

or controlled providers seeking to expand service on their Tribal lands. At the same time, we remain committed to our goal of awarding support in a fiscally responsible manner and targeting support to locations where it is most likely to make a difference. We are concerned that none of the alternatives suggested thus far would provide an effective means to maximize the impact of our limited budget to expand service as far as possible on unserved Tribal lands. In addition, we are committed to awarding funds openly, transparently, and fairly. We believe that any subjective mechanism to assess the merits of various proposals or any mechanism that would provide an absolute priority to Tribes that have established their own communications service provider is less likely to promote these objectives. Accordingly, we conclude that a reverse auction mechanism, together with the Tribal engagement and preferences we adopt below, would best achieve our goals in expanding service to Tribal lands in a respectful, fair, and fiscally responsible manner.

488. *Establishing Unserved Units.* For purposes of determining the number of unserved units in a given geographic area, we conclude that for a Tribal Phase I auction, a population-based metric is more appropriate than road miles, which will be used in a general Mobility Fund Phase I auction.⁸⁰⁶ While road miles generally best reflect the value of mobility, there are compelling concerns raised here that warrant a different approach in the context of Tribal lands. We are sensitive to concerns raised by Tribes that mobile wireless deployment to date on Tribal lands has largely centered along major highways and has, unlike other rural deployments, ignored population centers and community anchor institutions.⁸⁰⁷ Moreover, we observe that infrastructure generally is less developed on Tribal lands, particularly in Alaska.⁸⁰⁸ While we note that the stringent coverage requirement we incorporate here will help to mitigate the concern that these patterns could continue in Mobility-Fund-supported areas, we find that, taken together, this concern still suggests that a population-based metric is more appropriate for Tribal lands.

b. Tribal Engagement Obligation

489. Throughout this proceeding, commenters have repeatedly stressed the essential role that Tribal consultation and engagement plays in the successful deployment of mobile broadband service.⁸⁰⁹ We agree. For both the general and Tribal Mobility Fund Phase I auctions, we encourage applicants seeking to serve Tribal lands to begin engaging with the affected Tribal government as soon as possible but no later than the submission of its long-form.⁸¹⁰ Moreover, any bidder winning support for areas within Tribal lands must notify the relevant Tribal government no later than five business days after being identified by Public Notice as such a winning bidder. Thereafter, at the long-form application stage, in annual reports, and prior to any disbursement of support from USAC, Mobility Fund Phase I winning

⁸⁰⁶ In light of this conclusion, we note that the “drive tests” used to demonstrate coverage supported by Tribal Mobility Fund Phase I may be conducted by means other than in automobiles on roads. Providers may demonstrate coverage of an area with a statistically significant number of tests in the vicinity of residences being covered. Moreover, equipment to conduct the testing can be transported by off-road vehicles, such as snow-mobiles or other vehicles appropriate to local conditions.

⁸⁰⁷ See, e.g., NPM and NCAI *Mobility Fund NPRM* Comments at 7-8; Benton et al. *Mobility Fund NPRM* Reply at 11.

⁸⁰⁸ See, e.g., ACS *Mobility Fund NPRM* Comments at 2-3; Gila River *Mobility Fund NPRM* Comments at 3-4; NPM and NCAI *Mobility Fund NPRM* Comments at 5.

⁸⁰⁹ See, e.g., NPM and NCAI *Mobility Fund NPRM* Comments at 8-9; Navajo Commission *Mobility Fund NPRM* Reply at 4; Twin Houses *April 18 PN* Comments at 1-3, 6.

⁸¹⁰ We note, however, that any such engagement must be done consistent with our auction rules prohibiting certain communications during the competitive bidding process.

bidders will be required to comply with the general Tribal engagement obligations discussed *infra* in Section IX.A.⁸¹¹

c. Preference for Tribally-Owned or Controlled Providers

490. Consistent with record evidence⁸¹² and Commission precedent,⁸¹³ we adopt a preference for Tribally-owned or controlled providers⁸¹⁴ seeking general or Tribal Mobility Fund Phase I support. The preference will act as a “reverse” bidding credit that will effectively reduce the bid amount of a qualified Tribally owned- or controlled provider by a designated percentage for the purpose of comparing it to other bids, thus increasing the likelihood that Tribally-owned and controlled entities will receive funding. The preference will be available with respect to the eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribal entity seeking support. While commenters generally support a preference for Tribally-owned and controlled providers, we received no comment on the appropriate size of a bidding credit. We note that, in the spectrum auction context, the Commission typically awards small business bidding credits ranging from 15 to 35 percent, depending on varying small business size standards.⁸¹⁵ We believe that a bidding credit in that range would further Tribal self-government by increasing the likelihood that the bid would be awarded to a Tribal entity associated with the relevant Tribal land, without providing an unfair advantage over substantially more cost-competitive bids. Accordingly we adopt a 25 percent bidding credit.⁸¹⁶

d. ETC Designation for Tribally-Owned or Controlled Entities

491. To afford Tribes an increased opportunity to participate at auction, in recognition of their interest in self-government and self-provisioning on their own lands, we will permit a Tribally-owned or controlled entity that has an application for ETC designation pending at the relevant short-form application deadline to participate in an auction to seek general and Tribal Mobility Fund Phase I support for eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. We note that allowing such participation at auction in no way prejudices the ultimate decision on a Tribally-owned or controlled entity’s ETC designation and that support will be disbursed only after it receives such designation.⁸¹⁷

e. Tribal Priority

492. We conclude that further comment is warranted before we would move forward with a Tribal priority process that would afford Tribes “priority units” to allocate to areas of particular

⁸¹¹ See *infra* Section IX.A.

⁸¹² See NTTA *April 18 PN* Comments at 11; So Cal TDV *April 18 PN* Comments at 2; Twin Houses *April 18 PN* Comments at 3.

⁸¹³ See, e.g., *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 1583, 1587-97, paras. 7-27 (2010) (*Rural Radio R&O and FNPRM*); see also *Spectrum over Tribal Lands NPRM*, 26 FCC Rcd at 2635-37, paras. 35-40.

⁸¹⁴ Eligible entities include Tribes or tribal consortia, and entities majority owned or controlled by Tribes. *Rural Radio R&O and FNPRM*, 25 FCC Rcd at 1587, para. 7. Currently there are eight Tribally-owned and controlled providers.

⁸¹⁵ See 47 C.F.R. § 1.2110(f).

⁸¹⁶ See also *infra* para. 1166 (seeking comment on a proposal to adopt a similar credit for Mobility Fund Phase II).

⁸¹⁷ A Tribally-owned or controlled entity that does not obtain and provide the required ETC designation will not be entitled to any support payments and may ultimately be in default in accordance with the rules. See 47 C.F.R. § 54.1005(b)(3)(v); 47 C.F.R. § 1.21004.

importance to them.⁸¹⁸ As noted below, we are seeking additional input on this proposal in the context of the Tribal Mobility Fund Phase II. In the meantime, we believe that the Tribal engagement obligations we adopt here, combined with build-out obligations, will ensure that Tribal needs are met in bringing service to unserved Tribal communities in the Mobility Fund Phase I.

3. Mobility Fund Phase II

493. In addition to Phase I of the Mobility Fund, we also establish today Phase II of the Mobility Fund, which will provide ongoing support for mobile services in areas where such support is needed. As noted above, millions of Americans live in communities where current-generation mobile service is unavailable or where current-generation mobile service is available only with universal service support, and millions more work in or travel through such areas. Whereas Mobility Fund Phase I will provide one-time funding for the expansion of current and next generation mobile networks, here, we establish Phase II of the Mobility Fund in recognition of the fact that there are areas in which offering of mobile services will require ongoing support. We adopt a budget for Phase II below and seek further comment on the details of Phase II in the FNRPM accompanying this Order.

494. We designate \$500 million annually for ongoing support for mobile services, to be distributed in Phase II of the Mobility Fund. Of this amount, we anticipate that we would designate up to \$100 million to address the special circumstances of Tribal lands. We set a budget of \$500 million to promote mobile broadband in these areas, where a private sector business case cannot be met without federal support. Although the budget for fixed services exceeds the budget for mobile services, we note that today significantly more Americans have access to 3G mobile coverage than have access to residential broadband via fixed wireless, DSL, cable, or fiber.⁸¹⁹ We expect that as 4G mobile service is rolled out, this disparity will persist – private investment will enable the availability of 4G mobile service to a larger number of Americans than will have access to fixed broadband with speeds of at least 4 Mbps downstream and 1 Mbps upstream.⁸²⁰

495. In 2010, wireless ETCs other than Verizon Wireless and Sprint received \$921 million in high-cost support. Under 2008 commitments to phase down their competitive ETC support, Verizon Wireless and Sprint have already given up significant amounts of the support they received under the identical support rule, and there is nothing in the record showing that either carrier is reducing coverage or shutting down towers even as this support is eliminated. Nor is there anything in the record that suggests AT&T or T-Mobile would reduce coverage or shut down towers in the absence of ETC support. We therefore find that it reasonable to assume that the four national carriers will maintain at least their existing coverage footprints even if the support they receive today is phased out. In 2010, \$579 million flowed to regional and small carriers, *i.e.*, carriers other than the four nationwide providers.⁸²¹ Of this \$579 million, we know in many instances that this support is being provided to multiple wireless carriers in the same geographic area.⁸²² We also note that the State Members of the Federal State Joint Board on

⁸¹⁸ See discussion *infra*; see also *Tribal Mobility Fund Public Notice*, 26 FCC Rcd at 5998-99.

⁸¹⁹ See *15th Annual Mobile Wireless Competition Report*, 26 FCC Rcd at 9742-43, paras. 120-122. See also *Section 706 Seventh Report and Order on Reconsideration*, 26 FCC Rcd at 8049-51, App. B.

⁸²⁰ *15th Annual Mobile Wireless Competition Report*, 26 FCC Rcd at 9736-41, paras. 109-116 and Table 11.

⁸²¹ See *2010 Disbursement Analysis*.

⁸²² Federal Communications Commission Response to United States House of Representatives Committee on Energy and Commerce, Universal Service Fund Data Request of June 22, 2011, Request 7: Study Areas with the Most Eligible Telecommunications Carriers (Table 1: Study Areas with the Most Eligible Telecommunications Carriers in 2010), (*Waxman Report*) available at <http://republicans.energycommerce.house.gov/Media/file/PDFs/2011usf/ResponsetoQuestion7.pdf>.

Universal Service have proposed that the Commission establish a dedicated Mobility Fund that would provide \$50 million in the first year, \$100 million in the second year, and then increase by \$100 million each year until support reaches \$500 million annually.⁸²³ Thus, we believe that our \$500 million annual budget will be sufficient to sustain and expand the availability of mobile broadband. We anticipate as well that mobile providers may also be eligible for support in CAF 1 in areas where price cap carriers opt not to accept the state-level commitment, in addition to Mobility Fund Phase II support.

496. We recognize that some small proportion of geographic areas may be served by a single wireless ETC, which might reduce coverage if it fails to win ongoing support within our \$500 million budget. But the current record does not persuade us that the best approach to ensure continuing service in those instances is to increase our overall \$500 million budget. Rather, we have established a waiver process as discussed below, that a wireless ETC may use to demonstrate that additional support is needed for its customers to continue receiving mobile voice service in areas where there is no terrestrial mobile alternative.⁸²⁴

497. Of the \$500 million, we set aside up to \$100 million for a separate Tribal Mobility Fund, for the same reasons we articulated with respect to the Tribal Mobility Fund Phase I. In addition, we acknowledge that many Tribal lands require ongoing support in order to provide service and therefore designate a substantial level of funding to ensure that these communities are not left behind. We observe that this amount is roughly equivalent to the amount of funding currently provided to Tribal lands in the lower 48 states and in Alaska, excluding support awarded to study areas that include the most densely populated communities in Alaska.⁸²⁵

4. Eliminating the Identical Support Rule

498. *Background.* Section 54.307 of the Commission's rules, also known as the "identical support rule," provides competitive ETCs the same per-line amount of high-cost universal service support as the incumbent local exchange carrier serving the same area.⁸²⁶ As shown below, the identical support rule's primary role has been to support mobile services, although the Commission did not identify that purpose when it adopted the rule.⁸²⁷

⁸²³ State Joint Board May 2, 2011 Comments at 68-73 (proposing that this support be provided through grants awarded by States on a project-specific basis to fund 50 percent of the debt cost of new construction, with the grants to be paid over ten years).

⁸²⁴ See *infra* Section VII.G.

⁸²⁵ See NECA and USAC Data, USF Data Under USAC Memo of Understanding (Appendix C), CETCAAnalysisMOU5Extract.XLS, at http://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/CETCAAnalysisMOU5Extract.XLS (listing initial competitive ETC support payments by month and by incumbent local exchange carrier study area).

⁸²⁶ 47 C.F.R. § 54.307. In adopting the identical support rule, the Commission assumed that competitive ETCs would be competitive LECs (*i.e.*, wireline telephone providers) competing directly with incumbent LECs for particular customers. See *Universal Service First Report and Order*, 12 FCC Rcd at 8932, para. 286. Based on this assumption, the Commission concluded that high-cost support should be portable – *i.e.*, that support would follow the customer to the new LEC when the customer switched service providers. *Id.* at 8932-33, paras. 287-88. The Commission planned that eventually all support would be provided based on forward-looking economic cost estimates and not based on the incumbents' embedded costs. *Id.* at 8932, paras. 287. The Commission did not contemplate the complementary role that mobile service would play in the years ahead.

⁸²⁷ See *Universal Service First Report and Order*, 12 FCC Rcd at 8944-45 paras. 311-13. As discussed in paragraph 501, wireline competitive ETCs received only \$23 million out of \$1.2 billion disbursed to competitive ETCs in 2010. *2010 Disbursement Analysis*

499. In the NPRM, we sought comment on eliminating the identical support rule as we establish better targeted mechanisms to support mobility.⁸²⁸

500. The Federal-State Joint Board on Universal Service urged the Commission to eliminate the identical support rule in 2007, and the state members recently reiterated that viewpoint in this proceeding.⁸²⁹ In the current proceeding, a broad cross-section of stakeholders have advocated eliminating the identical support rule.⁸³⁰

501. In 2010, 446 competitive ETCs, owned by 212 holding companies, received funding under the identical support rule.⁸³¹ Aside from Verizon Wireless, which agreed in 2008 to give up its competitive ETC high-cost support as a condition of obtaining Commission approval of a transfer of control, the largest competitive ETC recipient by holding company in 2010 was AT&T, which received \$289 million.⁸³² Last year, about \$611 million went to one of the four national wireless providers, representing approximately 50 percent of competitive ETC support disbursed in 2010. The remaining \$602 million was disbursed to the other 208 competitive ETC holding companies. Of this, approximately \$23 million was disbursed to wireline competitive ETCs.

⁸²⁸ See American Cable Ass'n *USF/ICC Transformation NPRM Comments* at 18-19; Comcast *USF/ICC Transformation NPRM Comments* at 15; Iowa Utilities Board *USF/ICC Transformation NPRM Comments* at 9-10; Moss Adams *USF/ICC Transformation NPRM Comments* at 14; Rural Associations *USF/ICC Transformation NPRM Comments* at 57; Windstream *USF/ICC Transformation NPRM Comments* at 30-32; see also *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4677-78 paras. 403-07.

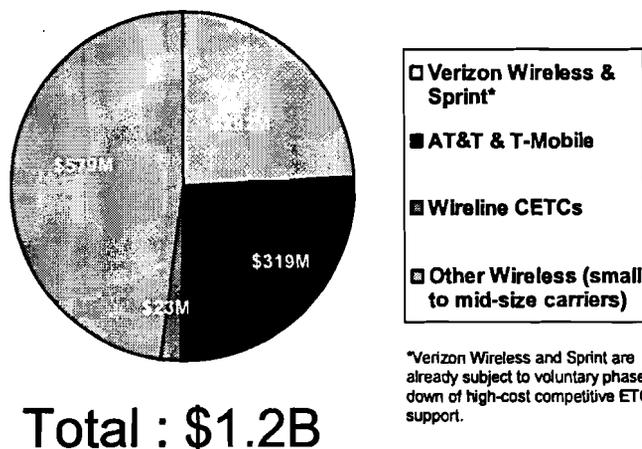
⁸²⁹ See *Joint Board 2007 Recommended Decision*, 22 FCC Rcd at 20491-94, paras. 55-68; State Joint Board Members *USF/ICC Transformation NPRM Comments* at 10.

⁸³⁰ See Verizon & Verizon Wireless *USF/ICC Transformation NPRM Comments* at 47-50; AT&T *USF/ICC Transformation NPRM Comments* at 90, 107; CenturyLink *USF/ICC Transformation NPRM Comments* at 30, 35; Windstream *USF/ICC Transformation NPRM Comments* at 30-32; Florida Public Service Commission *USF/ICC Transformation NPRM Comments* at 10-11; NASUCA *USF/ICC Transformation NPRM Comments* at 46-47. Several commenters supported retaining the identical support rule for some carriers, in some places, or with adjustments, but not as it currently exists for all competitive ETCs. See ACS *USF/ICC Transformation NPRM Comments* at 21 (proposing per-line freeze); Cox *USF/ICC Transformation NPRM Comments* at 10-11 & n.14 (proposing to retain identical support for wireline competitive ETCs until CAF is implemented); GCI *USF/ICC Transformation NPRM Comments* at 30 (proposing to retain identical support for Covered locations); Docomo Pacific et al *USF/ICC Transformation NPRM Comments* at 14-15 (proposing to retain identical support in U.S. Territories).

⁸³¹ Actual disbursements in 2010 were \$1.22 billion. *2010 Disbursement Analysis*; USAC High-Cost Disbursement Tool. These amounts include disbursements to Verizon Wireless and Sprint that USAC now is in the process of reclaiming pursuant to the *Corr Wireless Order*. *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, 25 FCC Rcd 12854, 12859-63, paras. 14-22 (2010) (*Corr Wireless Order*).

⁸³² *2010 Disbursement Analysis*; USAC High-Cost Disbursement Tool.

Total 2010 CETC Funding



502. *Discussion.* We eliminate the identical support rule. Based on more than a decade of experience with the operation of the current rule and having received a multitude of comments noting that the current rule fails to efficiently target support where it is needed, we reiterate the conclusion that this rule has not functioned as intended.⁸³³ As described in more detail below, identical support does not provide appropriate levels of support for the efficient deployment of mobile services in areas that do not support a private business case for mobile voice and broadband. Because the explicit support for mobility we adopt today will be designed to appropriately target funds to such areas, the identical support rule is no longer necessary or in the public interest.

503. The Commission anticipated that universal service support would be driven to the most efficient providers as they captured customers from the incumbent provider in a competitive marketplace. It originally expected that growth in subscribership to a competitive ETC's services would necessarily result in a reduction in subscribership to the incumbent's services. Instead, the vast majority of competitive ETC support has been attributable to the growing role of wireless in the United States. Overwhelmingly, high-cost support for competitive ETCs has been distributed to wireless carriers providing mobile services.⁸³⁴ Although nearly 30 percent of households nationwide have cut the cord and have only wireless voice service, many households subscribe to both wireline voice service and wireless voice service.⁸³⁵ Moreover, because households typically have multiple mobile phones, wireless competitive ETCs have been able to receive multiple subsidies for the same household. Although the

⁸³³ *Interim Cap Order*, 23 FCC Rcd at 8843-44, paras. 19-20. See also *supra* note 826.

⁸³⁴ USAC estimates that 95 to 97 percent of high-cost support to competitive ETCs is provided to wireless carriers. High-Cost Program Quarterly Statistics, "High-Cost Support Distribution by Wireless & Wireline CETCs, 1998-1Q2011" available at <http://www.usac.org/about/universal-service/fund-facts/fund-facts-high-cost-quarterly-program-statistics.aspx>

⁸³⁵ Blumberg & Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July – December 2010*, CDC Division of Health Interview Statistics, National Center for Health Statistics (rel. June 8, 2011) available at www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201106.pdf.

expansion of wireless service has brought many benefits to consumers, the identical support rule was not designed to efficiently provide appropriate levels of support for mobility.

504. The support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile voice service in a particular geography. In areas where the incumbent's support per line is high, a competitive ETC will receive relatively high levels of support per line, while it would receive markedly less support in an adjacent area with the same cost characteristics, if the incumbent there is receiving relatively little support per line. This makes little sense. Demographics, topography, and demand by travelers for mobile coverage along roads, as opposed to residences, are considerations that may create different business cases for fixed vs. mobile voice services in different areas, with a resulting effect on the level of need for subsidization.⁸³⁶ As a result of these and other differences in cost and revenue structures, the per-line amounts received by competitive ETCs are a highly imperfect approximation of the amount of subsidy necessary to support mobile service in a particular geographic area and such structures have simply missed the mark.

505. Given the way the identical support rule operates, wireless competitive ETCs often do not have appropriate incentives for entry. Some areas with per-line support amounts that are relatively high may be attracting multiple competitive ETCs, each of which invests in its own duplicative infrastructure. Indeed, many areas have four or more competitive ETCs providing overlapping service.⁸³⁷ These areas may be attracting investment that could otherwise be directed elsewhere, including areas that are not currently served. Conversely, in some areas the subsidy provided by the identical support rule may be too low, so that no competitive ETCs seek to serve the area, resulting in inadequate mobile coverage.

506. Moreover, today, competitive ETC support is calculated, and lines are reported, according to the billing address of the subscriber.⁸³⁸ Although the identical support rule provides a per-line subsidy for each competitive ETC handset in service, the customer need not use the handset at the billing address in order to receive support. Indeed, mobile competitive ETCs may receive support for some customers that rarely use their handsets in high-cost areas, but typically use their cell phones on highways and in towns or other places in which coverage would be available even without support.⁸³⁹ As currently constructed, the rule fails to ensure that facilities are built in areas that actually lack coverage.⁸⁴⁰

⁸³⁶ See *OBI Broadband Availability Gap*; see also Rural Associations *USF/ICC Transformation NPRM* Comments at 57 (“[d]ifferent network technologies provide different service functionalities and entail different construction, operating and maintenance costs”).

⁸³⁷ Most of Puerto Rico, including San Juan, is served by four or more competitive ETCs receiving support. See Universal Service Administrative Company, Federal Universal Service Support Mechanism Fund Size Projections for Fourth Quarter 2011, filed Aug. 2, 2011, at Apps. HC10, HC19. Similarly, four or more competitive ETCs are designated to serve much of Mississippi and Alabama, including sizable communities such as Jackson, Birmingham, and Huntsville, and along the Interstate highways and other major roadways of the state. *Id.* at App. HC21. See also *FCC Response to House Energy and Commerce Committee*, Table 1.

⁸³⁸ 47 C.F.R. § 54.307(b).

⁸³⁹ Conversely, some carriers have recognized that the use of billing addresses does not accurately represent the costs of serving their customers who reside in low-cost areas but use their mobile phones in remote areas, such as oil fields. See *Arctic Slope Tel. Ass'n Cooperative, Inc.*, Petition for Waiver of the Federal Communications Commission Rules Concerning the Administration of the Universal Service Fund, CC Docket No. 96-45 (filed Jan. 31, 2008); Letter from John Nakahata, Counsel to General Communications, Inc., to Dana Shaffer, FCC, filed January 26, 2009 (proposing alternative methods of locating customers for high-cost universal service purposes).

⁸⁴⁰ We acknowledge that ETC designations typically create build-out requirements for wireless carriers that are designated ETCs. See Mississippi PSC *USF/ICC Transformation NPRM* Comments at 4-6. However, we believe that federal support to advance our goal of achieving universal availability of mobile voice and broadband should (continued...)

507. We reject contentions that competitive ETCs serving certain types of areas should be exempted from elimination of the identical support rule.⁸⁴¹ For example, a number of commenters from Alaska suggest that Alaska should be excluded altogether from today's reforms, and that high-cost support should generally continue in Alaska at existing levels with redistribution of that support within the state.⁸⁴² We appreciate and recognize that Alaska faces uniquely challenging operating conditions, and agree that national solutions may require modification to serve the public interest in Alaska. We do not, however, believe that the Alaskan proposals ultimately best serve the interest of Alaskan consumers. We believe that the package of reforms adopted in the Order targeting funding for broadband and mobility, eliminating duplicative support, and ensuring all mechanisms provide incentives for prudent and efficient network investment and operation is the best approach for all parts of the Nation, including Alaska.

508. That said, it is important to ensure our approach is flexible enough to take into account the unique conditions in places like Alaska, and we make a number of important modifications to the national rules, particularly with respect to public interest obligations,⁸⁴³ the Mobility Funds,⁸⁴⁴ and competitive ETC phase down,⁸⁴⁵ to account for those special circumstances, such as its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season. Further, to the extent specific proposals have a disproportionate or inequitable impact on any carriers (wireline or wireless) serving Alaska, we note that we will provide for expedited treatment of any related waiver requests for all Tribal and insular areas.⁸⁴⁶ We believe this approach, on balance, provides the benefits of our national approach while taking into account the unique operating conditions in some communities. Analogous proposals to maintain existing wireline and wireless support levels in other geographic areas, including the U.S. Territories and other Tribal lands, suffer the same infirmities as the proposals related to Alaska,⁸⁴⁷ and are also rejected.

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provide direct incentives for the achievement of our goals, aligning support payments with deployment and coverage.

⁸⁴¹ See GCI *USF/ICC Transformation NPRM* Comments at 30 (proposing to retain identical support for Covered locations); Smith Bagley *USF/ICC Transformation NPRM* Comments at 9 (proposing to retain identical support for Covered Locations); Docomo Pacific et al *USF/ICC Transformation NPRM* Comments at 14-15 (proposing to retain identical support in Territories); ACS *USF/ICC Transformation NPRM* Comments at 21 (proposing "improved" identical support frozen on a per-line basis); Alaska Rural August 29 *USF/ICC Transformation NPRM* Comments at 7-11; National Tribal Telecom Ass'n *USF/ICC Transformation NPRM* Comments at 49; MTPCS *USF/ICC Transformation NPRM* Comments at 7-8; MTPCS & Viaero *USF/ICC Transformation NPRM* Comments at 22-24; IT&E *USF/ICC Transformation NPRM* Reply at 2. Nonetheless, as described below, see *infra* paras. 529-531, we delay the phase-down of identical support for certain competitive ETCs serving remote areas of Alaska and for Standing Rock Telecommunications, a Tribally owned competitive ETC, by two years. During that interim, the identical support rule will continue to apply in those areas, albeit subject to constraints. The identical support rule will be fully eliminated in all areas when the delayed phase-down begins.

⁸⁴² GCI *USF/ICC Transformation NPRM* Comments at 30; ACS *USF/ICC Transformation NPRM* Comments at 21; Alaska Rural August 3 *PN* Comments at 7-11.

⁸⁴³ See *supra* para. 101.

⁸⁴⁴ See *supra* paras. 481-492, 497.

⁸⁴⁵ See *infra* paras. 529-531.

⁸⁴⁶ See *infra* para. 544.

⁸⁴⁷ See, e.g., Smith Bagley *USF/ICC Transformation NPRM* Comments at 9; National Tribal Telecom Ass'n *USF/ICC Transformation NPRM* Comments at 49; MTPCS *USF/ICC Transformation NPRM* Comments at 7-8; (continued...)

509. We note that the elimination of the identical support rule applies also to competitive ETCs providing fixed services, including competitive wireline service providers. The reforms we adopt elsewhere in the Order are designed to achieve nearly ubiquitous broadband deployment. In those states where the incumbent price cap carrier declines to make a state-level commitment to build broadband in exchange for model-based support, all competitive ETCs will have the opportunity to compete to provide supported services. In other areas, where the incumbent service providers will be responsible for achieving the universal service goals, we find it would not be in the public interest to provide additional support to carriers providing duplicative services. In addition, in areas where unsubsidized providers have built out service, no carrier – incumbent or competitive – will receive support, placing all providers on even footing.⁸⁴⁸

510. We reject any arguments that we may not eliminate the identical support rule because doing so would prevent some carriers from receiving high-cost support. Section 254 does not mandate the receipt of support by any particular carrier. Rather, as the Commission has indicated and the courts have agreed, the “purpose of universal service is to benefit the customer, not the carrier.”⁸⁴⁹ ETCs are not entitled to the expectation of any particular level of support, or even any support, so long as the level of support provided is sufficient to achieve universal service goals. As explained above, we find that the identical support rule does not provide an amount to any particular carrier that is reasonably calculated to be sufficient but not excessive for universal service purposes.

511. For all of these reasons, we find the identical support rule does not effectively serve the Commission’s goals, and we eliminate the rule effective January 1, 2012.

5. Transition of Competitive ETC Support to CAF

512. *Background.* In the NPRM, we proposed to transition all existing support for competitive ETCs to a new CAF program over a five-year period.⁸⁵⁰ In the alternative, we proposed to transition existing support to the new CAF program over a five-year period, but to allow individual competitive ETCs to make either rules-based or waiver-based showings that would permit them to continue to receive support until the new CAF program had been implemented.⁸⁵¹ We also sought comment on GCI’s proposal that any transition of competitive ETC support to the CAF include an exception for competitive ETCs serving Tribal lands and Alaska Native regions (“covered locations”).⁸⁵²

513. *Discussion.* We transition existing competitive ETC support to the CAF, including our reformed system for supporting mobile service over a five-year period beginning July 1, 2012. We find that a transition is desirable in order to avoid shocks to service providers that may result in service disruptions for consumers. Several commenters supported longer transition periods, but we do not find their arguments compelling.⁸⁵³ We understand that current recipients would prefer a slower, longer
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Docomo Pacific et al. *USF/ICC Transformation NPRM Comments* at 14-15; IT&E *USF/ICC Transformation NPRM Reply* at 2.

⁸⁴⁸ See *supra* para. 170.

⁸⁴⁹ *Rural Cellular Association v. FCC*, 588 F.3d 1095, 1103 (D.C. Cir. 2009) (quoting *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000)). See also *supra* para. 293.

⁸⁵⁰ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4640-42, paras. 246-49.

⁸⁵¹ *Id.* at paras. 250-55.

⁸⁵² *Id.* at para. 259.

⁸⁵³ See RTG *USF/ICC Transformation NPRM Comments* at 4, 10; United States Cellular *USF/ICC Transformation NPRM Comments* at 15; USA Coalition at 22. Some commenters urged immediate elimination of competitive ETC funding. XO Communications *USF/ICC Transformation NPRM Comments* at 38-39; RICA *USF/ICC* (continued...)

transition that provides them with more universal service revenues under the current system. We find, however, that a five-year transition will be sufficient for competitive ETCs that are currently receiving high-cost support to adjust and make necessary operational changes to ensure that service is maintained during the transition.

514. Moreover, during this period, competitive ETCs offering mobile wireless services will have the opportunity to bid in the Mobility Fund Phase I auction in 2012 and participate in the second phase of the Mobility Fund in 2013. Competitive ETCs offering broadband services that meet the performance standards described above will also have the opportunity to participate in competitive bidding for CAF support in areas where price cap companies decline to make a state-level broadband commitment in exchange for model-determined support, as described above, in 2013. With these new funding opportunities, many carriers, including wireless carriers, could receive similar or even greater amounts of funding after our reforms than before, albeit with that funding more appropriately targeted to the areas that need additional support.

515. For the purpose of this transition, we conclude that each competitive ETC's baseline support amount will be equal to its total 2011 support in a given study area, or an amount equal to \$3,000 times the number of reported lines as of year-end 2011, whichever is lower.⁸⁵⁴ Using a full calendar year of support to set the baseline will provide a reasonable approximation of the amount that competitive ETCs would currently expect to receive, absent reform, and a natural starting point for the phase-down of support.

516. In addition, we limit the baseline to \$3,000 per line in order to reflect similar changes to our rules limiting support for incumbent wireline carriers to \$3,000 per line per year.⁸⁵⁵ As discussed above, the per-line amounts received by competitive ETCs are a highly imperfect approximation of the amount of subsidy necessary to support mobile service in a particular geographic area. There is no indication in the record before us that competitive ETCs need support in excess of \$3,000 per line to maintain existing service pending transition to the Mobility Fund. Moreover, if we did not apply the \$3,000 per line limit to the baseline amount for competitive ETCs, their baselines could, in some circumstances, be much higher than the amount that they would have been permitted had we retained the identical support rule going forward, due to other changes that may lower support for the incumbent carrier.

517. Because the amount of Mobility Fund Phase II support provided will be designed to provide a sufficient level of support for a mobile carrier to provide service, we find there is no need for any carrier receiving Mobility Fund Phase II support to also continue receiving legacy support. Therefore, any such carrier will cease to be eligible for phase-down support in the first month it is eligible to receive support pursuant to the Mobility Fund Phase II. The receipt of support pursuant to Mobility Fund Phase I will not impact a carrier's receipt of support under the phase-down. Similarly, the receipt of support pursuant to

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Transformation NPRM Comments at 11-15 (proposing immediate elimination of identical support rule, but support based on own costs); *see also* NASUCA *USF/ICC Transformation NPRM* Comments at 45 (proposing immediate elimination of IAS for competitive ETCs); Sprint Nextel *USF/ICC Transformation NPRM* Comments at 34 (proposing 3-year phase-down); Verizon *USF/ICC Transformation NPRM* Comments at 49-50 (proposing immediate 40 percent reduction).

⁸⁵⁴ For the purpose of this transition, "total 2011 support" is the amount of support disbursed to a competitive ETC for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012.

⁸⁵⁵ *See supra* paras. 272-279. For the purpose of applying the \$3,000 per line limit, USAC shall use the average of lines reported by a competitive ETC pursuant to line count filings required for December 31, 2010, and December 31, 2011. This will provide an approximation of the number of lines typically served during 2011.

Mobility Fund Phase II for service to a particular area will not affect a carrier's receipt of phase-down support in other areas.⁸⁵⁶

518. We note that, pursuant to section 214(e) of the Act, competitive ETCs are required to offer service throughout their designated service areas.⁸⁵⁷ This requirement remains in place, even as support provided pursuant to the identical support rule is phased down. A competitive ETC may request modification of its designated service area by petitioning the entity with the relevant jurisdictional authority.⁸⁵⁸ In considering such petitions, the Commission will examine how an ETC modification would affect areas for which there is no other mobile service provider, and we encourage state commissions to do the same.

519. Competitive ETC support per study area will be frozen at the 2011 baseline, and that monthly baseline amount will be provided from January 1, 2012 to June 30, 2012. Each competitive ETC will then receive 80 percent of its monthly baseline amount from July 1, 2012 to June 30, 2013, 60 percent of its baseline amount from July 1, 2013, to June 30, 2014, 40 percent from July 1, 2014, to June 30, 2015, 20 percent from July 1, 2015, to June 30, 2016, and no support beginning July 1, 2016. We expect that the Mobility Fund Phase I auction will occur in 2012, and that ongoing support through the Mobility Fund Phase II will be implemented by 2013, with \$500 million expressly dedicated to mobility. If the Mobility Fund Phase II is not operational by June 30, 2014, we will halt the phase-down of support until it is operational.⁸⁵⁹ We will similarly halt the phase-down of support for competitive ETCs serving Tribal lands if the Mobility Fund Phase II for Tribal lands has not been implemented at that time. We anticipate that any temporary halt of the phase-down would be accompanied by additional mobile broadband public interest obligations, to be determined.⁸⁶⁰

520. We note that Verizon Wireless and Sprint will continue to be subject to the phase-down commitments they made in the November 2008 merger Orders.⁸⁶¹ Consistent with the process we set forth in the *Corr Wireless Order*, their specific phase downs will be applied to the revised rules of general applicability we adopt today.⁸⁶² As a result, each carrier will have its baseline support calculated based on

⁸⁵⁶ In the FNPRM, we seek comment on whether competitive ETCs providing fixed service should be subject to a similar rule to the extent they win CAF Phase II support. *See infra* paras. 1095-1097.

⁸⁵⁷ 47 U.S.C. § 214(e). We seek comment on issues related to ETC service areas in the attached Further Notice. *See infra* paras. 1089-1120.

⁸⁵⁸ 47 U.S.C. §§ 214(e)(2), (6). A competitive ETC may also be required to seek redefinition of a rural telephone company's service area in some instances. 47 U.S.C. § 214(e)(5).

⁸⁵⁹ We estimate that this would stabilize competitive ETC phase-down support at approximately \$600 million annually.

⁸⁶⁰ The temporary halt will apply to wireline competitive ETCs as well as competitive ETCs providing mobile services. As noted above, *see supra* para. 501, wireline competitive ETCs receive a relatively small portion of total competitive ETC support and developing administrative procedures to separately address wireline competitive ETCs would be unduly administratively burdensome.

⁸⁶¹ *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements and Petition for Declaratory Ruling That the Transaction Is Consistent with Section 310(b)(4) of the Communications Act*, WT Docket No. 08-95, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444 (2008); *Sprint Nextel Corporation and Clearwire Corporation Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations*, WT Docket No. 08-94, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17570 (2008).

⁸⁶² *Corr Wireless Order*, 25 FCC Rcd at 12589-61, paras. 14-17. The *Corr Wireless Order* provided Sprint and Verizon Wireless each with two options regarding how the merger commitments would be applied. Option A (continued...)

disbursements, with a 20 percent reduction applied beginning July 1, 2012. Sprint, which elected Option A described in the *Corr Wireless Order*, will, in 2012, have an additional reduction applied as necessary to reduce its support to 20 percent of its 2008 baseline amount. Verizon Wireless, which elected Option B, will, in 2012, have an 80 percent reduction applied to the support it would otherwise receive. In 2013, neither carrier will receive phase down support, consistent with the commitments. To the extent that they qualify by remaining ETCs or obtaining ETC designations and agreeing to the obligations imposed on all Mobility Fund recipients, they will be permitted to participate in Mobility Fund Phases I and II.⁸⁶³

521. In determining this transition process, we also considered (a) applying the reduction factors to each state's interim cap amount, or (b) converting each competitive ETC's baseline amount to a per-line amount, to which the reduction factor would be applied. We reject these alternatives because they would provide less certainty regarding support amounts for competitive ETCs during the transition and would create greater administrative burdens and complexity. Under the first alternative, an individual competitive ETC's support would continue to be affected by line counts, support calculations and relinquishments for other, unrelated carriers within the state. Under the second alternative, a competitive ETC's support would fluctuate based on line growth or loss. We believe, on balance, that the additional certainty to all competitive ETCs and the administrative efficiencies for USAC of freezing study area support as the baseline, particularly at a time when considerable demands will be placed on USAC to implement an entirely new support mechanism, outweigh the potential negative impact to any individual competitive ETCs that otherwise might receive greater support amounts during the transition to the CAF. In addition, competitive ETCs will be relieved of the obligation to file quarterly line counts, which will reduce their administrative burden as well.

522. In the NPRM, we sought comment on whether exceptions to the phase down or other modified transitions should be permitted for some carriers.⁸⁶⁴ Although we adopt limited exceptions for some remote parts of Alaska described below and for one Tribally-owned carrier whose ETC designation was modified after release of the *USF-ICC Transformation NPRM*, we decline to adopt any general exceptions to our transition. Although some commenters have argued that broad exceptions will be needed, they did not generally provide the sort of detailed data and analysis that would enable us to develop a general rule for which carriers would qualify.⁸⁶⁵ The purpose of the phase down is to avoid unnecessary consumer disruption as we transition to new programs that will be better designed to achieve universal service goals, especially with respect to promoting investment in and deployment of mobile service to areas not yet served. We do not wish to encourage further investment based on the inefficient subsidy levels generated by the identical support rule. We conclude that phasing down and transitioning existing competitive support will not create significant or widespread risks that consumers in areas that

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established a fixed baseline support amount to which a specified reduction factor would be applied each year during the phasedown. After calculating the carrier's support pursuant to the Commission's rules, the carrier's support is reduced pursuant to the merger commitment only if the support exceeds the reduced baseline. *Id.* Under Option B, the carrier's baseline floats each quarter, based on the amount of support it is eligible to receive pursuant to the Commission's rules, and the specified reduction factor is applied to that support amount. Sprint elected Option A and Verizon Wireless elected Option B.

⁸⁶³ See *supra* paras. 386-410.

⁸⁶⁴ *USF/ICC Transformation NPRM*, 26 FCC Rcd at 4640-42, paras. 250-55.

⁸⁶⁵ See RTG *USF/ICC Transformation NPRM* Comments at 11; see also NASUCA *USF/ICC Transformation NPRM* Comments at 46 (arguing that fixed rules would be subject to abuse, but waivers may be necessary).

currently have service, including mobile service, will be left without any viable mobile service provider serving their area.⁸⁶⁶

523. We will, however, consider waiver requests on a case-by-case basis.⁸⁶⁷ Consistent with the phase-down support's purpose of protecting existing service during the transition to the Mobility Fund programs, we would not find persuasive arguments that waivers are necessary in order to expand deployment and service offerings to new areas. We anticipate that future investment supported with universal service support will be provided pursuant to the new programs.

524. The Commission will carefully consider all requests for waiver of the phase down that meet the requirements described above. We expect that those requests will not be numerous. We note that two of the four nationwide carriers – Verizon Wireless and Sprint – have already given up significant amounts of the support they received under the identical support rule, and there is no indication in the record before us that those companies have turned off towers as a consequence of relinquishing their support.

525. We note that the transition we adopt here will include those carriers currently receiving support under the Covered Locations exception to the interim cap and those carriers that have sought to take advantage of the own-costs exception to the cap.⁸⁶⁸ In adopting the Covered Locations exception to the funding cap in the 2008 *Interim Cap Order*, we recognized that penetration rates for basic telephone service on Tribal lands⁸⁶⁹ were lower than for the rest of the Nation, and we concluded that competitive ETCs serving those areas were not merely providing complementary services.⁸⁷⁰ Under this exception, competitive ETCs serving Tribal lands have operated without a cap, and have benefited from significant funding increases. Indeed, support provided for service in Covered Locations has nearly doubled, from an estimated \$72 million in 2008 to an estimated \$150 million in 2011, while competitive ETC high-cost support for the remainder of the nation was frozen.⁸⁷¹

526. We note that a significant numbers of supported lines under the Covered Locations exception are in larger cities in Alaska where multiple competitive ETCs often serve the same area.⁸⁷² The result is that a significant amount of support in Alaska is provided to competitive ETCs serving the three largest Alaskan cities, Anchorage, Fairbanks, and Juneau.⁸⁷³

⁸⁶⁶ As described, *supra* para. 509, we think any loss of service is particularly unlikely with respect to consumers served by competitive ETCs providing *fixed* services – e.g., wireline competitive ETCs – because the incumbent LEC in the area served by the competitive carrier is required to provide voice service throughout its service territory.

⁸⁶⁷ See *infra* paras. 539-544.

⁸⁶⁸ See *Interim Cap Order*, 23 FCC Rcd at 8848-49, para. 31-33.

⁸⁶⁹ Covered Locations were defined in the *Interim Cap Order* to include tribal lands or Alaska Native regions as those terms are defined in section 54.400(e) of the Commission's rules. See 47 C.F.R. 54.400(e) (tribal lands or Alaska Native regions are "any federally recognized Indian tribe's reservation, pueblo, or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments.").

⁸⁷⁰ See *Interim Cap Order*, 23 FCC Rcd at 8848, para. 32.

⁸⁷¹ See High-Cost Program Quarterly Statistics, "Covered Locations Study Area Support" available at <http://usac.org/about/universal-service/fund-facts-charts/Covered-Locations-Study-Area-Support.pdf>

⁸⁷² Universal Service Administrative Company, Federal Universal Service Support Mechanism Fund Size Projections For First Quarter 2012, filed Nov. 2, 2011, at App. HC19. Fifty-nine percent of competitive ETC lines in Alaska are in three study areas that include Anchorage, Juneau, and Fairbanks. *Id.* In each of those study areas, at least three competitive ETCs receive funding today.

⁸⁷³ Twenty percent of 2010 high-cost competitive ETC disbursements in Alaska were distributed to competitive ETCs serving the Anchorage, Fairbanks, and Juneau study areas alone. Competitive ETC Support by Incumbent (continued...)

527. The interim cap—along with its exceptions—was intended to be in place only until the Commission adopted comprehensive reforms to the high-cost program.⁸⁷⁴ We adopt those reforms today. It is therefore appropriate, as we transition away from the identical support rule and the interim cap to a new high-cost support mechanism, including for mobile services, that this transition should begin for all competitive ETCs, including those that previously received uncapped support under exceptions to the interim cap.

528. With respect to Covered Locations, we recognize the significant strides that competitive ETCs have made in Covered Locations in the last two years, and that more still must be done to support expanded mobile coverage on Tribal lands. But, as with the rest of the Nation, we conclude that the most effective way to do so will be through mechanisms that specifically and explicitly target support to expand coverage in Tribal lands where there is no economic business case to provide mobile service, not through the permanent continuation of the identical support rule.⁸⁷⁵ Our newly created Mobility Funds will provide dedicated funding to Tribal lands in a manner consistent with the policy objectives underlying our Covered Locations policy to continue to promote deployment in these communities.

529. We therefore lift the Covered Locations exception, and conclude that those carriers serving Tribal lands will be subject to the national five-year transition period. We find persuasive, however, arguments that carriers serving remote parts of Alaska,⁸⁷⁶ including Alaska Native villages, should have a slower transition path in order to preserve newly initiated services and facilitate additional investment in still unserved and underserved areas during the national transition to the Mobility Funds.⁸⁷⁷ Over 50 remote communities in Alaska have no access to mobile voice service today, and many remote Alaskan communities have access to only 2G services.⁸⁷⁸ While carriers serving other parts of Alaska will be subject to the national five-year transition period, we are convinced a more gradual approach is warranted for carriers in remote parts of Alaska. Specifically, in lifting the Covered Locations exception, we delay the beginning of the five-year transition period for a two-year period for remote areas of Alaska. As a result, we expect that ongoing support through the Mobility Fund Phase II, including the Tribal Mobility Fund Phase II, will be implemented prior to the beginning of the five-year transition period in July 2014

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Study Area by Month as Provided by USAC (Attach. C Report 5, submitted pursuant to Memorandum of Understanding between Federal Communications Commission and the Universal Service Administrative Company), available at <http://transition.fcc.gov/wcb/iatdineca.html>.

⁸⁷⁴ See *Interim Cap Order*, 23 FCC Rcd at 8834, para. 1.

⁸⁷⁵ See *supra* paras. 481-492, 497.

⁸⁷⁶ For purposes of this Order, we treat as remote areas of Alaska all areas other than the study areas, or portions thereof, that include the three major cities in Alaska with over 30,000 in population, Anchorage, Juneau, and Fairbanks. See <http://quickfacts.census.gov/qfd/states/02/0224230.html>. With respect to Anchorage, we exclude the ACS of Anchorage study area (SAC 613000) as well as Eagle River Zones 1 and 2 and Chugiak Zones 1 and 2 of the Matanuska Telephone Authority study area (SAC 619003). For Fairbanks, we exclude zone 1 of the ACS of Fairbanks (SAC 613008), and for Juneau, we exclude the ACS Alaska - Juneau study area (SAC 613012). We note that ACS and GCI concur that the study areas, or portions thereof, that include these three cities are an appropriate proxy for non-remote areas of Alaska. See Letter from John Nakahata, counsel to General Communications, Inc., to Marlene H. Dortch, Secretary, FCC (filed Oct. 21, 2011) (GCI/ACS Oct. 21 Letter). There is no evidence on the record that any accommodation is necessary to preserve service or protect consumers in these larger Alaskan communities.

⁸⁷⁷ GCI/ACS Oct. 21 Letter.

⁸⁷⁸ *Id.* at 2.

for remote parts of Alaska, providing greater certainty and stability for carriers in these areas.⁸⁷⁹ During this two-year period, we establish an interim cap for remote areas of Alaska⁸⁸⁰ for high-cost support for competitive ETCs, which balances the need to control the growth in support to competitive ETCs in uncapped areas and the need to provide a more gradual transition for the very remote and very high-cost areas in Alaska to reflect the special circumstances carriers and consumers face in those communities.⁸⁸¹

530. In addition, we adopt a limited exception to the phase-down of support for Standing Rock Telecommunications, Inc. (Standing Rock), a Tribally-owned competitive ETC that had its ETC designation modified within calendar year 2011 for the purpose of providing service throughout the entire Standing Rock Sioux Reservation.⁸⁸² We recognize that Tribally-owned ETCs play a vital role in serving their communities, often in remote, low-income, and unserved and underserved regions. We find that a tailored approach in this particular instance is appropriate because of the unique federal trust relationship we share with federally recognized Tribes,⁸⁸³ which requires the federal government to adhere to certain fiduciary standards in its dealings with Tribes.⁸⁸⁴ In this regard, the federal government has a longstanding policy of promoting Tribal self-sufficiency and economic development, as embodied in various federal statutes.⁸⁸⁵ As an independent agency of the federal government, “the Commission recognizes its own general trust relationship with, and responsibility to, federally recognized Tribes.”⁸⁸⁶ In keeping with this recognition, the Commission has previously taken actions to aid Tribally-owned

⁸⁷⁹ As noted above, carriers in remote areas of Alaska may not receive phase-down support in any area in which they receive support pursuant to either component of Mobility Fund Phase II. *See supra* para. 517. Further, we note that the halt of the phase-down described above would apply to remote areas of Alaska as well. *See supra* para. 519.

⁸⁸⁰ This cap will be modeled on the state-by-state interim cap that has been in place under the *Interim Cap Order*. 23 FCC Rcd at 8846, paras. 26-28. Specifically, the interim cap for remote areas of Alaska will be set at the total of all competitive ETC’s baseline support amounts in remote areas of Alaska using the same process described above. *See supra* paras. 515-516. On a quarterly basis, USAC will calculate the support each competitive ETC would have received under the frozen per-line support amount as of December 31, 2011 capped at \$3000 per year, and then, if necessary, calculate a state reduction factor to reduce the total amount down to the cap amount for remote areas of Alaska. Specifically, USAC will compare the total amount of uncapped support to the interim cap for remote areas of Alaska. Where the total uncapped support is greater than the available support amount, USAC will divide the interim cap support amount by the total uncapped amount to yield the reduction factor. USAC will then apply the reduction factor to the uncapped amount for each competitive ETC within remote areas of Alaska to arrive at the capped level of high-cost support. If the uncapped support is less than the available capped support amount, no reduction will be required.

⁸⁸¹ *See supra* paras. 507-508.

⁸⁸² *See Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Area; Petition for Reconsideration of Standing Rock Telecommunications, Inc.’s Designation as an Eligible Telecommunications Carrier on the Standing Rock Sioux Reservation*, WC Docket No. 09-197, Memorandum Opinion and Order on Reconsideration, 26 FCC Rcd 9160 (2011) (*Standing Rock Final ETC Designation Order*).

⁸⁸³ *See, e.g., Seminole Nation v. United States*, 316 U.S. 286, 296 (1942) (citations omitted).

⁸⁸⁴ *See, e.g., United States v. Mitchell*, 463 U.S. 206 (1983).

⁸⁸⁵ *See, e.g., The Indian Financing Act of 1974*, 25 U.S.C. § 1451(1974); *The Indian Self-Determination and Education Assistance Act of 1975*, 25 U.S.C. § 450 (1975); *The Indian Civil Rights Act of 1968*, 25 U.S.C. § 1301 (1968).

⁸⁸⁶ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078, 4080-81 (2000) (*Tribal Policy Statement*).

companies, which are entities of their Tribal governments and instruments of Tribal self-determination.⁸⁸⁷ For example, we have adopted licensing procedures to increase radio station ownership by Tribes and Tribally-owned entities through the use of a “Tribal Priority.”⁸⁸⁸

531. A limited exception to the phase-down of competitive ETC support will give Standing Rock, a nascent Tribally-owned ETC that was designated to serve its entire Reservation and the only such ETC to have its ETC designation modified since release of the *USF-ICC Transformation NPRM* in February 2011, the opportunity to ramp up its operations in order to reach a sustainable scale to serve consumers in its service territory. We find that granting a two-year exception to the phase-down of support to this Tribally-owned competitive ETC is in the public interest. For a two-year period, Standing Rock will receive per-line support amounts that are the same as the total support per line received in the fourth quarter of this year. We adopt this approach in order to enable Standing Rock to reach a sustainable scale so that consumers on the Reservation can realize the benefits of connectivity that, but for Standing Rock, they might not otherwise have access to.⁸⁸⁹

532. We conclude that carriers that have sought to take advantage of the “own-costs” exception to the existing interim cap on competitive ETC funds should not be exempted from the phase down of support. The “own costs” exception was intended to exempt carriers filing their own cost data from the interim cap to the extent their costs met an appropriate threshold.⁸⁹⁰ Because we are transitioning away from support based on the identical support rule and toward new high-cost support mechanisms, we see no reason to continue to make the exception available going forward.⁸⁹¹

F. Connect America Fund in Remote Areas

533. In this section, we establish a budget for CAF support in remote areas. This reflects our commitment to ensuring that Americans living in the most remote areas of the nation, where the cost of deploying wireline or cellular terrestrial broadband technologies is extremely high, can obtain affordable broadband through alternative technology platforms such as satellite and unlicensed wireless. As the National Broadband Plan observes, the cost of providing service is typically much higher for terrestrial networks in the hardest-to-serve areas of the country than in less remote but still rural areas.⁸⁹² Accordingly, we have exempted the most remote areas, including fewer than 1 percent of all American homes, from the home and business broadband service obligations that otherwise apply to CAF

⁸⁸⁷ See *Improving Communications Services for Native Nations*, CG Docket No. 11-41, Notice of Inquiry, 26 FCC Rcd 2672, 2677-78 (2011) (*Native Nations NOI*) (“Emphasizing the historic federal trust relationship between itself and the Tribes, and the ability of the Commission to create the Tribal Priority based on the constitutional classification of Tribes as governmental entities, the Commission limited eligibility for the Tribal Priority to Tribes and entities majority owned by Tribes and proposing to serve Tribal lands.”) (citing *Policies To Promote Rural Radio and To Streamline Allotment and Assignment Procedures*, MB Docket No. 09-52, First Report and Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1583, 1590, 1596) (*Rural Radio First Report and Order*)).

⁸⁸⁸ *Rural Radio First Report and Order*, 25 FCC Rcd at 1587-88.

⁸⁸⁹ According to its most recently reported line counts, Standing Rock reported serving only 808 lines. See Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for First Quarter 2012, at Apps. HC19, HC20 (filed Nov. 2, 2011).

⁸⁹⁰ *Interim Cap Order*, 23 FCC Rcd at 8848, para. 31. See also *id.* at 8850, para. 36 & n.108 (noting that the interim cap would go into effect immediately, but that the exceptions would go into effect only after approval of the relevant reporting requirements by the Office of Management and Budget).

⁸⁹¹ The Commission will address pending petitions filed pursuant to the own-cost exception in a separate proceeding.

⁸⁹² See National Broadband Plan at 138; OBI, Broadband Availability Gap at 6.

recipients.⁸⁹³ By setting aside designated funding for these difficult-to-serve areas, however, and by modestly relaxing the broadband performance obligations associated with this funding to encourage its use by providers of innovative technologies like satellite and fixed wireless, which may be significantly less costly to deploy in these remote areas, we can ensure that those who live and work in remote locations also have access to affordable broadband service.

534. Although we seek further comment on the details of distributing dedicated remote-areas funding in the Further Notice of Proposed Rulemaking accompanying this Order, we set as the budget for this funding at least \$100 million annually. Our choice of budget necessarily involves the reasonable exercise of predictive judgment, rather than a precise calculation: Many of the innovative, lower-cost approaches to serving hard to reach areas continue to evolve rapidly; we are not setting the details of the distribution mechanism in this Order; and we are balancing competing priorities for funding. Nevertheless, we conclude that a budget of at least \$100 million per year is likely to make a significant difference in ensuring meaningful broadband access in the most difficult-to-serve areas.

535. We note in this regard that some remote areas in rural America already have broadband that meets the performance requirements we establish above, and we do not envision that the dedicated funding we establish with this budget would be available in those areas. For example, the CQBAT model relied on by the ABC Plan predicts that there are 1.2 million residential and business locations where the forward-looking cost of wireline broadband service is greater than \$256 per month, and that of these, only approximately 670,000 locations are unserved by any terrestrial broadband.⁸⁹⁴

536. Based on the RUS's prior experience with dedicated satellite funding to remote areas, we are confident that a budget of at least \$100 million could make a significant difference in expanding availability of affordable broadband service at such locations. Satellite broadband is already available to most households and small businesses in remote areas,⁸⁹⁵ and is likely to be available at increasing speeds over time,⁸⁹⁶ but current satellite services tend to have significantly higher prices to end-users than terrestrial fixed broadband services, and include substantial up-front installation costs.⁸⁹⁷ To help overcome these barriers in the RUS's BIP satellite program, supported providers received a one-time

⁸⁹³ As described above, we have excluded from carriers' broadband service obligations in price-cap territories all areas where the model-estimated cost to serve a location is above an "extremely high cost" threshold. For rate-of-return areas, we may adopt a similar approach once the CAF model is finalized. In the meantime, rate-of-return carriers are required to extend broadband on reasonable request. *See supra* section VII.D.2. (Public Interest Obligations of Rate-of-Return Carriers).

⁸⁹⁴ Of the remainder, some areas already have broadband meeting our performance requirements, while other areas have some form of basic broadband that does not yet meet those requirements. *See* Letter from Mike Lieberman, AT&T, Michael D. Saperstein, Jr., Frontier, Jeffrey S. Lanning, CenturyLink, Maggie McCreedy, Verizon, Michael T. Skrivan, Fairpoint Communications, Frank Schueneman, Windstream, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, et al. (filed Sept. 28, 2011).

⁸⁹⁵ While such funding will be available to community anchor institutions, we observe that community anchor institutions in rural America often are located near the more densely populated area in a given county – the small town, the county seat, and so forth – which are less likely to be extremely high cost areas.

⁸⁹⁶ *See, e.g.,* Satellite Broadband Providers (DISH, EchoStar, Hughes, ViaSat, WildBlue) Joint Comments at 10-11; ViaSat Comments at 2-3, 5; Satellite Broadband Providers (DISH, EchoStar, Hughes, ViaSat, WildBlue) Joint Reply Comments at 3.

⁸⁹⁷ We seek comment below in the FNPRM on how and whether Remote Areas Fund support should be allocated to defray the higher startup costs for satellite services. *See infra* paras. 1269-1271.

upfront payment per location to offer service for at least one year at a reduced price.⁸⁹⁸ There has been substantial consumer participation in this program, with providers estimating that they would be able to provide service to approximately 424,000 people at the reduced rates.⁸⁹⁹ Were the FCC to take a similar approach in distributing the \$100 million we set aside for remote areas funding, we could, in principle, provide a one-time sign-up subsidy to *almost all* of the estimated 670,000 remote, terrestrially-unserved locations within 4 years.⁹⁰⁰

537. We emphasize that this calculation is only illustrative. For one, we do not anticipate restricting the technology that can be used for remote area support. To the contrary, we seek to encourage maximum participation of providers able to serve these most difficult to reach areas. In addition, the Commission may choose to disburse funding for remote areas in ways that either increase or decrease the dollars per supported customer, as compared to the RUS program. For example, the Commission may choose to provide ongoing support, in addition to or instead of a one-time subsidy, or we may adopt a means-tested approach to reducing the cost of service in remote areas, to target support to those most in need. We seek comment on each of these approaches in the Further Notice.

538. Notwithstanding this uncertainty, however, the record before us is sufficient for us to conclude that a budget of at least \$100 million falls within a reasonable initial range for a program targeted at innovative broadband technologies in remote areas. We expect to revisit this decision over time, and will adjust support levels as appropriate.

G. Petitions for Waiver

539. During the course of this proceeding, various parties, both incumbents and competitive ETCs, have argued that reductions in current support levels would threaten their financial viability, imperiling service to consumers in the areas they serve.⁹⁰¹ We cannot, however, evaluate those claims absent detailed information about individualized circumstances, and conclude that they are better handled in the course of case-by-case review. Accordingly, we permit any carrier negatively affected by the universal service reforms we take today to file a petition for waiver that clearly demonstrates that good cause exists for exempting the carrier from some or all of those reforms, and that waiver is necessary and in the public interest to ensure that consumers in the area continue to receive voice service.

⁸⁹⁸ Generally, providers must offer their Basic Service Package for no more \$50 per month for at least one year, with no length of service requirements. Certain exceptions apply to the extent a provider is offering a Basic Service Package for \$40 or less/month or for Expanded or Commercial Service Packages. In addition, providers must provide customer premise equipment (CPE) at no cost. See Broadband Initiatives Program, Request for Proposals. Federal Register 75 (7 May 2010) 25185-25195.

⁸⁹⁹ Spacenet, Inc., Echostar XI Operating LLC, Hughes Network Systems, and WildBlue Communications were awarded \$100 million in grant funds, with approximately 424,000 people standing to benefit nationwide. See Rural Utility Service, Press Release, *Satellite Awards, Broadband Initiatives Program* (Oct. 20, 2010) available at <http://www.rurdev.usda.gov/supportdocuments/BIPSatelliteFactSheet10-20-10.pdf>.

⁹⁰⁰ The CQBAT model relied on by the ABC plan indicates that there are approximately 670,000 remote, terrestrially-unserved locations. See *supra* note 894. The average number of people per household in the U.S. is 2.59, indicating that there are approximately 1,735,300 people living in remote locations. See U.S. Census Bureau, Current Population Survey, 2010 Annual Social and Economic (ASEC) Supplement, Table AVG1 (last visited Oct. 28, 2011) available at <http://www.census.gov/population/socdemo/hh-fam/cps2010/tabAVG1.xls>. Thus, if we took an approach similar to the RUS BIP, only 39,300 people (or approximately 15,000 households) would not have received a one time subsidy at the end of four years.

⁹⁰¹ See, e.g., Kansas Rural Independent Telephone Companies, et al. *August 3 PN Comments* at 2; RCA USF/ICC *Transformation Comments* at 22; Moss Adams LLP USF/ICC *Transformation Comments* at 4-9; Utah Public Service Commission USF/ICC *Transformation Comments* at 2.

540. We do not, however, expect to grant waiver requests routinely, and caution petitioners that we intend to subject such requests to a rigorous, thorough and searching review comparable to a total company earnings review. In particular, we intend to take into account not only all revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services as well.⁹⁰² The intent of this waiver process is not to shield companies from secular market trends, such as line loss or wireless substitution. Waiver would be warranted where an ETC can demonstrate that, without additional universal service funding, its support would not be “sufficient to achieve the purposes of [section 254 of the Act].”⁹⁰³ In particular, a carrier seeking such waiver must demonstrate that it needs additional support in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative. We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service using the same or other technologies that provide the functionalities required for supported voice service.⁹⁰⁴ We envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service to consumers using the same or other technologies that provide the functionalities required for supported voice service. We will also consider whether the specific reforms would cause a provider to default on existing loans and/or become insolvent. For mobile providers, we will consider as a factor specific showings regarding the impact on customers, including roaming customers, if a petitioner is the only provider of CDMA or GSM coverage in the affected area.

541. Petitions for waiver must include a specific explanation of why the waiver standard is met in a particular case.⁹⁰⁵ Conclusory assertions that reductions in support will cause harm to the carrier or make it difficult to invest in the future will not be sufficient.

542. In addition, petitions must include all financial data and other information sufficient to verify the carrier’s assertions, including, at a minimum, the following information:

- Density characteristics of the study area or other relevant geographic area including total square miles, subscribers per square mile, road miles, subscribers per road mile, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the area’s high costs.

⁹⁰² See Comcast August 3 PN Comments at 18-19.

⁹⁰³ 47 U.S.C. 254(e)

⁹⁰⁴ We do not require petitioners to demonstrate that satellite voice service is unavailable in the area at issue. The record before us does not conclusively establish that, at this time, satellite voice services (which typically involve higher latencies than terrestrial services) provide the same consumer benefits as terrestrial voice services. As satellite services evolve, we may revisit this issue.

⁹⁰⁵ Generally, the Commission may waive its rules for good cause shown. See 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. See *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.

- Information regarding existence or lack of alternative providers of voice and whether those alternative providers offer broadband.
- (For incumbent carriers) How unused or spare equipment or facilities is accounted for by providing the Part 32 account and Part 36 separations category this equipment is assigned to.
- Specific details on the make-up of corporate operations expenses such as corporate salaries, the number of employees, the nature of any overhead expenses allocated from affiliated or parent companies, or other expenses.
- Information regarding all end user rate plans, both the standard residential rate and plans that include local calling, long distance, Internet, texting, and/or video capabilities.
- (For mobile providers) A map or maps showing (1) the area it is licensed to serve; (2) the area in which it actually provides service; (3) the area in which it is designated as a CETC; (4) the area in which it is the sole provider of mobile service; (5) location of each cell site. For the first four of these areas, the provider must also submit the number of road-miles, population, and square miles. Maps shall include roads, political boundaries, and major topographical features. Any areas, places, or natural features discussed in the provider's waiver petition shall be shown on the map.
- (For mobile providers) Evidence demonstrating that it is the only provider of mobile service in a significant portion of any study area for which it seeks a waiver. A mobile provider may satisfy this evidentiary requirement by submitting industry-recognized carrier service availability data, such as American Roamer data, for all wireless providers licensed by the FCC to serve the area in question. If a mobile provider claims to be the sole provider in an area where an industry-recognized carrier service availability data indicates the presence of other service, then it must support its claim with the results of drive tests throughout the area in question. In the parts of Alaska or other areas where drive testing is not feasible, a mobile provider may offer a statistically significant number of tests in the vicinity of locations covered. Moreover, equipment to conduct the testing can be transported by off-road vehicles, such as snow-mobles or other vehicles appropriate to local conditions. Testing must examine a statistically meaningful number of call attempts (originations) and be conducted in a manner consistent with industry best practices. Waiver petitioners that submit test results must fully describe the testing methodology, including but not limited to the test's geographic scope, sampling method, and test set-up (equipment models, configuration, etc.). Test results must be submitted for the waiver petitioner's own network and for all carriers that the industry-recognized carrier service availability data shows to be serving the area in which the petitioner claims to be the only provider of mobile service.
- (For mobile providers). Revenue and expense data for each cell site for the three most recent fiscal years. Revenues shall be broken out by source: end user revenues, roaming revenues, other revenues derived from facilities supported by USF, all other revenues. Expenses shall be categorized: expenses that are directly attributable to a specific cell site, network expenses allocated among all sites, overhead expenses allocated among sites. Submissions must include descriptions the manner in which shared or common costs and corporate overheads are allocated to specific cell sites. To the extent that a mobile provider makes arguments in its waiver petition based on the profitability of specific cell sites, petitioner must explain why its cost allocation methodology is reasonable.
- (For mobile providers) Projected revenues and expenses, on cell-site basis, for 5 years, with and without the waiver it seeks. In developing revenue and expense projections, petitioner should assume that it is required to serve those areas in which it is the sole provider for the

entire five years and that it is required to fulfill all of its obligations as an ETC through December 2013.

- A list of services other than voice telephone services provided over the universal service supported plant, e.g., video or Internet, and the percentage of the study area's telephone subscribers that take these additional services.
- (For incumbent carriers) Procedures for allocating shared or common costs between incumbent LEC regulated operations, competitive operations, and other unregulated or unsupported operations.
- Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years. Specifically, the cash flow statement, income statement and balance sheets. Such statements shall include information regarding costs and revenues associated with unregulated operations, e.g., video or Internet.
- Information regarding outstanding loans, including lender, loan terms, and any current discussions regarding restructuring of such loans.
- Identification of the specific facilities that will be taken out of service, such as specific cell towers for a mobile provider, absent grant of the requested waiver.
- For Tribal lands and insular areas, any additional information about the operating conditions, economic conditions, or other reasons warranting relief based on the unique characteristics of those communities.

543. Failure to provide the listed information shall be grounds for dismissal without prejudice. In addition to the above, the petitioner shall respond and provide any additional information as requested by Commission staff. We will also welcome any input that the relevant state commission may wish to provide on the issues under consideration, with a particular focus on the availability of alternative unsubsidized voice competitors in the relevant area and recent rate-setting activities at the state level, if any.

544. We delegate to the Wireline Competition and Wireless Telecommunications Bureaus the authority to approve or deny all or part of requests for waiver of the phase-down in support adopted herein. Such petitions will be placed on public notice, with a minimum of 45 days provided for comments and reply comments to be filed by the general public and relevant state commission. We direct the Bureaus to prioritize review of any applications for waiver filed by providers serving Tribal lands and insular areas, and to complete their review of petitions from providers serving Tribal lands and insular areas within 45 days of the record closing on such waiver petitions.

H. Enforcing the Budget for Universal Service

545. As previously noted, we have established an annual budget for the high-cost portion of the USF of no more than \$4.5 billion for the next six years, which will include all support disbursed under legacy high-cost mechanisms as they are phased out as well as support under new mechanisms, including the CAF access replacement mechanism discussed more fully below.⁹⁰⁶ In this section, we address administrative issues regarding the implementation of that budget target.

546. Specifically, we adopt a framework that will permit the universal service fund to accumulate reserves in the near term to be used to facilitate the transition to the CAF and to fund one-time universal service expenses, such as the Mobility Fund Phase I, without causing undesirable volatility in the

⁹⁰⁶ See *infra* section XIII.

contribution factor. To do this, we amend section 54.709(b), giving the Commission greater flexibility to direct USAC to manage collections to mitigate fluctuations in the contribution factor. Using this new flexibility, we then provide instruction to USAC to set quarterly demand filings so that consumers collectively do not contribute more than \$4.5 billion on an annual basis to support service in rural and high cost areas. We also provide instructions to USAC for winding down the existing broadband reserve account established pursuant to the *Corr Wireless Order*.

1. Creating New Flexibility To Manage Fluctuations in Demand

547. *Background.* In the *Corr Wireless Order*, the Commission, among other actions, created a temporary reserve account in the Universal Service Fund for the purpose of funding future universal service program changes without causing undue volatility in the contribution factor.⁹⁰⁷ The Commission accomplished this through two actions. First, it instructed USAC, in its quarterly contribution factor demand filing, to forecast high-cost demand by competitive ETCs at the full amount of the interim cap on competitive ETC support, even if forecasted demand would otherwise be lower.⁹⁰⁸ Second, the Commission waived section 54.709(b) of its rules, which would otherwise require USAC to reduce its forecasted demand in a subsequent quarter by an amount equal to any excess contributions received.⁹⁰⁹ Pursuant to the waiver, the Commission instructed USAC not to make such prior period adjustments as they relate to competitive ETC support for a period of 18 months and to instead place the funds in a reserve account.⁹¹⁰ The eighteen-month waiver is due to expire on February 3, 2012. In addition to providing these instructions and waiving section 54.709(b), the Commission also sought comment on amending section 54.709(b) to permit it to provide alternative instructions to USAC in the future without waiving the rule.⁹¹¹

548. *Discussion.* We adopt the proposed amendment to section 54.709(b) to permit the Commission to instruct USAC to take alternative action with regard to prior period adjustments when making its quarterly demand filings. Currently, the section requires that excess contributions received in a quarter “will be carried forward to the following quarter.”⁹¹² We amend the rule to add paragraph 54.709(b)(1), which shall read, “The Commission may instruct USAC to treat excess contributions in a manner other than as prescribed in paragraph (b). Such instructions may be made in the form of a Commission Order or a Public Notice released by the Wireline Competition Bureau. Any such Public Notice will become effective fourteen days after release of the Public Notice, absent further Commission action.”

549. Permitting the Commission to modify its current treatment of excess contributions as necessary on a case-by-case basis will permit it to better manage the effects of one-time and seasonal events that may create undue volatility in the contribution factor. Programmatic changes, one-time distributions of support (such as Mobility Fund Phase I), and other transitional processes will likely cause

⁹⁰⁷ *Corr Wireless Order*, 25 FCC Rcd at 12862 paras. 20-22.

⁹⁰⁸ *Id.* at 12862 para. 21.

⁹⁰⁹ *Id.* at 12862-63 para. 22.

⁹¹⁰ *Id.*

⁹¹¹ *Id.* at 12863-64 paras. 25-26. In that NPRM, the Commission also sought comment on a modification to its rules governing the interim cap on competitive ETC support. *Id.* at para. 24. The Commission adopted the rule – reducing the interim cap amount when a competitive ETC relinquishes its ETC status – in a subsequent Order. *High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Request for Review of Decision of Universal Service Administrator by Corr Wireless Communications, LLC*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 25 FCC Rcd 18146 (2010).

⁹¹² 47 C.F.R. § 54.709(b).

the quarterly funding demands to fluctuate considerably until the transitions are complete, similarly to how large, unforecasted one-time contributions have caused significant fluctuations in the past.⁹¹³ The ability to provide specific, case-by-case instructions will allow the Commission to smooth the effects of such events on the contribution factor, rendering it more predictable for the consumers who ultimately pay for universal service.

550. In response to the NPRM seeking comment on whether to modify section 54.709(b), some commenters raise questions about whether section 254 of the Act provides the Commission the authority to establish a broadband reserve fund intended to make disbursements according to rules that were, at the time, not yet adopted.⁹¹⁴ As RICA put it, section 254 requires carriers to contribute to the “specific, predictable, and sufficient mechanisms established (not *to be* established) by the Commission to preserve and advance Universal Service.”⁹¹⁵ Verizon, similarly, suggests that section 254’s reference to “‘specific’ and ‘predictable’ USF programs and support—and contributions collected for ‘established’ universal service mechanisms—counsels against reserving support for mechanisms that do not yet exist.”⁹¹⁶ Nevertheless, for the reasons set forth below, we conclude that a broadband reserve account is consistent with section 254 of the Act.

551. Section 254(d) of the Act provides:

TELECOMMUNICATIONS CARRIER CONTRIBUTION.—Every telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service. The Commission may exempt a carrier or class of carriers from this requirement if the carrier’s telecommunications activities are limited to such an extent that the level of such carrier’s contribution to the preservation and advancement of universal service would be *de minimis*. Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.⁹¹⁷

⁹¹³ See, e.g., *AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services, Regulation of Prepaid Calling Card Services*, WC Docket Nos. 03-133 and 05-68, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4836-37 paras. 30-33 (2005) (ordering AT&T to restate revenues by an estimated \$160 million for universal service purposes).

⁹¹⁴ See Comments of Verizon and Verizon Wireless, WC Docket No. 05-337, CC Docket No. 96-45, at 5 (filed Oct. 5, 2010) (Verizon Corr Comments); Comments of Rural Telecommunications Group, Inc., WC Docket No. 05-337, CC Docket No. 96-45, at 3-5 (filed Oct. 7, 2010); Comments of Rural Independent Competitive Alliance, WC Docket No. 05-337, CC Docket No. 96-45, at 5 (filed Oct. 7, 2010) (RICA Corr Comments); Reply Comments of CTIA, WC Docket No. 05-337, CC Docket No. 96-45, at 8 (filed Oct. 21, 2010). In any event, that is not the case here. As set forth below, the temporary reserve was used to support the E-rate inflation adjustment in FY 2010, and will be used to fund Phase I of the Mobility Fund and CAF Phase I established by this Order. See *infra* paras. 564-567. Other commenters supported the Commission’s determination to create the reserve fund. See Comments of Free Press at 4 (filed Oct. 7, 2010) (“The Commission’s proposed implementation timetable for USF reform is appropriately aggressive. Under this timetable, it makes sense to keep the contribution factor stable by holding reserves as the Connect America Fund is designed and implemented.”). See also Comments of the Public Utilities Commission of Ohio at 6-7 (filed Oct. 7, 2010); Comments of Telephone Association of Maine at 2 (filed Oct. 7, 2010).

⁹¹⁵ RICA Corr Comments at 5 (emphasis in original).

⁹¹⁶ Verizon Corr Comments at 5.

⁹¹⁷ 47 U.S.C. § 254(d).

552. We do not read this language as limiting the Commission's authority to require contributions only to support specific mechanisms that are already established at the time the contributions are required, for several reasons.

553. Broadly speaking, we understand section 254(d) to be directed to explaining *who* must contribute to the Federal universal service mechanisms—specifically, telecommunications carriers that provide interstate telecommunications services, unless exempted by the Commission, as well as other providers of interstate telecommunications if the Commission determines the public interest so requires.⁹¹⁸ The reference in section 254(d) to “the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service” is not, as these commenters suggest, a limitation on what kinds of mechanisms—*i.e.*, already-established mechanisms—will be supported; it is instead a reference to language in section 254(b), which directs the Commission (as well as the Joint Board) to be guided by several principles in establishing universal service policies, including the principle that “[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.” In other words, it merely requires that contributions under section 254 are to be used to support the Federal mechanisms that are established under section 254.

554. We also find that commenters' argument is unpersuasive given the grammatical construction of the relevant section of the law. In the phrase “mechanisms established by the Commission,” the clause “established by the Commission” functions as an adjectival phrase identifying which mechanisms are funded through section 254(d). Specifically, the mechanisms funded by section 254(d) are the mechanisms “established by the Commission” consistent with the principles of section 254(b) (that they be specific, predictable, and sufficient). When used in this way, the word “established” is not a word in the past tense; it is not a word that signifies any particular tense at all.⁹¹⁹ Commenters who read the word “established” as signifying the past tense are, we conclude, improperly reading “already” into the phrase, so that it would read “mechanisms already established by the Commission.” Congress could have written the statute that way, but it did not. Admittedly, Congress could have written the statute in yet other ways that would have made clearer that these commenters' concerns are misplaced. But that indicates only that the statute is amenable to various interpretations. And for the reasons explained here, we conclude our interpretation is the better reading of the statute.

555. These commenters' view also raises troubling questions of interpretation, which we believe Congress did not intend. That is, under these commenters' reading of the statute, contributions may only

⁹¹⁸ Our understanding, in addition to being the most natural reading of the statute, is also consistent with the legislative history. See S. Conf. Rep. 104-230 at 131 (noting that section 254(d) “requires that all telecommunications carriers providing interstate telecommunications services shall contribute to the preservation and advancement of universal service.”).

⁹¹⁹ The D.C. Circuit has repeatedly held that where (as here) a statutory phrase is “simply an adjectival phrase, not a verbal phrase indicating the past tense,” the phrase “allows alternative temporal readings.” See *United States Dep't of the Treasury v. FLRA*, 960 F.2d 1068, 1072 (D.C. Cir. 1992) (the phrase “adversely affected” could reasonably be construed by FLRA to refer to future as well as past adverse effects); see also *County of Los Angeles v. Shalala*, 192 F.3d 1005, 1013 (D.C. Cir. 1999) (the statutory phrase “payments made” could reasonably be read to mean not just “payments that *have been* made,” but also “payments *to be* made”); *Administrators of Tulane Educ. Fund v. Shalala*, 987 F.2d 790, 796 (D.C. Cir. 1993) (the phrase “recognized as reasonable” in the Medicare Act “does not tell us whether Congress means to refer the Secretary to action already taken or to give directions on actions about to be taken”). See generally *Transitional Hospitals Corp. of Louisiana, Inc. v. Shalala*, 222 F.3d 1019, 1027-28 (D.C. Cir. 2000) (citing these cases with approval). The Supreme Court has endorsed the same principle of statutory construction. See *Regions Hospital v. Shalala*, 522 U.S. 448, 458 (1998) (the phrase “recognized as reasonable” in the Medicare Act is ambiguous; it could refer to “costs the Secretary (1) *has* recognized as reasonable for 1984 ... cost-reimbursement purposes, or (2) *will* recognize as reasonable as a base for future ... calculations”).