necessary for Phase I of the CAF for price cap carriers in 2012.⁹³³ Those actions together should exhaust the *Corr Wireless* reserve account.⁹³⁴

567. Second, we instruct USAC not to use the *Corr Wireless* reserve account to fund inflation adjustments to the e-rate cap for the current 2011 funding year.⁹³⁵ Inflation adjustments to the e-rate cap for Funding Year 2011 and future years shall be included in demand projections for the e-rate program.

VIII. ACCOUNTABILITY AND OVERSIGHT

568. The billions of dollars that the Universal Service Fund disburses each year to support vital communications services come from American consumers and businesses, and recipients must be held accountable for how they spend that money. This requires vigorous ongoing oversight by the Commission, working in partnership with the states, Tribal governments, where appropriate, and U.S. Territories, and the Fund administrator, USAC.⁹³⁶ This section reforms the framework for that ETC

⁹³¹ The Commission directed USAC to “reserve any reclaimed funds as a fiscally responsible down payment on proposed broadband universal service reforms, as recommended in the National Broadband Plan.” *Corr Wireless Order*, 25 FCC Rcd at 12862, para. 20.

⁹³² See *supra* paras. 28, 313-314, 493-497.

⁹³³ See *supra* Section VII.C.1.

⁹³⁴ While we expect funding for Mobility Fund Phase I to be committed in 2012, those funds are not likely to be disbursed in 2012; rather, funding will be disbursed over a two or three-year period, as recipients meet deployment milestones.

⁹³⁵ *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, 25 FCC Rcd 18762, 18781-82 para. 38 (2010). The current funding year (2011) runs from July 1, 2011, to June 30, 2012.

⁹³⁶ Because the Connect America Fund, including the Mobility Fund, are part of the Universal Service Fund, we conclude that USAC shall administer these new programs under the terms of its current appointment as Administrator, subject to all existing Commission rules and orders applicable to the Administrator. USAC engages (continued...)

oversight.⁹³⁷ We establish a uniform national framework for information that ETCs must report to their respective states and this Commission, while affirming that states will continue to play a critical role overseeing ETCs that they designate. We modify and extend our existing federal reporting requirements to all ETCs, whether designated by a state or this Commission, to reflect the new public interest obligations adopted in this Order. We simplify and consolidate our existing certification requirements and adopt new certifications relating to the public interest obligations adopted in this Order. We address consequences for failure to meet program rules. We also clarify our record retention rules, describe the audit process we have implemented in conjunction with the Fund's administrator, and clarify USAC's and our ability to obtain all data relevant to calculations of support amounts.

A. Uniform Framework for ETC Oversight

569. First, we discuss the need for a uniform national oversight framework, implemented as a partnership between the Commission and the states, U.S. Territories, and Tribal governments, where appropriate. Second, we describe the specific reporting requirements that are part of that uniform framework. Third, we amend our rules relating to the annual certifications ETCs must make to confirm that they use "support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁹³⁸

1. Need for Uniform Standards for Accountability and Oversight

570. *Background.* Pursuant to section 214(e), the states designate common carriers over which they have jurisdiction as ETCs, and this Commission designates common carriers as ETCs in those instances where the state lacks jurisdiction.⁹³⁹ An important component of accountability and oversight is the information that companies seeking designation to become ETCs are required to provide in order to obtain designation, and then must file annually thereafter.

571. In 2005, the Commission adopted requirements governing federal ETC designations and encouraged the states to adopt similar requirements.⁹⁴⁰ Since that time, a number of states have amended their state-specific rules for ETCs to more closely conform to the rules for federally-designated ETCs. Nonetheless, variation remains in what information is annually reported to state commissions as well as the oversight processes followed by individual state commissions.⁹⁴¹ Under our current rules, states

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in frequent consultation with the Commission. Today, under the Memorandum of Understanding with USAC, the Commission's Wireline Competition Bureau is the USF Administrator's primary point of contact regarding USF policy questions, including without limitation questions regarding the applicability of rules, orders, and directives, unless otherwise specified. 2008 FCC-USAC MOU at paragraph III.B.3. Personnel from other Bureaus and Offices, including the Office of Managing Director (OMD), the Enforcement Bureau, and the Office of the Inspector General assist with various aspects of management and oversight of the USF and USAC. We hereby designate the Wireless Telecommunications Bureau as a point of contact, in addition to the Wireline Competition Bureau, on policy matters relating to Universal Service Fund administration.

⁹³⁷ For purposes of this section, "ETCs" refers only to those ETCs receiving the types of support provided for in this Order. It does not refer to ETCs receiving disbursements from the low-income program.

⁹³⁸ 47 U.S.C. § 254(e)

⁹³⁹ 47 U.S.C. § 214(e)

⁹⁴⁰ *Matter of Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371 (2005) (ETC Designation Order).

⁹⁴¹ United States Government Accountability Office, Report to Congressional Committees, Telecommunications: FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program, at 31-34 (June 2008) (GAO High-Cost Report).

annually certify to this Commission that support is being used for its intended purpose by state-designated ETCs.⁹⁴² Failure by a state to make such certification for a particular ETC results in a loss of support for that ETC.⁹⁴³

572. In the *USF-ICC Transformation NPRM*, we sought comment generally on the role of the states in preserving and advancing universal service, and whether and how to modify existing ETC requirements to achieve our reform objectives.⁹⁴⁴ Subsequently, in the *August 3rd PN*, we sought more focused comment on “specific illustrative areas where the states could work in partnership with the Commission in advancing universal service, subject to a uniform national framework.”⁹⁴⁵

573. *Discussion.* A uniform national framework for accountability, including unified reporting and certification procedures, is critical to ensure appropriate use of high-cost support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively.⁹⁴⁶ Therefore, we now establish a national framework for oversight that will be implemented as a partnership between the Commission and the states, U.S. Territories, and Tribal governments, where appropriate.⁹⁴⁷ As set forth more fully in the subsections immediately following, this national framework will include annual reporting and certification requirements for all ETCs receiving universal funds—not just federally-designated ETCs—which will provide federal and state regulators the factual basis to determine that all USF recipients are using support for the intended purposes, and are receiving support that is sufficient, but not excessive. We have authority to require all ETCs to comply with these national requirements as a condition of receiving federal high-cost universal service support.

574. We clarify that the specific reporting and certification requirements adopted below are a floor rather than a ceiling for the states. In section 254(f), Congress expressly permitted states to take action to preserve and advance universal service, so long as not inconsistent with the Commission’s

⁹⁴² 47 C.F.R. §§ 54.313 and 54.314. Federally-designated ETCs make such certifications directly to the Commission.

⁹⁴³ 47 C.F.R. §§ 54.313(c) and 54.314(d).

⁹⁴⁴ *USF/ICC Transformation NPRM* at 4585, 4587-88, paras. 84, 88.

⁹⁴⁵ *Further Inquiry into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket No. 10-90 et al., Public Notice, 26 FCC Rcd 11112, 11115, para. 5 (Wireline Comp. Bur. 2011).

⁹⁴⁶ For purposes of this Section VIII, our references to ETCs include those ETCs that receive high-cost support pursuant to legacy high-cost programs and CAF programs adopted in this Order. It does not generally include ETCs that receive support solely pursuant to Mobility Fund Phase I, which has separate reporting obligations, discussed above in Section VII.E.. Where the requirements discussed in this section also apply to ETCs receiving only Phase I Mobility Fund support, we specifically state so. In the FNPRM, we seek comment on alternative reporting requirements for Mobility Fund support to reflect basic differences in the nature and purpose of the support provided for mobile services. See XVII.H.

⁹⁴⁷ Numerous commenters support a continued state oversight role. See, e.g., Connecticut PURA *USF/ICC Transformation NPRM* Comments at 7-8; DC Commission *August 3 PN* Comments at 3; Delaware Commission *August 3 PN* Comments at 2-3; Virginia Commission *August 3 PN* Comments at 3; South Dakota Commission *August 3 PN* Further Comments at 3-4; Montana Commission *August 3 PN* Reply Comments at 8; North Dakota Commission *August 3 PN* Reply Comments at 2; Kansas Commission *August 3 PN* Reply Comments at 24-25; NARUC *August 3 PN* Further Comments at 4; NASUCA *August 3 PN* Comments at 87-88; Nebraska Companies *August 3 PN* Comments at 33-37; ITTA *August 3 PN* Comments at 5; Greenlining *August 3 PN* Comments at 7. But see ABC Plan, Attach. 5 at 60 (proposing exclusive federal designation and oversight of broadband providers).

universal service rules.⁹⁴⁸ The statute permits states to adopt additional regulations to preserve and advance universal service so long as they also adopt state mechanisms to support those additional substantive requirements.⁹⁴⁹ Consistent with this federal framework, state commissions may require the submission of additional information that they believe is necessary to ensure that ETCs are using support consistent with the statute and our implementing regulations, so long as those additional reporting requirements do not create burdens that thwart achievement of the universal service reforms set forth in this Order.

575. We note, however, that one benefit of a uniform reporting and certification framework for ETCs is that it will minimize regulatory compliance costs for those ETCs that operate in multiple states. ETCs should be able to implement uniform policies and procedures in all of their operating companies to track, validate, and report the necessary information. Although we adopt a number of new reporting requirements below, we conclude that the critical benefit of such reporting – to ensure that statutory and regulatory requirements associated with the receipt of USF funds are met – outweighs the imposition of some additional time and cost on individual ETCs to make the necessary reports. Under this uniform framework, ETCs will provide annual reports and certifications regarding specific aspects of their compliance with public interest obligations to the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate by April 1 of each year. These annual reporting requirements should provide the factual basis underlying the annual section 254(e) certification by the state commission (or ETC in the case of federally designated ETCs) by October 1 of every year that support is being used for the intended purposes.

2. Reporting Requirements

576. *Background.* In 2005, the Commission adopted section 54.209, which requires federally-designated ETCs to submit an annual report to the Commission including: a progress report on their five-year build-out plans; data and explanatory text concerning outages, unfulfilled requests for service, complaints received; and certifications of compliance with applicable service quality and consumer protection standards⁹⁵⁰ and of the ability to function in emergency situations.

577. As noted above, since the Commission adopted the annual reporting requirements, a number of states have established similar reporting obligations for ETCs within their jurisdiction.⁹⁵¹ The 2008

⁹⁴⁸ See 47 U.S.C. § 254(f) (“A state may adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service. * * * A state may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.”).

⁹⁴⁹ *Id.*

⁹⁵⁰ 47 C.F.R. § 54.209.

⁹⁵¹ See, e.g., Michigan Commission *USF/ICC Transformation NPRM* Comments at 4 (Michigan Public Service Commission requires ETCs to provide information each year in connection with renewal of their designations; Mississippi Commission *USF/ICC Transformation NPRM* Comments at 5-6; Missouri Commission *USF/ICC Transformation NPRM* Comments at 5 (stating that Missouri’s rules regarding, among other things, annual certification filings “were based, to an extent, on the FCC’s recommended guidelines” but are more stringent than the federal rules); N.M. Admin. Code § 17.11.27.8; GAO High-Cost Report at 33.

GAO High-Cost Report noted, however, that states have different requirements for the information they collect from carriers regarding how they use high-cost program funds.⁹⁵²

578. In the *USF/ICC Transformation NPRM*, we sought comment on how the annual reporting requirements should be modified as we transition to the Connect America Fund.⁹⁵³ We proposed to collect data from recipients on deployment, pricing, and adoption for both voice and broadband services. We also proposed to collect financial information from all recipients.

579. *Discussion.* We take several steps to harmonize and update annual reporting requirements. We extend current reporting requirements for voice service to all ETCs, and we adopt uniform broadband reporting requirements for all ETCs. We also adopt rules requiring the reporting of financial and ownership information to assist our discharge of statutory requirements.

580. First, we extend the current federal annual reporting requirements to all ETCs, including those designated by states.⁹⁵⁴ These requirements will now be located in new section 54.313.⁹⁵⁵ Specifically, we conclude that all ETCs must include in their annual reports the information that is currently required by section 54.209(a)(1)-(a)(6) – specifically, a progress report on their five-year build-out plans; data and explanatory text concerning outages; unfulfilled requests for service; complaints received; and certifications of compliance with applicable service quality⁹⁵⁶ and consumer protection standards and of the ability to function in emergency situations.⁹⁵⁷ We conclude that it is necessary and appropriate to obtain such information from all ETCs, both federal- and state-designated, to ensure the continued availability of high-quality voice services and monitor progress in achieving our broadband goals and to assist the FCC in determining whether the funds are being used appropriately. As we said at the time we adopted these requirements for federally-designated ETCs, these reporting requirements ensure that ETCs comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes.⁹⁵⁸ They also help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.⁹⁵⁹ Accordingly, we now conclude that these requirements should serve as a baseline requirement for all ETCs.

⁹⁵² See *United States Government Accountability Office, Report to Congressional Committees, Telecommunications: FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program*, at 31 (June 2008) (GAO High-Cost Report).

⁹⁵³ *USF/ICC Transformation NPRM* 4692-93, para. 459.

⁹⁵⁴ Most commenters addressing the issue support the extension of reporting requirements to all recipients of high-cost support. See, e.g., IUB *USF/ICC Transformation NPRM* Comments at 8; U.S. Cellular *USF/ICC Transformation NPRM* Comments at 42; NASUCA *USF/ICC Transformation NPRM* Comments at 40.

⁹⁵⁵ As discussed in section VIII.A.3. below, we are eliminating current section 54.313. Recipients of high-cost support, including CAF support, will now report pursuant to new section 54.313 rather than current section 54.209. Section 54.209, which applies to the various universal service mechanisms, sets forth reporting and certification requirements for entities designated as ETCs by the Commission. 47 C.F.R. § 54.209. Lifeline-only ETCs, however, will remain subject to section 54.209.

⁹⁵⁶ If ETCs are complying with any voluntary code (e.g., the voluntary code of conduct concerning “bill shock” or the CTIA Consumer Code for Wireless Service), they should so indicate in their reports.

⁹⁵⁷ We do, however, modify subparagraph (a)(3), regarding unfulfilled requests for service, to require carriers to provide that information broken out separately for voice and broadband.

⁹⁵⁸ ETC Designation Order, para. 68.

⁹⁵⁹ ETC Designation Order, para. 70.

581. All ETCs that receive high-cost support will file the information required by new section 54.313 with the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.⁹⁶⁰ Section 54.313 reports will be due annually by April 1, beginning on April 1, 2012.⁹⁶¹ We will also require that an officer of the company certify to the accuracy of the information provided and make the certifications required by new section 54.313, with all certifications subject to the penalties for false statements imposed under 18 U.S.C. § 1001.⁹⁶²

582. Second, we incorporate new reporting requirements described below to ensure that recipients are complying with the new broadband public interest obligations adopted in this Order, including broadband public interest obligations associated with CAF ICC.⁹⁶³ This information must be included in annual section 54.313 reports filed with Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate. However, some of the new elements are tied to new public interest obligations that will be implemented in 2013 or a subsequent year and, therefore, they need not be included until that time, as detailed below.

583. Competitive ETCs whose support is being phased down will not be required to submit any of the new information or certifications below related solely to the new broadband public interest obligations, but must continue to submit information or certifications with respect to their provision of voice service.⁹⁶⁴

584. We delegate to the Wireline Competition Bureau and Wireless Telecommunication Bureaus the authority to determine the form in which recipients of support must report this information.

585. Speed and latency. Starting in 2013, we will require all ETCs to include the results of network performance tests conducted in accordance with the requirements of this Order and any further requirements adopted after consideration of the record received in response to the FNPRM.⁹⁶⁵ Additionally, in the calendar year no later than three years after implementation of CAF Phase II, price cap recipients must certify that they are meeting all interim speed and latency milestones, including the 4 Mbps/1 Mbps speed standard required by Section VII.C.1. of this Order. In the calendar year no later than five years after implementation of CAF Phase II, those price cap recipients must certify that they are meeting the default speed and latency standards applicable at the time.⁹⁶⁶

586. Capacity. Starting in 2013, we require all ETCs to include a self-certification letter certifying that usage capacity limits (if any) for their services that are subject to the broadband public interest standard associated with the type of funding they are receiving are reasonably comparable to usage capacity limits for comparable terrestrial residential fixed broadband offerings in urban areas, as set

⁹⁶⁰ USAC will review such information as appropriate to inform its ongoing audit program, in depth data validations, and related activities.

⁹⁶¹ We delegate authority to the Wireline Competition Bureau to modify the initial filing deadline as necessary to comply with the requirements of the Paperwork Reduction Act.

⁹⁶² We already require recipients and beneficiaries of universal service support to make certifications subject to the penalties available under 18 U.S.C. § 1001. *See, e.g.*, FCC Form 470; FCC Form 471; FCC Form 492A; FCC Form 507; FCC Form 508; FCC Form 509; FCC Form 525.

⁹⁶³ Section XIII.

⁹⁶⁴ As discussed in Section VII.E.4., competitive ETCs are required to offer service throughout their designated service areas, even as support provided pursuant to the identical support rule is phased down.

⁹⁶⁵ Section VI.B.2.

⁹⁶⁶ Section VI.B.

forth in the Public Interest Obligations sections above. ETCs will also be required to report on specific capacity requirements (if any) in conjunction with reporting of pricing of their broadband offerings that meet our public interest obligations, as discussed below.

587. Build-out/Service. Recognizing that existing five-year build out plans may need to change to account for new broadband obligations set forth in this Order, we require all ETCs to file a new five-year build-out plan in a manner consistent with 54.202(a)(1)(ii) by April 1, 2013. Under the terms of new section 54.313(a), all ETCs will be required to include in their annual 54.313 reports information regarding their progress on this five-year broadband build-out plan beginning April 1, 2014. This progress report shall include the number, names, and addresses of community anchor institutions to which the ETCs newly offer broadband service.⁹⁶⁷ As discussed above, we expect ETCs to use their support in a manner consistent with achieving universal availability of voice and broadband. Incumbent carriers, both rate-of-return and price cap, should make certifications to that effect beginning April 1, 2013 for the 2012 calendar year.

588. In addition, all ETCs must supply the following information:

(a) Rate-of-Return Territories. We require all rate-of-return ETCs receiving support to include a self-certification letter certifying that they are taking reasonable steps to offer broadband service meeting the requirements established above throughout their service area,⁹⁶⁸ and that requests for such service are met within a reasonable amount of time. As noted above, these carriers must also notify the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate, of all unfulfilled requests for broadband service meeting the 4 Mbps/1 Mbps standard we establish as our initial CAF requirement, and the status of such requests.

(b) Price Cap Territories. We require all ETCs receiving CAF support in price cap territories based on a forward-looking cost model to include a self-certification letter certifying that they are meeting the interim deployment milestones as set forth in the Public Interest Obligations section above and that they are taking reasonable steps to meet increased speed obligations that will exist for a specified number of supported locations before the expiration of the five-year term for CAF Phase II funding. ETCs that receive CAF support awarded through a competitive process will also be required to file such self-certifications, subject to any modifications adopted pursuant to the FNPRM below.

589. In addition, as discussed above, price cap ETCs will be able to elect to receive CAF Phase I incremental funding under a transitional distribution mechanism prior to adoption and implementation of an updated forward-looking broadband-focused cost model for CAF Phase II. As a condition of receiving such support, those companies will be required to deploy broadband to a certain number of unserved locations within three years, with deployment to no fewer than two-thirds of the required number of locations within two years and to all required locations within three years after filing their notices of acceptance. As of that time, carriers must offer broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including VoIP, and with usage limits, if any, that are reasonably comparable to those in urban areas. As noted above, no later than 90 days after being informed of its eligible incremental support amount, each price cap ETC must provide notice to the Commission and to the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate, identifying the areas, by wire center and census block, in which the carrier intends to deploy broadband to meet this obligation, or stating that the carrier declines to accept incremental support for that year.

⁹⁶⁷ "Community anchor institutions" is defined above. See *supra* note 37.

⁹⁶⁸ See *supra* Section VII.D.2.

590. The carrier must also certify that (1) deployment funded by CAF Phase I incremental support will occur in areas shown as unserved by fixed broadband on the National Broadband Map that is most current at that time, and that, to the best of the carrier's knowledge, are unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream, and that, to the best of the carrier's knowledge, are, in fact, unserved by fixed broadband at those speeds; and (2) the carrier's current capital improvement plan did not already include plans to deploy broadband to that area within three years, and that CAF Phase I support will not be used to satisfy any merger commitment or similar regulatory obligation.⁹⁶⁹ In addition, carriers must certify that: (1) within two years after filing a notice of acceptance, they have deployed to no fewer than two-thirds of the required number of locations; and (2) within three years after filing a notice of acceptance, they have deployed to all required locations and that they are offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including VoIP, and with usage limits, if any, that are reasonably comparable to those in urban areas. These certifications must be included in the first annual report due following the year in which the carriers reach the required milestones.

591. In addition, price cap carriers that receive frozen high-cost support will be required to certify that they are using such support in a manner consistent with achieving universal availability of voice and broadband.⁹⁷⁰ Specifically, in the 2013 certification, all price cap carriers receiving frozen high-cost support must certify to the Commission, the relevant state commission, relevant authority in a U.S. Territory, and to any affected Tribal government that they used such support in a manner consistent with achieving the universal availability of voice and broadband. In the 2014 certification, all price cap carriers receiving frozen high-cost support must certify that at least one-third of the frozen-high cost support they received in 2013 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.⁹⁷¹ In the 2015 certification, carriers must certify that at least two-thirds of the frozen high-cost support the carrier received in 2014 was used in such fashion, and for 2016 and subsequent years, carriers must certify that all frozen high-cost support they received in the previous year was used in such fashion. These certifications must be included in the carriers' annual reports due April 1 of each year. Price cap companies that receive CAF ICC also are obligated to certify that they are using such support for building and operating broadband-capable networks used to offer their own retail service in areas substantially unserved by an unsubsidized competitor.

592. Price. We require all ETCs to submit a self-certification that the pricing of their voice services is no more than two standard deviations above the national average urban rate for voice service, which will be specified annually in a public notice issued by the Wireline Competition Bureau. This certification requirement begins April 1, 2013, to cover 2012.

593. ETCs receiving only Mobility Fund Phase I support will self-certify annually that they offer service in areas with support at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas. ETCs receiving any other support will submit a self-certification that the pricing of their broadband service is within a specified reasonable range. That range will be established and published as more fully described in Section VI.B.3. above for recipients of high-

⁹⁶⁹ See *supra* Section VII.C.1.

⁹⁷⁰ A carrier must certify that with respect to the frozen high cost support dollars subject to this obligation, a substantial portion went to areas without an unsubsidized competitor.

⁹⁷¹ See Section VI.B.a. above. We note that this obligation applies to carriers, regardless of whether or not they accept CAF Phase I incremental support.

cost and CAF support, other than Mobility Fund Phase I.⁹⁷² This certification requirement begins April 1, 2013, to cover 2012.

594. ETCs must also report pricing information for both voice and broadband offerings. They must submit the price and capacity range (if any) for the broadband offering that meets the relevant speed requirement in their annual reporting. In addition, beginning April 1, 2012, subject to PRA approval, all incumbent local exchange company recipients of HCLS, frozen high-cost support, and CAF also must report their flat rate for residential local service to USAC so that USAC can calculate reductions in support levels for those carriers with R1 rates below the specified rate floor, as established above.⁹⁷³ Carriers may not request confidential treatment for such pricing and rate information.

595. Financial Reporting. We sought comment on requiring all ETCs to provide financial information, including balance sheets, income statements, and statements of cash flow.

596. Upon consideration of the record, we now adopt a less burdensome variation of this proposal.⁹⁷⁴ We conclude that it is not necessary to require submission of such information from publicly traded companies, as we can obtain such information directly for SEC registrants. Likewise, we conclude at this time it is not necessary to require the filing of such information by recipients of funding determined through a forward-looking cost model or through a competitive bidding process, even if those recipients are privately held. We expect that a model developed through a transparent and rigorous process will produce support levels that are sufficient but not excessive, and that support awarded through competitive processes will be disciplined by market forces. The design of those mechanisms should drive support to efficient levels.

597. We emphasize, however, that we may request additional information on a case-by-case basis from all ETCs, both private and public, as necessary to discharge our universal service oversight responsibilities.⁹⁷⁵

⁹⁷² See Section VII.E.1.

⁹⁷³ See Section VII.D.5.

⁹⁷⁴ Several commenters supported requiring financial disclosures. See, e.g., CWA *USF/ICC Transformation NPRM* Comments at 20; NASUCA *USF/ICC Transformation NPRM* Comments at 86; WISPA *USF/ICC Transformation NPRM* Comments at 10. Another party asserts, however, that “it is not clear whether these burdensome requirements would be necessary to serve any public policies related to administration of the universal service fund.” Cellular One and Viaero *USF/ICC Transformation NPRM* Comments at 29. Although WISPA supports financial disclosures, it asserts that such disclosures should be limited to financial information related to the recipients’ CAF activities. See WISPA *USF/ICC Transformation NPRM* Comments at 10. We disagree, as we conclude that it is appropriate to understand the overall finances of privately-held rate-of-return carriers receiving support, as discussed below, to ensure that universal service subsidies are not subsidizing unregulated operations.

⁹⁷⁵ We note that a number of states already require carriers to file financial information with state commissions. Most of those states require that telecommunications providers file financial information including, at a minimum, income statements and, in most instances, balance sheets. See, e.g., Georgia Pub. Serv. Comm’n Rule 515-3-1-.04(1); http://www.psc.state.ga.us/telecom/compliance_memo.pdf; Hawaii Public Utilities Commission Rule 6-80-91; <http://psc.mt.gov/Docs/AnnualReports/forms/2009TelephoneAnnualReport.pdf>; Wash. Code 480-120-382 and 480-120-385; <http://www.lpsc.org/teleannualreports.aspx>; Mississippi Code § 77-3-79; <http://www.mpus.ms.gov/utility/telecomm/forms.html>; <http://www.psc.state.ne.us/home/NPSC/forms/Online/Communications.2004.12.31.Annual%20Report%20Compliance%20Form.pdf>; <http://www.bpu.state.nj.us/bpu/pdf/telecopdfs/TelcoAr.pdf>. Montana and Nebraska both require that accounts be kept in accordance with Part 32 of the Commission’s rules. See <https://psc.mt.gov/Docs/AnnualReports/forms/2009TelephoneUtilityCoversheetandTOC.pdf>; 291 Neb. Code § 002.24B. New Jersey requires its telecommunications carriers to maintain their accounts in accordance with either (continued...)

598. For privately-held rate-of-return carriers that continue to receive support based in part on embedded costs, we adopt a more limited reporting requirement, beginning in 2012. We require all privately-held rate-of-return carriers receiving high-cost and/or CAF support to file with the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate beginning April 1, 2012, subject to PRA approval, a full and complete annual report of their financial condition and operations as of the end of their preceding fiscal year, which is audited and certified by an independent certified public accountant in a form satisfactory to the Commission, and accompanied by a report of such audit. The annual report shall include balance sheets, income statements, and cash flow statements along with necessary notes to clarify the financial statements. The income statements shall itemize revenue by its sources.

599. The ETCs subject to this new requirement are all already subject to the Uniform System of Accounts, which specifies how required financial information shall be maintained in accordance with Part 32 of the Commission's rules. Because Part 32 of our rules already requires incumbent carriers to break down accounting by study area, it should provide an accurate picture of how recipients are using the high-cost support they receive in particular study areas. Additionally, Part 32 provides a uniform system of accounting that allows for an accurate comparison among carriers. ETCs that receive loans from the Rural Utility Service (RUS) are already required to provide RUS with annual financial reports maintained in accordance with Part 32. We will allow these carriers to satisfy their financial reporting obligation by simply providing electronic copies of their annual RUS reports to the Commission, which should not impose any additional burden. All other rate-of-return carriers, in their initial filing after adoption of this Order, shall provide the required financial information as kept in accordance with Part 32 of the Commission's rules.

600. We delegate to the Wireline Competition Bureau the authority to resolve all other questions regarding the appropriate format for carriers' first financial filing following this Order, as well as the authority to set the format for subsequent reports. We may in future years implement a standardized electronic filing system, and we also delegate to the Wireline Competition Bureau the task of establishing an appropriate format for transmission of this information.

601. We do not expect privately held ETCs will face a significant burden in producing the financial disclosures required herein because such financial accounting statements are normally prepared in the usual course of business.⁹⁷⁶ In particular, because incumbent LECs are already required to maintain their accounts in accordance with Part 32,⁹⁷⁷ the required disclosures are expected to impose minimal new burdens. Indeed, for the many carriers that already provide Part 32 financial reports to RUS, there will be no additional burden.

602. Finally, we conclude that these carriers' financial disclosures should be made publicly available. The only comment we received on this issue came from NASUCA, which strongly urged the Commission to require public disclosure of all financial reports.⁹⁷⁸ NASUCA rightly observed that recipients of high-cost and/or CAF support receive extensive public funding, and therefore the public has

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Part 32 of the Commission's rules or Generally Accepted Accounting Principles. See <http://www.bpu.state.nj.us/bpu/pdf/telecopdfs/TelcoAr.pdf>.

⁹⁷⁶ See Comments of John Staurulakis, Inc., GN Docket Nos. 10-90, 09-51, WC Docket No. 05-337 (filed July 12, 2010), at 10 (noting that "independent audit firms review the financial records of virtually all rate-of-return regulated RLECs on an annual basis").

⁹⁷⁷ 47 C.F.R. § 32.11(a).

⁹⁷⁸ See NASUCA *USF/ICC Transformation NPRM* Comments at 86.

a legitimate interest in being able to verify the efficient use of those funds.⁹⁷⁹ Moreover, by making this information public, the Commission will be assisted in its oversight duties by public interest watchdogs, consumer advocates, and others who seek to ensure that recipients of support receive funding that is sufficient but not excessive.

603. Ownership Information. All recipients of funding today are required to obtain FCC registration numbers to do business with the Commission, and are assigned Study Area Codes by USAC to receive high-cost funding. We now adopt a rule requiring all ETCs to report annually the company's holding company, operating companies, affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation). In addition, filers will be required to report relevant universal service identifiers for each such entity by Study Area Codes. This will help the Commission reduce waste, fraud, and abuse and increase accountability in our universal service programs by simplifying the process of determining the total amount of public support received by each recipient, regardless of corporate structure. Such information is necessary in order for the Commission to ensure compliance with various requirements adopted today that take into account holding company structure.⁹⁸⁰ For purposes of this requirement, affiliated interests shall be reported consistent with section 3(2) of the Communications Act of 1934, as amended.⁹⁸¹

604. Tribal Engagement. ETCs serving Tribal lands must include in their reports documents or information demonstrating that they have meaningfully engaged Tribal governments in their supported areas.⁹⁸² The demonstration must document that they had discussions that, at a minimum, included: (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements.⁹⁸³

605. Elimination of Certain Data Reporting Requirements. Finally, as discussed above,⁹⁸⁴ we are eliminating LSS and IAS as standalone support mechanisms. This obviates the need for reporting requirements specific to 54.301(b) and 54.802 of our rules (and 54.301(e) after December 31, 2012).⁹⁸⁵

⁹⁷⁹ See NASUCA *USF/ICC Transformation NPRM* Comments at 86.

⁹⁸⁰ See Sections VII.C.1. and VII.D.10. above and Section XIII below. We note that on occasion, we receive congressional requests for information regarding receipt of high-cost funding at the holding-company level. Letter from Fred Upton, Chairman, House Committee on Energy and Commerce, Henry A. Waxman, Ranking Member, House Committee on Energy and Commerce, Greg Walden, Chairman, House Subcommittee on Communications and Technology, Anna G. Eshoo, Ranking Member, House Subcommittee on Communications and Technology, to Julius Genachowski, Chairman, FCC, (June 22, 2011)

⁹⁸¹ 47 U.S.C. § 153(2) ("The term 'affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term 'own' means to own an equity interest (or the equivalent thereof) of more than 10 percent.").

⁹⁸² See Section IX.A. below.

⁹⁸³ Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

⁹⁸⁴ See Sections VII.C.1. and VII.D.7. above.

⁹⁸⁵ Section 54.301(b), which applies to LSS, requires an ILEC designated as an ETC and serving a study area with 50,000 or fewer access lines to "provide the Administrator with the projected total unseparated dollar amount (continued...)

606. Overall, we think that the changes to the reporting requirements do not impose an undue burden on ETCs and that the benefits outweigh any burdens. Given the extensive public funding these entities receive, the expanded goals of the program, and the need for greater oversight, as noted by the GAO, it is prudent to impose narrowly tailored reporting requirements focused on the information that will demonstrate compliance with statutory requirements and our implementing rules. These specific reporting requirements are tailored to ensure that ETCs are complying with their public interest obligations and using support for the intended purposes, as required by section 254(e) of the Act. Where possible, we are minimizing burdens by requiring certifications in lieu of collecting data, and by allowing the filing of reports already prepared for other government agencies in lieu of new reports. Moreover, we are eliminating some of the existing requirements, which will reduce burdens for some ETCs. Finally, to the extent ETCs currently provide information either to their state or to the Commission, they will not bear any significant additional burden in now also providing copies of such information to the other regulatory body.⁹⁸⁶

3. Annual Section 254(e) Certifications

607. *Background.* As noted above, 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.”⁹⁸⁷ The Commission currently requires states to annually certify with respect to ETCs they designate that this statutory requirement is met in order to receive HCLS, SVS, SNA, HCMS, or LSS.⁹⁸⁸ States take different approaches in how they develop a factual basis to support this certification, however.⁹⁸⁹ Federally-designated ETCs are required to make an annual certification directly to this Commission in order to receive HCLS, SVS, SNA, HCMS, LSS, IAS, or ICLS,⁹⁹⁰ but the Commission has not specified what factual basis must support such certifications. GAO found inconsistencies in the certification process among states and questioned whether such certifications enabled program administrators to fully assess whether carriers are appropriately using high-cost program support.⁹⁹¹ In the Notice, we sought comment on how to harmonize certifications and ensure that they are meaningful.⁹⁹²

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assigned to each account listed below for the calendar year following each filing.” 47 C.F.R. § 54.301(b). Section 54.301(e) requires carriers subject to 54.301(b) to submit historical data to the Administrator to allow the Administrator to calculate a true-up adjustment for the preceding year. 47 C.F.R. § 54.301(e). Section 54.802, which applies to IAS, requires ETCs providing service within an area served by a price cap LEC to file quarterly line-count data, as well as certain other information, with the Fund Administrator. 47 C.F.R. § 54.802.

⁹⁸⁶ See Cellular One and Viaero *USF/ICC Transformation NPRM* Comments at 30.

⁹⁸⁷ 47 U.S.C. § 254(e).

⁹⁸⁸ 47 C.F.R. §§ 54.313 (non-rural carriers), 54.314 (rural carriers).

⁹⁸⁹ For example, the Michigan Public Service Commission requires ETCs to provide information each year in connection with renewal of their designations. See Michigan Commission *USF/ICC Transformation NPRM* Comments at 4. And as stated in the GAO High-Cost Report, “[s]tates most frequently require carriers to submit affidavits that future support will be used for its intended purpose; plans for quality, coverage, or capacity improvements; and evidence that past support was used for its intended purposes.” GAO High-Cost Report at 33.

⁹⁹⁰ 47 C.F.R. §§ 54.313 (non-rural carriers), 54.314 (rural carriers), 54.809 (IAS), 54.904 (ICLS).

⁹⁹¹ GAO High-Cost Report at 38.

⁹⁹² *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4696, para. 475.

608. *Discussion.* We modify our rules to streamline and improve ETCs' annual certification requirements.

609. First, we require that states – and entities not falling within the states' jurisdiction (i.e., federally-designated ETCs) – certify that all federal high-cost and CAF support was used in the preceding calendar year and will be used in the new calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, regardless of the rule under which that support is provided. This corrects a defect in our current rules, which require only a certification with respect to the coming year.⁹⁹³ The certifications required by new section 54.314 will be due by October 1 of each year, beginning with October 1, 2012. The certification requirement applies to all recipients of high-cost and CAF support, including those that receive only Phase I Mobility Fund support.

610. Second, we maintain states' ongoing role in annual certifications. Several commenters take the position that responsibility for ensuring USF recipients comply with their public interest obligations should remain with the states.⁹⁹⁴ As discussed above, we agree that the states should play an integral role in assisting the Commission in monitoring compliance, consistent with an overarching uniform national framework.⁹⁹⁵ States will continue to certify to the Commission that support is used by state-designated ETCs for the intended purpose, which is modified to include the provision, maintenance, and upgrading of facilities capable of delivering voice and broadband services to homes, businesses and community anchor institutions.⁹⁹⁶

611. Under our reformed rules, as before, some recipients of support may be designated by the Commission rather than the states. States are not required to file certifications with the Commission with respect to carriers that do not fall within their jurisdiction. However, consistent with the partnership between the Commission and the states to preserve and enhance universal service, and our recognition that states will continue to be the first place that consumers may contact regarding consumer protection issues, we encourage states to bring to our attention issues and concerns about all carriers operating within their boundaries, including information regarding non-compliance with our rules by federally-designated ETCs. We similarly encourage Tribal governments, where appropriate, to report to the Commission any concerns about non-compliance with our rules by all recipients of support operating on Tribal lands. Any such information should be provided to the Wireline Competition Bureau and the Consumer & Governmental Affairs Bureau. Through such collaborative efforts, we will work together to ensure that consumer interests are appropriately protected.

⁹⁹³ Current sections 54.313 and 54.314 of our rules provide that states “must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” 47 C.F.R. §§ 54.313(a) and 54.314(a).

⁹⁹⁴ See State Members *USF/ICC Transformation NPRM* Comments at 140; Frontier *USF/ICC Transformation NPRM* Comments at 25; Nebraska Commission *USF/ICC Transformation NPRM* Comments at 16; Kansas Commission *USF/ICC Transformation NPRM* Comments at 24, 27; Missouri Commission *USF/ICC Transformation NPRM* Comments at 5, 9-11; Washington Commission *USF/ICC Transformation NPRM* Comments at 4-6; Greenlining *USF/ICC Transformation NPRM* Comments at 10.

⁹⁹⁵ The State Members noted that the basic model of requiring states to make annual certifications is sound, but should be updated to include the new provider of last resort duties assigned to broadband providers. State Members Comments at 140. Another commenter supported federal standards “so states that exercise authority over ETCs have the ability to gather information from ETCs ensuring USF support is being used appropriately.” Missouri Commission *USF/ICC Transformation NPRM* Comments at 9.

⁹⁹⁶ 47 C.F.R. §§ 54.313 and 54.314.

612. Third, we clarify that we expect a rigorous examination of the factual information provided in the annual section 54.313 reports prior to issuance of the annual section 254(e) certifications. Because the underlying reporting requirements for recipients of Mobility Fund Phase I support differ from the reporting requirements for ETCs receiving other high-cost support, Mobility Fund Phase I recipients' certifications will be based on the factual information they provide in the annual reports they file pursuant to section 54.1009 of the Mobility Fund rules.⁹⁹⁷ We expect that states (or the ETC if the state lacks jurisdiction) will use the information reported in April of each year for the prior calendar year in determining whether they can certify that carriers' support has been used and will be used for the intended purposes. In light of the public interest obligations we adopt in this Order, a key component of this certification will now be that support is being used to maintain and extend modern networks capable of providing voice and broadband service. Thus, for example, if a state commission determines, after reviewing the annual section 54.313 report, that an ETC did not meet its speed or build-out requirements for the prior year, a state commission should refuse to certify that support is being used for the intended purposes. In conjunction with such review, to the extent the state has a concern about ETC performance, we welcome a recommendation from the state regarding prospective support adjustments or whether to recover past support amounts.⁹⁹⁸ As discussed more fully below, failure to meet all requirements will not necessarily result in a total loss of support, to the extent we conclude, based on a review of the circumstances, that a lesser reduction is warranted. Likewise, we will look at ETCs' annual 54.313 reports to verify certifications by ETCs (in instances where the state lacks jurisdiction) that support is being used for the intended purposes.⁹⁹⁹

613. Fourth, we streamline existing certifications. Today, we have two different state certification rules, one for rural carriers and one for non-rural carriers. There is no substantive difference between the existing certification rules for the two classes of carriers, and as a matter of administrative convenience, we consolidate all certifications into a single rule. Moreover, because the net effect of the changes that we are implementing to our high-cost programs is, as a practical matter, to shift the focus from whether a company is classified as "rural" versus "non-rural" to whether a company receives all support through a forward-looking model or competitive process or, instead, based in part on embedded costs,¹⁰⁰⁰ it does not make sense to maintain separate certification rules for "rural" and "non-rural" carriers. We see no substantive difference in the certifications that should be made. Thus, we eliminate the certification requirements currently found in sections 54.313 and 54.314 of our rules¹⁰⁰¹ and implement new rule 54.314.

⁹⁹⁷ Because ETCs of Mobility Fund Phase I support that receive support pursuant to other high-cost mechanisms are subject to the reporting requirements of new section 54.313, those companies' certifications will be based on the factual information in the annual reports they file pursuant to both new section 54.313 and section 54.1009 of the Mobility Fund rules.

⁹⁹⁸ This should help address the concern of the State Members of the Federal-State Joint Board on Universal Service that, under the annual certification process as it exists today, "a State has only one remedy, denial of certification." State Members *USF/ICC Transformation NPRM* Comments at 140.

⁹⁹⁹ ETC Designation Order, 20 FCC Rcd at 6402, para. 72 ("If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.")

¹⁰⁰⁰ See Section VII.C.1. above.

¹⁰⁰¹ Current section 54.313 requires certifications with regard to support pursuant to sections 54.309 and 54.311. 47 C.F.R. § 54.313. Current section 54.314's requirements pertain to support pursuant to sections 54.301, 54.305, and 54.307, as well as part 36, subpart F. 47 C.F.R. § 54.314.

614. Finally, we also eliminate carriers' separate certification requirements for IAS and ICLS. As discussed above, we are eliminating IAS as a standalone support mechanism, and this obviates the need for IAS-specific certifications.¹⁰⁰² Although ICLS will remain in place for some carriers, those carriers will certify compliance through new section 54.314. However, to ensure there is no gap in coverage, those carriers will file a final certification under section 54.904 due June 30, 2012, covering the 2012-13 program year. Thus, by this Order, we eliminate section 54.809 and, effective July 2013, section 54.904 of our rules.¹⁰⁰³ And as discussed in section VII.C.1. above, we also eliminate section 54.316 of our rules, relating to rate comparability.¹⁰⁰⁴

B. Consequences for Non-Compliance with Program Rules

615. *Background.* In the *USF/ICC Transformation NPRM*, we sought comment on proposed consequences for a Fund recipient's failure to fulfill its public interest obligations.¹⁰⁰⁵ We also sought comment on whether we should reduce or suspend universal support payments for non-compliance with the various reporting requirements.¹⁰⁰⁶ Under our existing rules, companies lose support if the state (or the ETC, in the case of federally designated ETCs) fails to file the required certifications or information, such as the annual reports required by current section 54.209.¹⁰⁰⁷

616. *Discussion.* Effective enforcement is necessary to ensure that the reforms we make in this Order achieve their intended goal.¹⁰⁰⁸ Our existing rules already have self-effectuating mechanisms to incent prompt filing of requisite certifications and information necessary to calculate support amounts, as companies lose support to the extent such information is not provided in a timely fashion.¹⁰⁰⁹ While we need such information to ensure that support is being used for the intended purposes, consistent with section 254(e) of the Act, we also need to ensure that such certifications, which will be based upon the certifications and information provided in the new section 54.313 annual reports, adequately address all areas of material non-compliance with program obligations.

617. We believe that in the majority of cases involving repeated failures to timely file certifications or data, the Commission's existing enforcement procedures and penalties will adequately deter noncompliance with the Commission's rules, as herein amended, regarding high-cost and CAF

¹⁰⁰² See Section VII.C.1. above.

¹⁰⁰³ Sections 54.809 and 54.904 require carriers receiving IAS and ICLS support, respectively, to file a certification stating that all such support "will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." 47 C.F.R. §§ 54.809 and 54.904.

¹⁰⁰⁴ Section 54.316 requires that states certify as to rate comparability for areas served by non-rural carriers. 47 C.F.R. § 54.316.

¹⁰⁰⁵ *USF/ICC Transformation NPRM* at ¶ 153.

¹⁰⁰⁶ *USF/ICC Transformation NPRM* at ¶ 466.

¹⁰⁰⁷ 47 C.F.R. § 54.209(b).

¹⁰⁰⁸ See *Greenlining USF/ICC Transformation NPRM Comments* at 9. We received almost no comments on this issue. Those we did receive were largely conclusory and provided no specifics as to appropriate penalties or remedies. See, e.g., *CWA USF/ICC Transformation NPRM Comments* at 20; *Greenlining USF/ICC Transformation NPRM Comments* at 10.

¹⁰⁰⁹ Under current rules, certifications are due by October. If a carrier files late, but on or before January 1, the carrier will receive support for Q2, Q3 and Q4. If a carrier files late, but on or before April 1, the carrier will receive support for Q3 and Q4. If the carrier files late, but on or before July 1, the carrier will receive support for Q4. If a carrier files after July 1, the carrier will not receive any support for that year. See 47 C.F.R. §§ 54.209(b), 54.313(d), 54.314(d).

support.¹⁰¹⁰ We adopt the provisions of section 54.209(b) in new section 54.313, which provides for reductions in support for failing to file the reports required by section 54.209(a) in a timely fashion, and extend those provisions to all recipients of high-cost support.¹⁰¹¹ We also adopt new section 54.314, which provides for a similar reduction in support for the late filing of annual certifications that the funds received were used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹⁰¹² Our rules also provide for debarment of those convicted of or found civilly liable for defrauding the high-cost support program,¹⁰¹³ and we emphasize that those rules apply with equal force to CAF, including the Mobility Fund Phase I.

618. To further ensure that the recipients of existing high-cost and/or CAF support use those funds for the purposes for which they are provided, we create a rule that entities receiving such support will receive reduced support should they fail to fulfill their public interest obligations, such as by failing to meet deployment milestones, to provide broadband at the speeds required by this Order, or to provide service at reasonably comparable rates.¹⁰¹⁴ This is consistent with the suggestions of the State Members of the Federal-State Joint Board on Universal Service,¹⁰¹⁵ who further note that revoking a carrier's ETC designation is too blunt an instrument.¹⁰¹⁶ We agree that revoking a carrier's ETC status is not an appropriate consequence for noncompliance, except in the most egregious circumstances.¹⁰¹⁷ In the FNPRM, we seek comment on appropriate enforcement options for partial non-performance. We do not rule out the option of revoking an ETC's status, but we seek comment on what circumstances would justify such a remedy and what alternatives might be appropriate in other circumstances. We delegate to the Wireline Competition Bureau and Wireless Telecommunications Bureau the task of implementing reductions in support based on the record received in response to the FNPRM.

¹⁰¹⁰ See 47 C.F.R. § 1.80. See also 47 C.F.R. § 1.80, Note to para. (b)(4), "Guidelines for Assessing Forfeitures" (Forfeiture Guidelines). The Forfeiture Guidelines provide base forfeiture amounts for certain specified violations. However, those base amounts are subject to adjustment based on the factors set forth in section 1.80(b)(4) and in Section II of the Forfeiture Guidelines. Thus, the Commission has assessed forfeitures of \$50,000 per violation for a carrier's failure to timely file Forms 499A and 499Q because of the programmatic importance of such filings and the impact a carrier's failure to file has on other carriers' contribution obligations. See, e.g., *ADMA Telecom, Inc.*, Forfeiture Order, 26 FCC Rcd 4152, 4155, paras. 9-10 (2011); *Globalcom, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 3479, 3486, para. 17 (2010); *Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd 4710, 4720, ¶¶ 26-28 (2006); *InPhonic, Inc.*, Notice of Apparent Liability of Forfeiture and Order, 20 FCC Rcd 13277, 13287, ¶ 26 (2005).

¹⁰¹¹ For each quarter the filing is late, the carrier loses support for an additional quarter. 47 C.F.R. § 54.209(b).

¹⁰¹² Current sections 54.313 and 54.314, both of which are being replaced by new section 54.314, provide for this same reduction in support. See 47 C.F.R. §§ 54.313(d), 54.314(d). As with section 54.209(b), the carrier loses support for one quarter for each quarter the filing is late. *Id.*

¹⁰¹³ 47 C.F.R. § 54.8.

¹⁰¹⁴ See Section XVII.G. below.

¹⁰¹⁵ State Members *USF/ICC Transformation NPRM* Comments at 62 (Step 7 of the multi-step penalty framework in the proposed "Provider of Last Resort Fund" would "reduce[] support if the ETC fails to meet specific build-out requirements or to provide adequate service quality").

¹⁰¹⁶ See State Members *USF/ICC Transformation NPRM* Comments at 140.

¹⁰¹⁷ At least one commenter contended that recipients who fail to deploy should face "significant penalties," such as asset seizure. See *ACA USF/ICC Transformation NPRM* Comments at 32.

C. Record Retention

619. *Background.* Without proper documentation, it is impossible to conduct effective audits and assessments of high-cost or CAF recipients. In 2007, the Commission adopted a five-year record retention requirement for recipients of high-cost support.¹⁰¹⁸ In the *USF/ICC Transformation NPRM*, we sought comment on whether those record retention requirements are adequate to facilitate audits of program recipients or whether additional requirements are needed in light of the changed responsibilities and expectations for Fund recipients called for in this Order. No commenters addressed this issue.

620. *Discussion.* We find that the current record retention requirements, although adequate to facilitate audits of program participants, are not adequate for purposes of litigation under the False Claims Act,¹⁰¹⁹ which can involve conduct that relates back substantially more than five years. Thus, we revise our record retention requirements to extend the retention period to ten years.

621. Additionally, we believe our record retention requirements need clarification. The current record retention requirements appear in section 54.202(e) of the Commission's rules.¹⁰²⁰ Section 54.202 is entitled: "Additional requirements for Commission designation of eligible telecommunications carriers."¹⁰²¹ Subsections (a) through (d) of that section apply, by their terms, only to ETCs designated under section 214(e)(6) of the Act – i.e., ETCs designated by the Commission rather than by the states.¹⁰²² Subsection (e), however, is not so limited.¹⁰²³ Indeed, the Commission intended the requirements of section 54.202(e) to apply to all recipients of high-cost support.¹⁰²⁴ To fully support our ongoing oversight, the record retention requirements must apply to all recipients of high-cost and CAF support. Thus, by this Order, we amend our rules by re-designating section 54.202(e) as new section 54.320 to clarify that these ten-year record retention requirements apply to all recipients of high-cost and CAF support.¹⁰²⁵ To ensure access to documents and information needed for effective ongoing oversight, we include in new section 54.320 a requirement that all documents be made available upon request to the Commission and any of its Bureaus or offices, the Administrator, and their respective auditors.

D. USAC Oversight Process

622. *Background.* In the *USF/ICC Transformation NPRM*, we sought comment on ways to improve USAC's audit process to reduce improper payments and assess risks. We received only one set of comments addressing this issue.¹⁰²⁶

¹⁰¹⁸ See 47 C.F.R. § 54.202(e).

¹⁰¹⁹ 31 U.S.C. §§ 3729–33. Under the False Claims Act, carriers receiving funds under fraudulent pretenses may be held liable for a civil penalty of between \$5,000 and \$10,000, plus treble damages. 31 U.S.C. § 3729(a)(1).

¹⁰²⁰ See 47 C.F.R. § 54.202(e).

¹⁰²¹ See 47 C.F.R. § 54.202.

¹⁰²² See 47 C.F.R. § 54.202(a)-(d).

¹⁰²³ See 47 C.F.R. § 54.202(e).

¹⁰²⁴ See *Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight*, Report and Order, 22 FCC Rcd 16372, 16383-84, para. 24 (2007).

¹⁰²⁵ As noted in Section VII.E.f.iii. above, Mobility Fund Phase I recipients will be required to retain documentation for at least ten years after the date on which the company receives its final disbursement of Mobility Fund Phase I support.

¹⁰²⁶ See COMPTEL *USF/ICC Transformation NPRM* Comments at 21 ("One critical action that the Commission should take immediately to strengthen its audit processes ... is to ensure that the audits are completed on a timely (continued...)

623. *Discussion.* As noted in the *USF/ICC Transformation NPRM*, audits are an essential tool for the Commission and USAC to ensure program integrity and to detect and deter waste, fraud, and abuse.¹⁰²⁷ In the *USF/ICC Transformation NPRM*, we discussed the concerns expressed by the GAO in 2008 regarding, among other things, the audit process that existed at the time.¹⁰²⁸ The *USF/ICC Transformation NPRM* also acknowledged USAC's December 2010 Final Report,¹⁰²⁹ which detailed the findings of the audits conducted at the direction of the Commission's Office of Inspector General.¹⁰³⁰

624. As directed by the Commission's Office of the Managing Director, USAC now has two programs in place to safeguard the Universal Service Fund – the Beneficiary/Contributor Compliance Audit Program (BCAP) and Payment Quality Assurance (PQA) program.¹⁰³¹ We created these programs, in conjunction with USAC, in order to address the shortcomings of the audit processes discussed in the GAO High-Cost Report and USAC's December 2010 Final Report. The PQA program was launched in August 2010,¹⁰³² and the first round of BCAP audits were announced on December 1, 2010. OMD oversees USAC's implementation of both programs.¹⁰³³

625. Audits done pursuant to BCAP are intended to: (1) ensure that recipients of USF support are in compliance with the Commission's rules; (2) prevent, detect, and deter waste, fraud, and abuse; (3) recover funds for rule violations; and (4) ensure equitable contributions to the USF. These compliance audits will also verify the accuracy of the underlying data,¹⁰³⁴ thus addressing one of the concerns expressed by the GAO,¹⁰³⁵ the State Members of the Federal-State Joint Board on Universal Service, and Comptel.¹⁰³⁶

626. Unlike BCAP, the PQA program does not involve audits.¹⁰³⁷ Rather, it provides for reviews specifically designed to assess estimated rates of improper payments, thereby supporting Improper (Continued from previous page) _____

basis and that timely efforts are made to recover improper payments.”). We did, however, receive comments supporting our ability to audit recipients. See, e.g., *WISPA USF/ICC Transformation NPRM Comments* at 10-11.

¹⁰²⁷ *USF/ICC Transformation NPRM* at ¶ 471.

¹⁰²⁸ *USF/ICC Transformation NPRM* at ¶ 469. See GAO High-Cost Report at 34-36.

¹⁰²⁹ *USF/ICC Transformation NPRM* at ¶¶ 472-73.

¹⁰³⁰ See *Universal Service Administrative Company, Final Report and Statistical Analysis of the 2007-08 Federal Communications Commission Office of Inspector General High-Cost Program Beneficiary Audits* (Dec. 15, 2010), available at <http://www.fcc.gov/omd/usf-letters2011.html> (December 2010 USAC Compliance Report).

¹⁰³¹ See Letter from Steven VanRoekel, FCC, to Scott Barash, USAC (Feb. 12, 2010), available at <http://www.fcc.gov/omd/usac-letters/2010/021210-ipia.pdf> (Feb. 12, 2010 USAC Letter) (directing USAC to separate its two audit objectives into distinct programs – one focused on Improper Payments Information Act (IPIA) assessment and the second on auditing compliance with all four USF programs.)

¹⁰³² See USAC 2010 Annual Report at 5. This report may be found at: <http://www.usac.org/about/governance/annual-reports/2010.html>.

¹⁰³³ See Feb. 12, 2010 USAC Letter.

¹⁰³⁴ See <http://www.usac.org/hc/about/understanding-audits.aspx>.

¹⁰³⁵ GAO High-Cost Report at 37.

¹⁰³⁶ State Members *USF/ICC Transformation NPRM Comments* at 55; *COMPTTEL USF/ICC Transformation NPRM Comments* at 20-21. We received no other comments in response to our request for comment on how to improve the data validation process to correct the weakness identified by GAO.

¹⁰³⁷ See <http://www.usac.org/fund-administration/about/program-integrity/pqa-faqs.aspx>.

Payments Information Act (IPIA) requirements. The PQA reviews measure the accuracy of USAC payments to applicants, evaluate the eligibility of program applicants, and involve high-level testing of information obtained from program participants. USAC tailors the scope of procedures to ensure reasonable costs while still meeting IPIA requirements. These reviews occur in four-month cycles, with USAC conducting 20-60 assessments of high-cost recipients per cycle.¹⁰³⁸

627. To assist program participants, USAC has information about BCAP and the PQA program available on its website.¹⁰³⁹ In addition to BCAP and the PQA program, USAC conducts outreach training events as well as individual outreach activities via phone, e-mail, video-conference, or in person.¹⁰⁴⁰ USAC also has outreach products on its website, including video tutorials.¹⁰⁴¹ USAC has also “enhanced internal controls and data gathering to gain greater visibility into payment operations, calibrated audit and audit follow-up activities to gain greater certainty about beneficiary support, and modernized information technology systems to achieve greater efficiencies and improve reporting capabilities.”¹⁰⁴²

628. We direct USAC to review and revise the BCAP and PQA programs to take into account the changes adopted in this Order. We direct USAC to annually assess compliance with the new requirements established for recipients, including for recipients of CAF Phase I and Phase II. For CAF Phase I, we establish above a requirement that companies have completed build-out to two-thirds of the requisite number of locations within two years. We direct USAC to assess compliance with this requirement for each holding company that receives CAF Phase I funds. ETCs that receive CAF Phase I funding should ensure that their underlying books and records support the assertion that assets necessary to offer broadband service have been placed in service in the requisite number of locations. We also direct USAC to test the accuracy of certifications made pursuant to our new reporting requirements. Any oversight program to assess compliance should be designed to ensure that management is reporting accurately to the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate, and should be designed to test some of the underlying data that forms the basis for management’s certification of compliance with various requirements. This list is not intended to be exhaustive, but rather illustrative of the modifications that USAC should make to its existing oversight activities. We direct USAC to submit a report to WCB, WTB, and OMD within 60 days of release of this Order proposing changes to the BCAP and PQA programs consistent with this Order.

629. To assist USAC’s audit and review efforts, we clarify in new section 54.320 that all ETCs that receive high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.¹⁰⁴³

E. Access to Cost and Revenue Data

630. *Background.* Although USAC is the USF Administrator, high-cost universal service data collection responsibilities are divided between USAC and NECA. In the *USF/ICC Transformation NPRM*, we noted that NECA collects data for the high-cost loop support program, while USAC collects

¹⁰³⁸ See <http://www.usac.org/fund-administration/about/program-integrity/pqa-faqs.aspx>.

¹⁰³⁹ See <http://www.usac.org/hc/about/understanding-audits.aspx>; <http://www.usac.org/fund-administration/about/program-integrity/pqa-program.aspx>.

¹⁰⁴⁰ See <http://www.usac.org/about/resource-room/individual-outreach/>.

¹⁰⁴¹ See <http://www.usac.org/hc/tools/video-tutorials.aspx>.

¹⁰⁴² December 2010 USAC Compliance Report.

¹⁰⁴³ This includes audits and investigations conducted by the Commission and its Bureaus and Offices.

data for the remaining components of the high-cost program. As a result of this division, certain information that is relevant to administration of universal service, including validation of universal service payments, is not routinely provided to USAC. For example, because NECA is responsible for Part 36 Subpart F-Universal Service Fund (HCLS) data collection under the Commission's current rules, NECA analyzes the cost data, performs certain calculations, and then transmits that information to USAC for use in determining HCLS payments to rural carriers, but USAC does not have access to the underlying Part 36 data that carriers submit to NECA.

631. Similarly, section 54.901 of the Commission's rules requires USAC to calculate ICLS support as the difference between the common line revenue requirement and the sum of end-user common line charges and certain other revenues.¹⁰⁴⁴ Yet NECA calculates the common line revenue requirement and submits the results of its analysis to USAC; USAC does not have access to the underlying information that carriers submit to NECA. In order for USAC to validate ICLS payments to rate-of-return carriers, USAC must request from NECA underlying cost study information and supporting documentation for SLC revenues (residence and single line business and multiline business), uncollectibles, end user ISDN port revenue, and special access revenues.

632. Moreover, the Commission does not routinely receive from NECA and USAC all data used to calculate high-cost payments. Accordingly, in the NPRM, we sought comment on ways to increase the flow of information, including to improve the data validation process to ensure that the funds are used "to advance modern networks capable of providing broadband and voice services."¹⁰⁴⁵

633. *Discussion.* We take two steps to facilitate the exchange of information needed to administer and oversee universal service programs. First, we modify our rules to clarify that USAC has a right to obtain – at any time and in any unaltered format – all cost and revenue submissions and related information that carriers submit to NECA that is used to calculate payments under any of the existing programs and any new programs, including the new CAF ICC (access replacement) support.

634. Second, we modify our rules to ensure that the Commission has timely access to relevant data. Specifically, we require that USAC (and NECA to the extent USAC does not directly receive such information from carriers) provide to the Commission upon request all underlying data collected from ETCs to calculate payments under current support mechanisms – specifically, HCLS, ICLS, LSS, SNA, SVS, HCMS and IAS – as well as to calculate CAF payments. This includes information or data underlying existing and future analyses that USAC uses to determine the amount of federal universal service support disbursed in the past or the future, including the new CAF.

635. We anticipate that NECA and USAC will submit summary filings to the Commission on a regular basis, and we delegate to the Wireline Competition Bureau authority to determine the format and timing of such summary filings, but we emphasize that USAC and NECA must timely provide any underlying data upon request. We also modify our rules to require rate-of-return carriers to submit to the Commission upon request a copy of all cost and revenue data and related information submitted to NECA for purposes of calculating intercarrier compensation and any new CAF payments resulting from intercarrier compensation reform adopted in this Order.¹⁰⁴⁶

¹⁰⁴⁴ See 47 C.F.R. § 54.901.

¹⁰⁴⁵ *USF/ICC Transformation NPRM* at ¶¶ 467, 476.

¹⁰⁴⁶ See Section XIII.

IX. ADDITIONAL ISSUES

A. Tribal Engagement

636. The deep digital divide that persists between the Native Nations of the United States and the rest of the country is well-documented.¹⁰⁴⁷ Many residents of Tribal lands lack not only broadband access, but even basic telephone service.¹⁰⁴⁸ Throughout this reform proceeding, commenters have repeatedly stressed the essential role that Tribal consultation and engagement play in the successful deployment of service on Tribal lands.¹⁰⁴⁹ For example, the National Tribal Telecommunications Association, the National Congress of American Indians, and the Affiliated Tribes of Northwest Indians have stressed the importance of measures to “specifically support and enhance tribal sovereignty, with emphasis on consultation with Tribes.”¹⁰⁵⁰

637. We agree that engagement between Tribal governments and communications providers either currently providing service or contemplating the provision of service on Tribal lands is vitally important to the successful deployment and provision of service. We, therefore, will require that, at a minimum, ETCs to demonstrate on an annual basis that they have meaningfully engaged Tribal governments in their supported areas.¹⁰⁵¹ At a minimum, such discussions must include: (1) a needs assessment and deployment planning with a focus on Tribal community anchor institutions; (2) feasibility and sustainability planning; (3) marketing services in a culturally sensitive manner; (4) rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (5) compliance with Tribal business and licensing requirements.¹⁰⁵² In requiring Tribal engagement, we do not seek to supplant the Commission’s own ongoing obligation to consult with Tribes on a government-to-government basis, but instead recognize the important role that all parties play in expediting service to Tribal lands. As discussed above, support recipients will be required to submit to the Commission and appropriate Tribal government officials an annual certification and summary of their

¹⁰⁴⁷ See, e.g., *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, 2673 (2011) (*Native Nations NOI*); *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum Over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, 26 FCC Rcd 2623, 2624-25 (2011) (*Spectrum Over Tribal Lands NPRM*); *Connecting America: The National Broadband Plan*, prepared by staff of the Federal Communications Commission, March 10, 2010 (*National Broadband Plan*).

¹⁰⁴⁸ *Native Nations NOI*, 26 FCC Rcd at 2673. See also *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket No. 99-266, Report and Order and Further Notice of Rule Making, 15 FCC Rcd 11794, 11798 (2000) (By virtually any measure, communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population.”); *National Broadband Plan* at 152, Box 8-4.

¹⁰⁴⁹ See, e.g., NTTA, NCAI, and ATNI Oct. 18, 2011 ex parte letter; Navajo Commission Oct. 24, 2011 ex parte letter; NPM and NCAI Comments at 8-9; Navajo Commission Reply Comments at 4; Twin Houses Public Notice Comments at 1-3, 6; Navajo Nation Telecommunications Regulatory Commission Ex Parte

¹⁰⁵⁰ NTTA, NCAI, and ATNI Oct. 18, 2011 ex parte letter.

¹⁰⁵¹ As discussed, *infra*, we note that additional engagement obligation would apply in the context of bidding for, and receiving, Mobility Fund support.

¹⁰⁵² Tribal business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

compliance with this Tribal government engagement obligation.¹⁰⁵³ Carriers failing to satisfy the Tribal government engagement obligation would be subject to financial consequences, including potential reduction in support should they fail to fulfill their engagement obligations.¹⁰⁵⁴ We envision that the Office of Native Affairs and Policy (“ONAP”), in coordination with the Wireline and Wireless Bureaus, would utilize their delegated authority to develop specific procedures regarding the Tribal engagement process as necessary.

B. Interstate Rate of Return Prescription

638. In the *USF-ICC Transformation Notice*, the Commission sought comment on whether to initiate a proceeding to represcribe the authorized interstate rate of return for rate-of-return carriers if it determines that such carriers should continue to receive high-cost support under a modified rate-of-return system.¹⁰⁵⁵ The Commission has not revisited the current 11.25 percent rate of return for over 20 years. Several commenters supported our proposal to initiate a represcription proceeding.¹⁰⁵⁶ Others offered comments on how the Commission should proceed in the event it does initiate such a proceeding.¹⁰⁵⁷ We, therefore, conclude that the Commission should represcribe the authorized interstate rate of return for rate-of-return carriers, and we initiate that represcription process today. In the FNPRM, we propose that the interstate rate of return should be adjusted to ensure that it more accurately reflects the true cost of capital today. Based on our preliminary analysis and record evidence, we believe the current rate of return of 11.25 percent is no longer consistent with the Act and today’s financial conditions. In this Order, we find good cause to waive certain procedural requirements in the Commission’s rules relating to rate represcriptions to streamline and modernize this process to align it with the current Commission practice.

1. Represcription

639. Section 205(a) of the Act authorizes the Commission, on an appropriate record, to prescribe just and reasonable charges of common carriers.¹⁰⁵⁸ The Commission last adjusted the authorized rate of return in 1990, reducing it from 12 percent to 11.25 percent.¹⁰⁵⁹ In 1998, the Commission initiated a proceeding to represcribe the authorized rate of return for rate-of-return carriers.¹⁰⁶⁰ However, in the *MAG Order*, the Commission terminated that prescription proceeding.¹⁰⁶¹

¹⁰⁵³ Appropriate Tribal government officials are elected or duly authorized government officials of federally recognized American Indian Tribes and Alaska Native Villages. In the instance of the Hawaiian Home Lands, this engagement must occur with the State of Hawaii Department of Hawaiian Home Lands and Office of Hawaiian Affairs.

¹⁰⁵⁴ We direct the Office of Native Affairs and Policy (ONAP), in coordination with the Bureaus, to develop best practices regarding the Tribal engagement process to help facilitate these discussions.

¹⁰⁵⁵ *USF-ICC Transformation Notice*, 26 FCC Rcd at 4692, para. 456.

¹⁰⁵⁶ See, e.g., April 18 Comments of CTIA at 28 (“And the permitted rate of return unquestionably must be reduced from the current 11.25 percent level.”).

¹⁰⁵⁷ See, e.g., Pennsylvania PUC *August 3 PN* Comments at 19; N.E. Colorado Cellular *August 3 PN* Comments at 1, 17-8; Surewest Communications *USF/ICC Transformation NPRM* Comments at 18.

¹⁰⁵⁸ 47 U.S.C. §§ 201(b), 205(a).

¹⁰⁵⁹ *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, Order, 5 FCC Rcd 7507 (1990) (*1990 Prescription Order*).

¹⁰⁶⁰ *Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking, 13 FCC Rcd 20561 (1998) (*1998 Prescription Notice*).

Given the time that has elapsed since the authorized rate of return was last prescribed, and the major changes that have occurred in the market since then, we find that the authorized interstate rate of return should be reviewed and begin that process, seeking the information necessary to prescribe a new rate of return.¹⁰⁶²

640. The Commission's rules provide that the trigger for a new prescription proceeding is satisfied if the monthly average yields on ten-year United States Treasury securities remain, for a consecutive six month period, at least 150 basis points above or below the average of the monthly average yields in effect for the consecutive six month period immediately prior to the effective date of the current prescription.¹⁰⁶³ The monthly average yields for the past six months have been over 450 basis points below the monthly average yields in the six months immediately prior to the last prescription.¹⁰⁶⁴ Our trigger is easily satisfied, and we initiate the represcription now.

2. Procedural Requirements

641. Section 205(a) requires the Commission to give "full opportunity for hearing" before prescribing a rate.¹⁰⁶⁵ However, a formal evidentiary hearing is not required under section 205,¹⁰⁶⁶ and we have on multiple occasions prescribed individual rates in notice and comment rulemaking proceedings.¹⁰⁶⁷ Although we have found it useful in the past to impose somewhat more detailed requirements in rate of return prescription proceedings, we have expressly rejected the proposition that we could not "lawfully use simple notice and comment procedures to prescribe the rate of return authorized for LEC interstate access services."¹⁰⁶⁸ Accordingly, in the FNPRM we initiate a new rate of return prescription proceeding using notice and comment procedures, and on our own motion, we waive certain existing procedural rules to facilitate a more efficient process.

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¹⁰⁶¹ See *MAG Order*, 16 FCC Rcd at 19701, para. 208.

¹⁰⁶² See *infra* XVII.C.

¹⁰⁶³ 47 CFR § 65.101

¹⁰⁶⁴ See 10-Year Treasury Constant Maturity Rate (GS10), Federal Reserve Bank of St. Louis (*available at* <http://research.stlouisfed.org/fred2/series/GS10>) (last visited Oct. 21, 2011).

¹⁰⁶⁵ 47 U.S.C. § 205(a).

¹⁰⁶⁶ In *AT&T v. FCC*, for example, the Second Circuit made clear that because section 205 does not require a hearing "on the record," the Administrative Procedures Act (APA) does not require a full evidentiary hearing in section 205 prescription proceedings. 572 F.2d 17, 21-23 (2d Cir. 1978). Moreover, the court found that the language of section 205(a) itself did not impose greater hearing requirements than the APA – concluding that AT&T "may not complain that it had anything less than a 'full opportunity' to be heard" after receiving, in the context of the particular proceeding on review, three rounds of comments. 572 F.2d at 22.

¹⁰⁶⁷ See, e.g., *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, paras. 75-87 (1997), *aff'd* *Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998) (prescribing new limits on subscriber line charges for non-primary residential and multi-line business lines); *Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962, paras. 58, 70-75 (2000), *aff'd in pertinent part*, *Texas Office of Pub. Util. Counsel*, 265 F.3d 313 (5th Cir. 2001) (prescribing revised ceilings on subscriber line charges).

¹⁰⁶⁸ *Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes*, Report and Order, 10 FCC Rcd 6788, 6814, para. 55 (1995) (*Rate of Return Streamlined Rules R&O*). See generally *id.*, 10 FCC Rcd at 6814-15, paras. 55-57 (citing case law establishing that the "full opportunity for hearing" language of section 205 does not mandate "trial-type procedures in addition to, or instead of, notice and comment procedures").

642. The Commission's current interstate rate of return represetion rules in Part 65 contemplate a streamlined paper hearing process.¹⁰⁶⁹ These procedural rules are more specific and detailed than the Commission's rules for filing comments, replies, and written *ex parte* presentations in permit-but-disclose proceedings. The Part 65 rules require that:

- an original and four copies of all submissions must be filed with the Secretary (rule 65.103(d)),
- all participants in the proceeding state in their initial pleading whether they wish to receive service of documents filed in the proceeding (rule 65.100(b)), and filing parties must serve copies of their submissions (other than initial submissions) on all participants who properly so requested (rule 65.103(e)),
- parties may file "direct case submissions, responses, and rebuttals," with direct case submissions due 60 days after the beginning of the proceeding, responses due 60 days thereafter, and rebuttals due 21 days thereafter (rule 65.103(b)),
- direct case submissions and responses are subject to a 70-page limit, and rebuttals to a 50-page limit (rule 65.104(a)-(c)),
- parties must file copies of all information (such as financial analysts' reports) that they relied on in preparing their submissions (rule 65.105(a)), and
- parties may file written interrogatories and discovery requests directed at any other party's submissions, and the submitting parties may oppose those requests (rule 65.105(b)-(f)).

643. We find good cause to waive some of these procedural requirements on our own motion.¹⁰⁷⁰ We find that these procedures would be onerous and are not necessary to ensure adequate public participation. For instance, there is no need for parties to file an original plus four copies of submissions with the Secretary.¹⁰⁷¹ The Commission recently revised its rules to encourage electronic filing of comments and replies whenever technically feasible, and to require that *ex parte* submissions be filed electronically unless doing so poses a hardship.¹⁰⁷² Given the vast improvements to the electronic filing system, and the usual practice now of many parties to file documents electronically rather than on paper, we see no reason to require the submission of paper copies. Rather, parties to this proceeding may comply with our usual procedures in permit-but-disclosure proceedings.¹⁰⁷³ Pleadings other than *ex parte* submissions may be filed electronically or may be filed on paper with the Secretary's office. If they are filed on paper, the original and one copy should be provided.

644. The Part 65 rules also contemplate that all parties to the proceeding will be served with copies of all other parties' submissions.¹⁰⁷⁴ Again, this is no longer necessary. Before the greater and

¹⁰⁶⁹ 47 C.F.R. Part 65; *Rate of Return Streamlined Rules R&O*, 10 FCC Rcd at 6812-15, paras. 51-57.

¹⁰⁷⁰ 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1166 (D.C. Cir. 1990).

¹⁰⁷¹ 47 C.F.R. § 65.103(d).

¹⁰⁷² 47 C.F.R. § 1.1206(b)(2)(i); *Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1596 para. 6 (2011) (encouraging the migration to electronic filing).

¹⁰⁷³ Our rules already designate rate prescription proceedings under section 205 as permit-but-disclose for *ex parte* purposes. 47 C.F.R. § 1.1206(a)(10).

¹⁰⁷⁴ 47 C.F.R. §§ 65.100(b), 65.103(e).