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

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| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| A National Broadband Plan for Our Future | ) | GN Docket No. 09-51 |
| | ) | |
| Establishing Just and Reasonable Rates for Local Exchange Carriers | ) | WC Docket No. 07-135 |
| | ) | |
| High-Cost Universal Service Support | ) | WC Docket No. 05-337 |
| | ) | |
| Developing a Unified Intercarrier Compensation Regime | ) | CC Docket No. 01-92 |
| | ) | |
| Federal-State Joint Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |
| Lifeline and Link-Up | ) | WC Docket No. 03-109 |
| | ) | |
| Universal Service Reform – Mobility Fund | ) | WT Docket No. 10-208 |

# THIRD ORDER ON RECONSIDERATION

**Adopted: May 14, 2012** **Released: May 14, 2012**

By the Commission: Commissioner Rosenworcel not participating.

1. In this Order, we reconsider and clarify certain aspects of the *USF/ICC Transformation Order* in response to various petitions for reconsideration and/or clarification.[1] The *USF/ICC Transformation Order* represents a careful balancing of policy goals, equities, and budgetary constraints. This balance was required in order to advance the fundamental goals of universal service and intercarrier compensation reform within a defined budget while simultaneously providing sufficient transitions for stakeholders to adapt. While reconsideration of a Commission's decision may be appropriate when a petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters, if a petition simply repeats arguments that were previously considered and rejected in the proceeding, due to the balancing involved in this proceeding, we are likely to deny it.[2]

2. With this standard in mind, in this Order we take several limited actions stemming from reconsideration petitions. We grant in part and deny in part petitions relating to certain aspects of eligible

[1] *See Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order* or *Order*); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Order on Reconsideration, 26 FCC Rcd 17633 (2011); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Second Order on Reconsideration, FCC 12-47 (rel. Apr. 25, 2012) (*Second Reconsideration Order*).

[2] *See* 47 C.F.R. § 1.429.

telecommunications carrier (ETC) reporting obligations, while maintaining our overall framework for ETC accountability. We also grant in part and deny in part a petition relating to universal service support adjustments for carriers with artificially low local rates, making a minor adjustment in the timing for the sampling of rates to be used in calculating any such adjustments. We also clarify certain implementation details for both the reporting requirements and the rate floor requirement. In addition, we make a minor adjustment to the rule relating to the calculation of baseline support for competitive carriers serving remote areas of Alaska. We also clarify that the framework established for rate-of-return companies to extend broadband upon reasonable request would take into account any unique circumstances, such as backhaul costs, that may impact the ability of such companies, in Alaska or elsewhere, to extend broadband to their customers. We also deny a number of other requests relating to support for carriers serving Alaska. We deny a request to reconsider which 12 months of revenues will be considered for purposes of defining Eligible Recovery. Finally, we deny a request to reconsider the use of tariff forecasts for calculating the baseline for rate-of-return carriers.

## I. REPORTING REQUIREMENTS

### A. Reporting Requirements for State-Designated ETCs

3. In the *USF/ICC Transformation Order*, we extended the annual reporting requirements to all recipients of high-cost/Connect America Fund (CAF) support. Previously, our rules required annual reports only from federally-designated ETCs.[3] A number of petitioners oppose requiring state-designated ETCs to file section 54.313 annual reports.[4] The Rural Associations argued in their petition that we should respect the rights and discretion of the states.[5] Petitioners also argued that it would be unfair to require state-designated ETCs to report in 2012 on information they were not previously required to maintain.[6] USTelecom and other commenters asked that we clarify that we intended to preempt state reporting requirements.[7] Finally, USTelecom argued that the Commission violated the Paperwork Reduction Act (PRA) by not seeking approval from the Office of Management and Budget for the expanded application of the requirements in section 54.313(a)(1)-(a)(6) to state-designated ETCs and because "[t]he new reporting requirements amount to a scatter-shot data collection effort—in many cases with no potential to add any value to Commission decision-making."[8]

[3] *See* 47 C.F.R. § 54.209(a).

[4] *See* Petition for Reconsideration and Clarification of the National Exchange Carrier Assoc., Inc. the Organization for the Promotion and Advancement of Small Telecomms Cos., and the Western Telecomms Alliance, CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 at 22-25 (filed Dec. 29, 2011) (Rural Associations Petition); *see also* Opposition of the Indep. Tel. & Telecomms. Alliance, WC Docket No. 10-90 *et al.*, at 8-10 (filed Feb. 9, 2012) (ITTA Opposition).

[5] Rural Associations Petition at 22.

[6] *See* USTelecom Petition at 19-20.

[7] *See, e.g.*, Petition for Reconsideration of the United States Telecom Assoc., CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WC Docket Nos. 03-109, 05-337, 07-135, 10-90; WT Docket No. 10-208 at 17 (filed Dec. 29, 2011) (USTelecom Petition); Opposition of CenturyLink, WC Docket No. 10-90, at 18 (filed Feb. 9, 2012) (CenturyLink Opposition); Comments of AT&T, WC Docket No. 10-90 *et al.*, at 13-14 (filed Feb. 9, 2012) (AT&T Comments); Letter from Mary L. Henze, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 2 (filed March 21, 2012) (urging the Commission to act swiftly on the USTelecom issues related to the new ETC reporting requirements set forth in section 54.313).

[8] USTelecom Petition at 16-17.

### 1. No Exemption for State-Designated ETCs

4. Rural Associations assert that the *USF/ICC Transformation Order* "provides no evidence of inadequate, negligent or otherwise unsatisfactory monitoring of state-designated ETCs by state commissions during the more than 14 years that they have been responsible for that task."[9] This assertion ignores the discussion in the *Order* of the GAO's criticism of the lack of accountability for recipients of high-cost support due to lack of uniformity in reporting requirements among the states.[10] As NCTA noted in its comments, "reporting is an essential element of every government subsidy program."[11] We decline to exempt state-designated ETCs from the reporting requirements imposed by new section 54.313. Petitioners have neither presented new evidence nor raised new arguments that persuade us to reconsider including state-designated ETCs within section 54.313's purview.

### 2. No Preemption of State Reporting Requirements

5. We next deny USTelecom's request to clarify that we intended to preempt state reporting requirements when we implemented new section 54.313. As we stated in the *USF/ICC Transformation Order*, the federal reporting requirements in section 54.313 are intended to "serve as a baseline requirement for all ETCs."[12] Indeed, Congress expressly provided the states a regulatory role in this area.[13] We did not preempt the states from imposing state-specific reporting requirements, as long as those additional reporting requirements do not create burdens that thwart achievement of the universal service reforms adopted by the Commission.[14] Parties have provided no evidence that the states will act in a way that burdens the federal support mechanism in response to the changes implemented by the *USF/ICC Transformation Order* and thus have neither presented new evidence nor raised arguments that persuade us to reconsider our decisions in this regard.

6. We also note that we do not expect state-designated ETCs to report to the Commission information in their 2012 filing that they were not previously required to collect. As the Wireline Competition Bureau stated in the *Clarification Order*, it would be impossible for entities that were not previously required to collect and report the information required by 54.313 with respect to their provision of voice service in 2011 to report such information to the Commission.[15] But if a state-designated ETC is subject to a state requirement to report some or all of this information annually to the state, then the ETC should file a copy of any relevant information with the Commission in 2012.[16] Requiring a state-designated ETC to file with the Commission the same information it already reports to a state commission imposes at most a minimal burden.

### 3. Paperwork Reduction Act Procedural Requirements

7. We disagree with the premise of USTelecom's argument that the Commission has violated the PRA by extending section 54.313(a)(1)-(a)(6)'s new reporting requirements to state-

[9] *See* Rural Associations Petition at 23.

[10] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17851-52, para. 577.

[11] Comments of the National Cable & Telecommunications Assoc., WC Docket No. 10-90 *et al.*, at 10 (filed Feb. 9, 2012) (NCTA Comments).

[12] *USF/ICC Transformation Order*, 26 FCC Rcd at 17852, para. 580; *see also id.* at 17850, para. 574 ("[T]he specific reporting and certification requirements adopted below are a floor rather than a ceiling for the states.").

[13] *See id.* at 17850-51, para. 574 (citing 47 U.S.C. § 254(f)).

[14] *See id.*

[15] *Connect America Fund*, WC Docket No. 10-90 *et al.*, Order, 27 FCC Rcd 605, 608, para. 10 (2012) (*USF/ICC Clarification Order*).

[16] *Id.*

designated ETCs. In fact, the Commission sought and has received OMB approval for these provisions.[17] Nor are we persuaded by USTelecom's general argument that the reporting requirements add no value to Commission decision making. As we explained in the *USF/ICC Transformation Order*, these requirements are necessary and appropriate "to ensure the continued availability of high-quality voice services and monitor progress in achieving our broadband goals and to assist the FCC in determining whether the funds are being used appropriately."[18] We find that Petitioners have neither presented new evidence nor raised arguments that persuade us to reconsider our decisions in this regard.

### B. Reporting Requirements for Carriers Whose Support Is Being Phased Down

8. Certain petitioners and commenters argue that it is unreasonable to impose the new reporting obligations on competitive ETCs whose support is being phased down.[19] In the *USF/ICC Transformation Order*, we stated that such ETCs "will not be required to submit any of the new information or certifications below related solely to the new broadband public interest obligations, but must continue to submit information or certifications with respect to their provision of voice service."[20] As the Bureau clarified in the *USF/ICC Clarification Order*, competitive ETCs that have been designated by the Commission are required to file information with respect to their provision of voice service during 2011, as previously required by section 54.209 of the Commission's rules.[21] These competitive ETCs, who have been subject to these reporting obligations since Commission designation, are not subject to new reporting obligations, and we therefore do not find it unreasonable to continue to impose this reporting obligation. More generally, all competitive ETCs are required to offer voice service throughout the designated study area, and the Commission has an obligation to ensure these ETCs, who will continue to receive support until the completion of the phase down, are complying with this requirement. Moreover, many state-designated competitive ETCs are already subject to reporting obligations related to the provision of USF-supported voice service. For these reasons, we conclude it is reasonable to require competitive ETCs to comply with annual reporting obligations during their phase-down, and we deny the request for reconsideration. Those filings will be due on the same date as reports filed by other ETCs, as discussed more fully below.

### C. Filing Deadline

9. In the *USF/ICC Transformation Order*, we established a filing deadline of April 1 for annual reports pursuant to new section 54.313,[22] with reporting under a number of those subsections not beginning until 2013 or later. A number of petitioners and commenters argued that April 1 was an unrealistic deadline for the new financial reporting imposed by section 54.313(f)(2). These petitioners and commenters argue that: (1) many of the affected carriers have never been audited before; (2) some carriers do not close their books until the end of the first quarter; (3) many carriers are often still awaiting

[17] 77 Fed. Reg. 26987 (2012) (announcing OMB approval of information collection); *see also Wireline Competition Bureau Announces Filing Deadline of July 2, 2012, for Eligible Telecommunications Carriers to File Reports Pursuant to Section 54.313(a)(2) through (a)(6) and (h) of the Commission's Rules*, WC Docket Nos. 10–90 *et al.*, Public Notice, DA 12-729 (rel. May 8, 2012).

[18] *USF/ICC Transformation Order*, 26 FCC Rcd at 17852, para. 580; *see also* NCTA Comments at 10.

[19] USTelecom Petition at 15; AT&T Comments at 10-11.

[20] *USF/ICC Transformation Order*, 26 FCC Rcd at 17853, para. 583.

[21] *USF/ICC Clarification Order*, 27 FCC Rcd at 608, para. 9. We note that federally-designated ETCs should have filed their annual reports by April 1, 2012. *See id.* As a result of the changes implemented by this Order, those entities will file their next annual reports by July 1, 2013.

[22] *Id.* at 17853, para. 581.

various financial documents on April 1; and (4) RUS Form 479 filings are not due until April 30.[23] AT&T also argued that ETCs operating in multiple states would have difficulty meeting an April 1 deadline.[24] Most of those petitioners argued that a filing deadline of July 1 or later would be reasonable.[25] Additionally, USTelecom noted in its Petition that states do not need a six-month lead time in order to complete their section 254(e) annual certifications.[26] On reconsideration, we conclude that moving the annual filing deadline three months later in the year would be appropriate. Because we are moving the filing deadline from April 1 to July 1, we decline to provide the automatic 60-day extension sought by the Alaska Rural Coalition.[27]

10. We hereby revise the filing deadline under section 54.313 to July 1. We do not, however, change the years in which the various filings begin to be due. Many states do not require annual reporting until on or after July 1, and they still have sufficient time to provide the annual section 254(e) certifications to the Commission by October 1.[28]

11. We also revise the filing deadline in section 54.1009(a) for annual reports required of recipients of Mobility Fund Phase I support.[29] In the *USF/ICC Transformation Order*, the Commission established April 1 as the deadline for Mobility Fund Phase I recipients to submit their annual reports.[30] In establishing the same filing deadline as that required for submission of annual reports pursuant to new section 54.313, the Commission aimed to minimize the administrative burden on Mobility Fund recipients that are subject to the new ETC annual reporting requirements under section 54.313 by permitting them to satisfy their Mobility Fund reporting requirements in a separate section of their report filed under section 54.313. Consequently, in order to maintain the uniform deadline for filing of these annual reports, we also move the Mobility Fund annual report filing deadline from April 1 to July 1.

12. We also revise the penalty deadlines in section 54.313(j). The Rural Associations argue in their petition that the penalties imposed by section 54.313(j) are "far more onerous than similar prior

[23] *See* Rural Associations Petition at 23-24; Letter from Todd Thorson, Kiesling Assocs., to Carol Mattey, FCC, WC Docket No. 10-90 *et al.* (received Dec. 22, 2011) (Kiesling 12/22/11 Ex Parte); Letter from David M. Marlett, Marlett & Assocs., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Dec. 27, 2011) (Marlett 12/27/11 Ex Parte); USTelecom Petition at 21-22; Petition for Reconsideration of the Alaska Rural Coalition, WC Docket No. 10-90 *et al.*, at 16-17 (filed Dec. 29, 2011) (Alaska Rural Coalition Petition); Petition for Clarification and/or Reconsideration of Comporium, WC Docket No. 10-90 *et al.*, at 7 (filed Dec. 29, 2011) (Comporium Petition); ITTA Opposition at 10-11; Comments on Request for Reconsiderations by the National Assoc. of State Utility Consumer Advocates and the NJ Div. of Rate Counsel, WC Docket No. 10-90 *et al.*, at 10 (filed Feb. 9, 2012) (NASUCA and NJ Div. of Rate Counsel Comments). We do not address here the other issues raised in these Petitions or Comments relating to the new financial reporting requirements.

[24] AT&T Comments at 21-22.

[25] *See, e.g.*, Alaska Rural Coalition Petition at 16-17; USTelecom Petition at 21; AT&T Comments at 20. The Rural Associations asked that the deadline be moved to September 1. *See* Rural Associations Petition at 25. Comporium, ITTA, and NASUCA requested an October 15 filing deadline. *See* Comporium Petition at 7; ITTA Opposition at 10; NASUCA and NJ Div. of Rate Counsel Comments at 10. The state certifications are due October 1 of each year. We have directed the states to rely on the information contained in the carriers' section 54.313 annual reports in making those certifications. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17861, para. 612. Because a September 1 deadline would put the carriers' annual reports due only one month before the states' annual certifications are due, *see* new 47 C.F.R. § 54.314, that would not provide sufficient time for state commissions to review the information, and we therefore decline to extend the filing deadline so far out.

[26] USTelecom Petition at 21.

[27] *See* Alaska Rural Coalition Petition at 17.

[28] USTelecom Petition at 21; CenturyLink Opposition at 20.

[29] 47 C.F.R. § §54.1009(a).

[30] *See id. See also USF/ICC Transformation Order*, 26 FCC Rcd at 17817, paras. 471-474.

rules that applied to individual high-cost support mechanisms because it reduces an ETC's entire USF and CAF support."[31] In fact, however, the Commission merely extended existing rules that applied to federally designated ETCs to all ETCs.[32] These mechanisms are necessary because they "incent prompt filing of requisite certifications and information necessary to calculate support amounts . . . [and] to ensure that support is being used for the intended purposes."[33] By moving the filing deadline from April 1 to July 1, carriers will have sufficient time to file their annual reports. ETCs that are unable to file their annual reports in a timely manner without cause will receive reduced levels of support commensurate with the lateness of their filings.[34] Thus, a carrier that files late will not immediately lose all support. Rather, that support will be prorated for each quarter the filing is late.[35] Those carriers that need more time can request a waiver, as needed, pursuant to the Commission's rules.[36]

13. We also take this opportunity to clarify that federally designated ETCs should file their 54.313 annual reports with the commissions of the states in which they operate and with the Tribal authorities, as appropriate. As the Commission noted in the *USF/ICC Transformation Order*, states are not required to file certifications with the Commission with respect to carriers that do not fall within their jurisdiction. However, consistent with the partnership between the Commission and the states to preserve and enhance universal service, and our recognition that states will continue to be the first place that consumers may contact regarding consumer protection issues, in the *Order* we encouraged states to bring to our attention issues and concerns about all carriers operating within their boundaries, including information regarding non-compliance with our rules by federally-designated ETCs. We also stated in the *Order* that we encourage Tribal governments, where appropriate, to report to the Commission any concerns about non-compliance with our rules by all recipients of support operating on Tribal lands.[37] Ensuring that the relevant Tribal government has access to the annual reports of any ETC operating on Tribal lands is a critical component of the trust relationship with those Tribal governments.

### D. Document Retention Period

14. In the *USF/ICC Transformation Order,* we imposed a 10-year document retention period on all ETCs receiving high-cost support. USTelecom and CenturyLink argued that we should reduce the new 10-year document retention period and reinstate the original 5-year retention period previously contained in section 54.202(e).[38] We are not persuaded, as we conclude that a longer period of time is necessary for purposes of litigation under False Claims Act cases.[39] Thus, we decline to revise the 10-year document retention period set forth in section 54.320. USTelecom further argued in its Petition that, should the Commission decline to reconsider the new ten-year retention period, the rule should apply only to "records accumulated from the effective date of the rule going forward."[40] While we agree that section 54.320 should apply prospectively only, we disagree with US Telecom on what constitutes prospective application. The new retention period shall apply to all covered documents in existence as of the effective

[31] Rural Associations Petition at 24.

[32] *USF/ICC Transformation Order*, 26 FCC Rcd at 17862, para. 616.

[33] *Id.*

[34] 47 C.F.R. § 54.313(j).

[35] *Id.*

[36] *See* 47 C.F.R. § 1.3.

[37] *USF/ICC Transformation Order*, 26 FCC Rcd at 17860, para. 611.

[38] USTelecom Petition at 22-24; CenturyLink Opposition at 20.

[39] 31 U.S.C. § 3731(a)-(b).

[40] *Id.*

date of section 54.320.[41] The rule as so interpreted is a permissible, prospective application of a new rule because it does not affect or penalize past behavior but instead affects only conduct going forward.

## II. REPORTING OF END USER RATES

15. *Background.* In the *USF/ICC Transformation Order*, the Commission adopted a rule to limit high-cost support for incumbent ETCs where end-user rates do not meet a specified local rate floor.[42] Specifically, high-cost loop support (HCLS) and high-cost model support (HCMS) will be limited where a carrier's local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus those state regulated fees. This was to ensure that the universal service fund was not being used to subsidize local service rates that are significantly lower than the national urban average.[43]

16. To implement this rule change, the *Order* directed carriers receiving HCLS and/or HCMS to report basic voice rates and state regulated fees each April 1 as part of their annual section 54.313 reports.[44] In addition, the Commission required carriers to report all of their rates for residential local service and the number of lines for each such rate so that USAC can calculate any necessary support adjustments.[45] The rules specified that the rates and lines filed by the carriers each April 1 would be those in effect as of each January 1 (*i.e.*, the rate sampling date).[46] The first phase of the reductions will begin July 1, 2012.

17. In a joint petition, ITTA and the Rural Associations (Joint Petitioners) seek clarification of whether rate changes occurring after January 1, 2012 would be reflected in the adjustment to high-cost support beginning July 1, 2012.[47] The Joint Petitioners assert that the timing of the *USF/ICC Transformation Order* would not otherwise permit the carriers sufficient time to implement rate changes to avoid reductions in support. The Joint Petitioners also request that the Commission adopt a process that would permit carriers to amend their filing if rates were increased after July 1. In addition, the Rural Associations asked the Commission to reconsider the use of the average urban rate for the rate benchmark, requesting instead that the benchmark be set two standard deviations below the nationwide average urban rate.[48] Accipiter requested reconsideration of the adoption of the rate floor in whole, arguing that it may not be permitted to raise rates by a state rate regulator, that the low local rates are

[41] Section 54.320 became effective upon publication of the effective date notice in the Federal Register on May 8, 2012. 77 Fed. Reg. 26987 (2012). Carriers should update their retention policies, procedures, and systems to ensure their compliance with the new retention period.

[42] *See USF/ICC Transformation Order*, 26 FCC Rcd at 18212-13, App. A, Section 54.318. This rule applies to both rate-of-return carriers and price cap companies.

[43] *See id.* ¶¶ 235-240.

[44] The Bureau subsequently clarified that support reductions based on rate floors will offset frozen CAF Phase I support only to the extent that the recipient's frozen CAF Phase I support replaced HCLS and HCMS. The offset does not apply to frozen CAF Phase I support to the extent that it replaced IAS and ICLS. *USF/ICC Clarification Order*, 27 FCC Rcd at 606, para. 3. Therefore, companies that receive HCMS will also be required to report their basic voice rates and state-regulated fees, so that USAC can determine any reductions in support that are required.

[45] *See* 47 C.F.R. §54.313(h). To the extent that residential local rates and state fees included in the rate benchmark vary within a carrier's service area, the carrier must report the number of lines associated with each rate area.

[46] 47 C.F.R. § 54.313(h).

[47] Petition for Clarification of Indep. Tel. and Telecomms. Alliance, National Exchange Carrier Assoc., National Telecomms. Cooperative Assoc., Organization for the Promotion and Advancement of Small Telecomms. Cos., and Western Telecomms. Alliance, WC Docket No. 10-90 *et al.* (filed Jan. 23, 2012).

[48] Rural Associations Petition, at 13-14.

necessary to provide bundled services at rates reasonably comparable to urban rates, and that the low local rates are necessary to compete with competitive local exchange carriers.[49]

18. *Discussion.* We grant Joint Petitioners' request with regard to the sampling date for the rate filing, and also to permit mid-year updates to reflect changes to rates. However, we deny the Rural Associations' and Accipiter's petitions for reconsideration.

19. As discussed above, we are changing the date that ETCs must file their annual section 54.313 reports, including data required for the rate floor, from April 1 to July 1.[50] Consistent with this broader change to section 54.313, we also change the sampling date set forth in section 54.313(h) from January 1 to June 1. The Commission's intent in specifying January 1 was to select a date relatively close to the annual filing deadline, but with the change of the annual filing deadline to July 1, we conclude that a six-month gap between the original sampling date of January 1 and the new reporting date of July 1 is too long. Thus, we change the sampling date to June 1. Moreover, this conforming rule change addresses Joint Petitioners' request that carriers be permitted additional time to implement rate changes to maintain their eligibility for support before reductions begin on July 1, 2012.

20. In addition, we agree that carriers should be permitted to file mid-year updates when their rates and/or associated fees increase in a way that would reduce or eliminate the amount of any associated support reductions. Permitting mid-year updates in such instances will ensure that only carriers with artificially low rates still in effect will face support reductions. As discussed in the *USF/ICC Transformation Order*, the fund should not be used to subsidize local rates far below the national average; however, where carriers have raised their rates, it is appropriate for us to take that into account. Accordingly, we amend our rules to add an optional filing for carriers to report increases in their local service rates or applicable state fees. Specifically, such carriers may report their revised rates and fees, as of December 1, on January 2 of each year. This mid-year update will be optional for any carrier that has increased local service rates or applicable state fees and which, therefore, would have a smaller reduction in high-cost universal service support.[51] We also make a corresponding change in our rule to address situations where rates and/or fees are reduced after the June 1st annual sampling date. The mid-year update will be required for any carrier when local service rates and/or applicable state fees decrease after the June 1st sampling date, which would lead to an increased reduction in high-cost universal service support.[52] USAC will use the updated local service rates and state fees to determine the support reduction beginning with January support payments and continue until the next rate floor filing. We note that collecting these mid-year updates will require additional approval from the Office of Management and

[49] Petition for Reconsideration and Clarification, Accipiter Communications, Inc., WC Docket No. 10-90 *et al.*, (field December 29, 2011), at 20-22 (Accipiter Petition).

[50] *See supra* para. 16 (revising the filing deadline under section 54.313 from April 1 to July 1). We note that two petitions requested waiver of the April 1, 2012, filing date for rate floor-related data. *See* Petition for Waiver of Crocket Tel. Co. Inc., Peoples Tel. Co., and West Tennessee Tel. Co., Inc., WC Docket No. 10-90 *et al.* (filed April 25, 2012) (requesting three-month extension of filing deadline to July 1, 2012); Petition for Waiver of Shoreham Tel. LLC, WC Docket No. 10-90 *et al.* (filed May 8, 2012) (requesting extension of filing deadline to June 1, 2012). Because the change to the filing date adopted in this Order on Reconsideration effectively provide the relief requested in these petitions, we dismiss the petitions as moot.

[51] If, for instance, a carrier reports rates and state fees as of June 1st that are below the applicable benchmark, but then its rates and/or fees increase on October 1st, it may report those increased rates and/or fees in its January 2nd update, so that USAC can modify the support reductions for the remainder of the year. If the rates and/or fees increase after the June 1st sampling date to a level above the applicable rate floor, such that the carrier no longer would be subject to any reduction due to the rate floor, it may notify USAC of those increased rates in the January 2nd filing. Carriers do not need to report these rates in subsequent annual filings, as long as they remain greater than or equal to the applicable benchmark for the rate floor.

[52] The mid-year update is required only if the local service rate or state fee reduction results in a reportable rate that is below the rate floor and would therefore be required pursuant to the annual filing.

Budget pursuant to the Paperwork Reduction Act. The mid-year update will not, therefore, take effect until the Commission has received such approval.

21. In addition, we make minor corrections to our rules to make clear that the residential local rate needs only to be reported to the extent that the sum of that rate, and state regulated fees as specified below, is below the effective rate floor, rather than requiring the reporting of all rates. To the extent the local rate plus relevant fees is above the relevant benchmark, there is no need for USAC to have this information in order to calculate any support reductions for lines that fall before the rate floor.[53] We also clarify an inadvertent inconsistency that exists between the text of the Order and the text of the rules regarding which rates must be reported. We clarify that carriers are required to report all rates for residential local voice service that are under the specified rate floor, and not just rates that are denominated "R-1" rates or "flat" rates.[54] It is necessary to apply the rate floor to all local residential service rates in order to avoid subsidization of rural rates that are significantly lower than the nationwide urban average, as intended by the Commission in adopting the rate floor.[55]

22. In response to a petition for clarification from the Vermont Public Service Board,[56] we clarify what constitutes the local rate for purposes of the rate floor. For local service provided pursuant to measured or message rate plans – in which customers do not receive unlimited local calling, but instead pay a per-minute or per-call charge for some or all calls – the local service rate reported by carriers should reflect the basic rate for local service plus the additional charges incurred for measured service,[57] using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit.[58] For customers subscribing to bundled service, carriers should report the local service rate as tariffed, if applicable, or as itemized on end-user bills. If a carrier neither tariffs nor itemizes the local voice service rate on bills for bundled services, it may report the rate

[53] We note, however, that all ETCs will be required to report voice and broadband price offerings, which could include rates above the rate floor benchmark, once the Bureau specifies the format for the pricing and service comparability survey and obtains PRA approval. *See* 47 C.F.R. § 54.313(a)(7). We also note that USAC may collect additional data, subject to PRA approval, as necessary to validate the carriers' rate floor filings.

[54] The language used in paragraph 594 of the Order that carriers "must report their flat rate for residential local service to USAC so that USAC can calculate reductions in support levels for those carriers with R1 rates below the specified rate floor" therefore should have read "must report their rates for residential local service to USAC so that USAC can calculate reductions in support levels for those carriers with local residential rates below the specified rate floor" to be consistent with the adopted rule.

[55] *USF/ICC Transformation Order*, 26 FCC Rcd at 17749-56, paras.235-47.

[56] Motion for Clarification of Vermont Public Service Board, WC Docket Nos. 10-90, *et al.* (filed December 28, 2011). The specific requests for clarification articulated in the Vermont Public Service Board's motion remain pending before the Commission.

[57] Measured service plans typically, but not always, include some units for additional usage – whether the units are minutes or calls – beyond the basic plan. The local service rate to be reported for purposes of the rate floor should include additional charges for measured service only to the extent that the average number of units used by subscribers to that rate plan exceeds the number of units that are included in the plan. Where measured service plans have multiple rates for additional units, such as peak and off-peak rates, the calculation should reflect the average number of units that subscribers to the rate plan pay at each rate. Providers therefore should report a local rate for purposes of the rate floor that accurately reflects the amount that end users are actually paying for local service.

[58] Additionally, we clarify that the same methodology will apply to calculating the "R1" or "1FR" Rate Ceiling Component Charge that limits rate increases for end users associated with intercarrier compensation reforms. In particular, this methodology should be used by carriers that do not tariff a flat rate for residential local service that includes unlimited local calling, *i.e.*, the local service rate reported by such carriers should reflect the basic rate for local service of the measured or message rate plan, plus the additional charges incurred for measured service, using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit. *See* 47 C.F.R. § 51.915(b)(11).

of a similar stand-alone local voice service that it offers to consumers in that study area. Finally, we take this opportunity to clarify that the only fees that may be included for purposes of meeting the urban rate floor are state SLCs, state universal service fees, and mandatory extended area service charges. As the Commission stated in paragraph 238 of the *USF/ICC Transformation Order*, "we will limit high-cost support where local end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory extended area service charges) do not meet an urban rate floor representing the national average of local rates plus such state regulated fees."[59] Accordingly, other state fees, such as state 911 fees, may not be included.

23. We next deny the Rural Associations' request for reconsideration. Adopting a rate benchmark of two standard deviations below the nationwide average urban rate could result in a rate benchmark so low as to be meaningless.[60] In any event, the Rural Associations have not provided any analysis to support its request, other than to note that the Commission has previously used a standard deviation analysis to set a different type of rate benchmark. In that case, the Commission used a standard deviation analysis as part of a framework to ensure that basic voice service rates in rural, high-cost areas served by non-rural carriers were not significantly higher than in urban areas.[61] Here the Commission addressed a different issue – ensuring that federal universal service does not subsidize basic voice service rates that are artificially low. Adopting the Rural Associations' proposal would undermine this goal. Moreover, the *USF/ICC Transformation Order* states that a voice rate will be presumed to be reasonable if it falls within two standard deviations *above* the national average.[62] Adopting the Rural Associations' proposal would require us to reconsider the broader determination that it is inappropriate for consumers across the country to subsidize the cost of service for some consumers that pay local service rates that are significantly lower than the national urban average,[63] which we decline to do.

24. Similarly, we are unpersuaded by Accipiter's request to abandon the rate floor altogether.[64] A state ratemaking authority may decide to exercise its discretionary authority in a manner that prevents a carrier from avoiding the support reduction associated with low rates, but that would not change the fact that the carrier has excessively low rates and may, in fact, be an indication that the carrier does not require additional subsidization to service the community. The local rate floor is not intended to address broadband rates or components within bundled rates other than voice service, and as such Accipiter's argument regarding its ability to offer bundled services is irrelevant; here, all we are looking at is the rate for local voice service. The Commission sought comment on issues relating to comparability of pricing for broadband in the *Further Notice*.[65] Finally, we decline to eliminate the rate floor based on Accipiter's unsupported suggestions of possible competitive harm. We are not persuaded that the appropriate response to unsubsidized competitors with low rates is to provide greater subsidies for the incumbent carrier in the competitive areas. Accordingly, we deny Accipiter's petition for reconsideration.

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[59] *USF/ICC Transformation Order*, 26 FCC Rcd at 17751, para. 238.

[60] Standard deviation is a statistical measure of dispersion of data points around an average. Assuming a normal distribution of data points (*i.e.*, a bell curve), the range of data points within two standard deviations of the average would be expected to include 95 percent of the data points.

[61] Specifically, the Commission required states to certify that those rates were reasonably comparable – i.e., fell below the nationwide urban rate benchmark, which was set at two standard deviations above the average urban rate – or explain why they are not. *See* 47 C.F.R. § 54.316 (2011).

[62] *USF/ICC Transformation Order*, 26 FCC Rcd at 17694, para. 84.

[63] *See* id. at 17751, para. 237.

[64] Accipiter Petition, at [[x]].

[65] *USF/ICC Transformation Order,* 26 FCC Rcd at 18046-47, paras. 1018-27.

## III. UNIVERSAL SERVICE SUPPORT FOR ALASKA

25. In this section, we address petitions for reconsideration filed by General Communications, Inc. (GCI) and by the Alaska Rural Coalition relating to several universal service issues in Alaska.

26. At the outset, however, we note that the State of Alaska has expressed concern with the Commission's use of the term "Tribal lands" as that term relates to areas of Alaska.[66] In the *USF/ICC Transformation Order*, the Commission adopted a definition of "Tribal lands" for the purposes of high-cost support.[67] Though it does not object to the definition of "Tribal lands" adopted by the Commission, the State of Alaska asserts that the use of the term "Tribal lands" might engender confusion in light of Alaska's unique circumstances, and it suggests that Commission should have used the term "Tribal lands and Alaska Native Regions" instead to reduce the possibility of such confusion.[68] We decline to adopt the term proposed by the State of Alaska because we conclude that doing so could create more confusion than it might resolve, given the varying legal status of the other types of land included within the defined term Tribal lands. We clarify, however, that the use of the term Tribal lands in this context was not intended to alter the legal status of such lands for purposes unrelated to high-cost support.

27. In the *USF/ICC Transformation Order*, the Commission for the first time established ubiquitous mobile service as a universal service goal. To meet this goal, the Commission established a new support mechanism for mobile competitive ETCs within the CAF—the Mobility Fund—and provided for a five-year transition away from the support mechanism under which such carriers previously received support.[69] For most competitive ETCs, that five-year period begins on July 1, 2012.[70] However, for competitive ETCs serving remote areas in Alaska, the Commission delayed the beginning of the five-year transition period by two years and further provided that any phase-down of support would only commence following implementation of Mobility Fund Phase II, including its Tribal component.[71] During that two-year period, the Commission established an interim cap for remote parts of Alaska, modeled on the state-by-state interim cap that was established in the 2008 *Interim Cap Order*.[72]

### A. GCI's Petition for Reconsideration

28. GCI requests that the Commission reconsider several aspects of how the *USF/ICC Transformation Order* rationalizes support for competitive ETCs serving remote parts of Alaska. GCI

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[66] *See* Reply Comments of the State of Alaska, Department of Administration, WC Docket No. 10-90 *et al.* (filed Feb. 17, 2012) (State of Alaska Reply Comments).

[67] The Order defined "Tribal lands," for the purposes of high-cost support, to include "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 Settlements [sic] Act (85 Stat. 688) and Indian Allotments, *see* § 54.400(e), as well as Hawaiian Home Lands – areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat. 108, et seq., as amended." 47 C.F.R. § 54.5. *See also USF/ICC Transformation Order*, 26 FCC Rcd at 17711, para. 126 n.197. We take this opportunity to correct the misspelling of the Alaska Native Claims Settlement Act in our definition of "Tribal lands."

[68] *See* State of Alaska Reply Comments at 2-3.

[69] Within the CAF, the Commission established both a Phase I and a Phase II of the Mobility Fund, as well as a Tribal Mobility Fund. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17674-75, para. 28.

[70] *See id.* at 17830-31, para. 513.

[71] *See id.* at 17835-36, para. 529.

[72] *See id.* at 17835-36, para. 529 & n.880; *see also High-Cost Universal Service Support et al.*, WC Docket No. 05-337 et al., Order, 23 FCC Rcd 8834 (2008) (*Interim Cap Order*).

first asks that we reconsider the decision to transition support away from the identical support rule, under which competitive ETCs previously received universal service funding, to the Mobility Fund.[73] GCI argues: "Before commencing cuts to Remote Alaska support, the Commission should review the results of its Mobility Fund and Connect America Fund mechanisms, as well as the impact of capped support, to determine whether they, in fact, would provide sufficient support for Remote Alaska."[74]

29. While we appreciate the significant challenges that carriers serving Alaska face, we are not persuaded that we should reconsider the transition from the prior identical support system to the Mobility Fund for competitive ETCs serving remote portions of Alaska. In the *Order*, the Commission concluded that "[i]t is clear that the current system [of support for competitive ETCs] does not efficiently serve the nation."[75] In particular, the Commission noted, the identical support rule, under which support for competitive ETCs had long been provided, "d[id] 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."[76] To the contrary, "support levels generated by the identical support rule bear no relation to the efficient cost of providing mobile voice service in a particular geography," and, as a consequence, support in some areas was excessive while support in other areas may have been set too low.[77] And so in some areas, multiple competitive ETCs, each with its own facilities, might receive support, while in others, no carrier would seek to serve the area.[78] For these and the many other reasons set out in the *Order*, the Commission eliminated the identical support rule.

30. We see no persuasive reason why we should maintain the identical support rule in Alaska given our conclusion that it is an inefficient, poorly targeted mechanism for distributing support to competitive ETCs. Instead, we remain committed to transitioning to an efficient, incentive-based mechanism for ongoing support of mobile service. Because the Commission provided that support for carriers serving remote areas of Alaska would not begin to be phased down until after Mobility Fund Phase II, including its Tribal component, was implemented, support levels for these areas in Alaska will generally remain unchanged until the replacement mechanism is in place.[79] We will monitor the performance of all of the new support mechanisms, and, if circumstances warrant, we will adjust them as appropriate. But we are not persuaded now that they will fail to provide appropriate and sufficient support, and we therefore decline to modify the rules as requested.

31. In the alternative, GCI proposes that we make two changes to the interim cap for remote areas of Alaska and revise the baseline amount from which carriers will be phased down after the two-year delay. First, GCI asks that we modify the scope of the interim cap adopted for remote areas of Alaska in the *USF/ICC Transformation Order*. As adopted, the delayed phase-down applies only to carriers that previously had elected to take advantage of the Covered Locations exception to the 2008 interim cap, which permitted carriers to receive uncapped support (*i.e.*, to be exempt from the cap) if they

[73] General Communication Petition for Reconsideration, WC Docket No. 10-90 *et al.*, at 4 (filed Dec. 23, 2011) (GCI Petition).

[74] *Id.* at 6.

[75] *USF/ICC Transformation Order*, 26 FCC Rcd at 17772, para. 296.

[76] *Id.* at 17827, para. 502.

[77] *Id.* at 17828, para. 504-05.

[78] *See id.* at 17828, para. 505.

[79] *See id.* at 17835-36, para. 529 & n.879. Although competitive ETCs serving remote areas of Alaska are generally subject to a delayed phase down of support, they are not exempt from the $3000 annual per line cap the Commission adopted. *See id.* at 17836, para. 529 n.879.

certified that they served Tribal areas (*i.e.*, areas "covered" by the exception).[80] GCI requests that we modify that rule so that *all* competitive ETCs serving remote Alaska would be included in the cap, and that the cap be expanded to account for the support such carriers previously received.[81]

32. There is only one carrier that serves portions of remote areas of Alaska but did not take advantage of the Covered Locations exception: the competitive ETC Dobson Communications, which was acquired by AT&T several years ago. Under the old interim cap, carriers like AT&T that did not certify that they served Covered Locations received less support per line than carriers that did so certify. GCI proposes that we include AT&T in the remote Alaska mechanism, but continue to provide AT&T with the lower support amount per line that it received by virtue of not taking advantage of the Covered Location exception.[82]

33. GCI argues that including AT&T in the delayed phase-down for remote Alaska will improve incentives for participating carriers to make investments in unserved and underserved areas in remote Alaska.[83] GCI notes that adding AT&T to the remote Alaska mechanism would increase the total size of the cap for remote Alaska and would reduce each carrier's relative share of the total, which means that every time a carrier gains a customer (relative to other carriers), the operation of the cap would result in more of the incremental support associated with that customer "coming from" other carriers rather than the carrier itself. In addition, GCI claims that excluding AT&T from the remote Alaska mechanism would separately reduce AT&T's incentive to invest in those areas.

34. We are not persuaded that we should modify the rule as GCI requests. We note that GCI does not dispute that the cap mechanism provides incentives to make investments in unserved and underserved areas. Rather, GCI argues that its proposal would enhance those incentives. But, while GCI may be correct that, theoretically, a smaller pie (and larger relative shares) means less reward (and thus less incentive) for *improving* a carrier's position relative to its competitors, the opposite is true about the incentives to avoid *losing* relative position. That is, with a smaller pie (and larger shares), each carrier has a *greater* incentive to ensure that it does not lose customers relative to others (and, if others are gaining customers, to ensure that it gains customers proportionately). The incentive argument thus cuts both ways, and we do not find it compelling. Moreover, it is unclear how much the purported differences in incentives, over this time frame, would actually alter carriers' behavior

35. Nor are we persuaded that AT&T should be added to the remote Alaska mechanism in order to preserve AT&T's incentives to invest. AT&T did not previously take advantage of the Covered Locations exception to the interim cap, which would have provided it with significantly more support. It is speculative that including AT&T in the remote Alaska mechanism would have any material effect on AT&T's plans for investment in Alaska or its conduct vis-à-vis other competitive ETCs in the state. Indeed, in this regard, we note that AT&T neither sought reconsideration of this aspect of the *Order* nor

[80] *See* 47 C.F.R. § 54.307(e)(3)(ii); GCI Petition at 10 & n.20. At a high level, the 2008 interim cap froze high-cost support for competitive ETCs on a state-by-state basis. Support was calculated by first determining what support each carrier would be eligible for in the absence of the cap under the identical support rule, and, if total support for competitive ETCs in a state exceeded the cap amount, all competitive ETCs would have their support reduced by a factor necessary to bring total support down to the capped level. A carrier that served a Tribal area could file a certification to that effect, and its support in areas subject to its certification would not be subject to the cap—this provision was known as the Covered Locations exception. For the purposes of the 2008 interim cap, all of Alaska was considered Tribal and thus subject to the Covered Locations exception; however, carriers in Alaska still had to opt in to the Covered Locations exception. *See Interim Cap Order*, 23 FCC Rcd 8834.

[81] *See* GCI Petition at 9-14.

[82] *See id.* at 12-13.

[83] *Id.* at 10-11.

responded to GCI's proposal. Finally, we note that including AT&T in the cap mechanism would increase the total cost of the cap. We are not inclined to modify the mechanism to make it more costly when the benefit to doing so is as speculative as it would be in this case. For these reasons, we decline to alter the remote Alaska interim cap as GCI requests.[84]

36. Second, GCI asks that we reconsider the calculation of the remote Alaska interim cap amount. As adopted, the rules provide that the interim cap shall be equal to the sum of support carriers subject to the delayed phase-down received in 2011.[85] GCI suggests that, rather than using the amount of support disbursed in 2011 to set the cap, we should set it by multiplying the number of lines such carriers report on March 30, 2012 (reflecting lines served as of September 30, 2011) by the per-line support amounts in effect on December 31, 2011.[86] GCI asserts that doing so would be more consistent with the purpose of the delayed phase-down mechanism, "to 'preserve newly initiated services and facilitate additional investment in still unserved and underserved areas.'"[87] GCI argues that "[a]s written, the rules do not preserve funding for newly initiated services."[88] As GCI explains, there is normally a delay of 10-12 months between the time service is provided and the time support is received for that service—*i.e.*, a delay of 10-12 months between the time a carrier adds a line and when the carrier gets support for that line.[89] Accordingly, GCI asserts, "the rules as written in effect cap Remote Alaska funding based on deployments as they existed more than a year ago, and fail to fully reflect the new deployments to 35 Remote Alaska villages that occurred in the spring and summer of 2010 and 2011."[90]

37. We are not persuaded that we should alter the interim cap baseline as GCI suggests. The criticisms of the identical support rule—that, among other things, there was no reason to believe it set support amounts at the right level—apply to its operation in Alaska, as elsewhere.[91] In the *USF/ICC Transformation Order*, the Commission did not conclude that, in order to preserve newly initiated services and facilitate investment, it was necessary to permit support levels to continue to rise to what carriers might have anticipated they might have received in the future under that rule. Rather, the Commission concluded that the appropriate means to preserve newly initiated services and to facilitate additional investment would be to provide a "slower transition path" from *current* support levels—to ensure that the aggregate amount of support to remote areas of Alaska was not *reduced* prematurely.[92]

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[84] GCI subsequently offered an alternative proposal to mitigate the budget impact of including AT&T in the delayed phase-down mechanism. *See* Letter from John Nakahata to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Mar. 7, 2012). Specifically, GCI proposed that AT&T's support be calculated under the delayed phase-down in the manner GCI previously proposed, and then reduced further by the reduction factor applicable to other carriers (i.e., 20 percent in the first year, 40 percent in the second year, and so on). *See id.*, attachment at 9. We decline to adopt this revised proposal as well. We note that it is hard to predict precisely what effect this change would have on the total cost of the delayed phase-down compared to our existing rules—it could increase the total cost if other carriers like GCI were to "take away" some of AT&T's support through the operation of the cap mechanism, albeit by less than including AT&T without phasing down AT&T's support. It would also add significant complexity to the calculation of support amounts. Moreover, nothing in GCI's revised proposal alters our assessment of GCI's arguments about the incentives carriers would face under its proposal.

[85] 47 C.F.R. § 54.307(e)(3)(v)(A).

[86] *See* GCI Petition at 7. GCI proposes that this amount be adjusted appropriately for carriers that did not certify that they served covered locations under the *2008 Interim Cap Order*. *See id.*

[87] GCI Petition at 8 (quoting *USF/ICC Transformation Order*, 26 FCC Rcd at 17835, para. 529).

[88] GCI Petition at 8.

[89] *Id.* at 9.

[90] *Id.*

[91] *See supra* para. 29.

[92] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17835-36, para. 529.

The Commission's chosen approach, it explained, "balance[d] 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."[93] GCI has not provided any evidence that would call the Commission's conclusions on these points into question.[94] Accordingly, we decline to alter the rule in the manner proposed.

38. Finally, GCI requests that we revise the rules relating to the calculation of each carrier's baseline of support—the amount, at the end of the two-year delay, from which each carrier will phase down over the subsequent five years. As adopted, the rules provide that the baseline amount from which carriers will be phased down, for carriers subject to the delayed transition for remote Alaska, should be equal to the amount each such carrier received in 2013.[95] GCI proposes that we modify this baseline in two respects. First, GCI proposes that the baseline not be set "until the delayed phase-down for Remote Alaska actually begins, *i.e.*, the later of July 1, 2014, or the implementation of Mobility Fund Phase II, including its Tribal component."[96] Second, GCI proposes, each carrier's baseline should be set "based on the actual line count during the last complete month prior to the commencement of the support phase-down, *i.e.*, the latest possible line count would be used to calculate each per-study-area support amount."[97] GCI argues that making these modifications to the rules would improve the incentives for carriers subject to the delayed phase-down to continue to invest throughout the delay period.

39. As GCI observes, the rule as adopted provides no incentive to deploy new services or add new lines after the fourth quarter of 2012 (while beginning to mute incentives to do so even earlier), because new lines added at that point will not be considered as part of the baseline support amount from which each carrier will be phased down.[98] On the other hand, by setting each carrier's phase-down baseline using that carrier's actual line count from the month before the phase down begins, as GCI proposes, carriers' incentives would be maintained until approximately mid-2014, when the phase-down for such carriers is expected to begin. Yet adopting these proposals will have no budgetary impact, because total support distributed to competitive ETCs serving remote Alaska is limited by the overall cap amount. That is, the specific methodology used for calculating each carrier's phase-down baseline determines only each carrier's relative share of the total amount of support available under the cap.[99]

40. We agree with GCI that its proposed revisions would be an improvement, because they would enhance the incentives for carriers to compete and to deploy facilities, without, as GCI notes, impacting the overall budget.[100] For these reasons, we adopt GCI's proposed revisions and revise section 54.307(e) accordingly. Specifically, we alter the rule governing the calculation of support for carriers serving remote Alaska to provide that, rather than freezing support amounts at the end of 2013, support

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[93] *Id.*

[94] Of course, there are a host of considerations outside the context of the Commission's decision in the *USF/ICC Transformation Order* that may impact the extent to which GCI and other carriers invest in the next two years.

[95] *See* 47 C.F.R. § 54.307(e)(1), (3)(iii).

[96] GCI Petition at 16.

[97] *Id.*

[98] *See id.* at 15-16.

[99] ACS opposes GCI's request, noting that the rule as adopted provides a "reasonable degree of certainty for all Alaskan carriers to make prudent investment decisions during the phase-down period, whether it lasts for two years or longer." Opposition of Alaska Communications Systems Group, Inc., WC Docket No. 10-90 *et al.*, at 6 (filed Feb. 9, 2012) (ACS Opposition). While we agree with ACS that the existing rules would work reasonably, well, as we explain in the text, we agree with GCI that its proposal would work better.

[100] *See* GCI Petition at 16.

amounts will not be frozen under the delayed phase down mechanism until June 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later; we also provide that the baseline amount itself shall be the annualized monthly support amount the carrier received for June 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later. As stated previously, these changes will not affect the budget.[101]

### B. Alaska Rural Coalition's Petition

41. The Alaska Rural Coalition also asks us to reconsider and clarify aspects of the *USF/ICC Transformation Order*. While the Alaska Rural Coalition praises the decision to delay the phase-down of support for competitive ETCs serving remote areas of Alaska,[102] it argues that rural incumbent carriers serving remote Alaska should also be afforded a two-year delay before their own support is reduced.[103] The Alaska Rural Coalition states that the *Order* places "a significant burden on small, rural companies serving remote areas" and argues that "the same reasons that the Commission articulated in its delay of the national five year transition period [for competitive ETCs serving remote Alaska] also warrant a more gradual adjustment of these reforms [affecting incumbent carriers] for the remote areas of Alaska in order to reflect the special circumstances for these remote, extremely high cost areas."[104]

42. We decline to adopt the Alaska Rural Coalition's suggestion. We disagree that the reasons that underlay the Commission's decision to delay the transition for competitive ETCs serving remote Alaska apply to incumbent carriers like the Coalition's members. The Commission adopted the delayed transition for competitive carriers in order to ensure that support would not be reduced until after the mechanism that will provide ongoing support targeted at such carriers—the Mobility Fund Phase II, including its Tribal component—is operational. As explained in the *Order*, the delayed phase-down would help "preserve newly initiated services and facilitate additional investments in still unserved and underserved areas during the national transition to the Mobility Funds."[105] In contrast, support mechanisms for rate-of-return carriers like the members of the Alaska Rural Coalition already exist. Moreover, although some rate-of-return carriers will receive less support based on the Commission's decision to place reasonable limits on expenses and to phase out mechanisms that were outdated and not operating as intended, other rate-of-return carriers will see little change in support, and yet others will see increases in support. Given this, we are not persuaded that a blanket delay of reforms to the existing mechanisms for incumbent carriers serving remote Alaska would serve the public interest.

43. The Alaska Rural Coalition also asks that we reconsider and relax certain broadband requirements that the Commission adopted in this proceeding. The *USF/ICC Transformation Order* imposed a general obligation that carriers receiving high-cost universal service support offer broadband with defined speed, latency, and capacity characteristics.[106] The Commission set an initial broadband speed requirement of at least 4 megabits per second downstream and 1 megabit per second upstream.[107] The Commission recognized, however, that these requirements may prove impractical for carriers reliant

[101] We also take this opportunity to correct the spelling of the Matanuska Telephone Association in what is currently section 54.307(e)(3)(i)(C) of our rules and renumber the subparagraphs of section 54.307(e)(3)(i) to correct an error in the numbering of those provisions.

[102] *See* Alaska Rural Coalition Petition for Reconsideration, WC Docket No. 10-90 *et al.*, at 3-4 (filed Dec. 29, 2011) (Alaska Rural Coalition Petition).

[103] *Id.* at 8.

[104] *Id.*

[105] *USF/ICC Transformation Order*, 26 FCC Rcd at 17835-36, para. 529.

[106] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17696-705, paras. 90-108.

[107] *See id.* at 17697, para. 94.

on satellite backhaul facilities and therefore relaxed those obligations for carriers with no access to terrestrial backhaul, instead allowing 1 megabit per second downstream and 256 kilobit per second upstream speed requirement with no capacity or latency requirement.[108] The Commission stated that the limited exception would not apply to carriers that do have access to terrestrial backhaul facilities but object to the cost of that backhaul.[109] In addition, the Commission provided rate-of-return carriers like the Alaska Rural Coalition's members with flexibility in meeting their buildout obligations, requiring them to provide broadband meeting the defined service characteristics on reasonable request, rather than ubiquitously by a date certain.[110]

44. The Alaska Rural Coalition asks that we reconsider these requirements in two respects. First, the Alaska Rural Coalition objects to the requirements imposed on carriers reliant on satellite backhaul, claiming that it "is not convinced that current satellite offerings can reliably meet" the relaxed speed requirements for such carriers.[111] The Coalition asks that "further consideration . . . be given to the cost and realistic capacity of the satellites serving Alaska."[112] But the Alaska Rural Coalition provides no information about satellite capacity limitations. Indeed, the Coalition does not even actually assert that meeting the relaxed requirements will, in fact, pose a challenge at all. On this record, we are not convinced that we should modify these requirements.

45. The Alaska Rural Coalition also asks that we clarify or reconsider the Commission's conclusion that a carrier may not take advantage of the relaxed broadband requirements if terrestrial backhaul is available to the carrier, but the carrier objects to the cost of obtaining it.[113] For example, the Coalition explains, terrestrial backhaul may be newly present in some areas of Alaska, but carriers may not be able to get access to it at any price, while in other areas, the cost may "far exceed[] the cost of purchasing satellite backhaul, an already cost-prohibitive solution."[114] The Alaska Rural Coalition further observes that the buildout requirement applicable to rate-of-return carriers—that they deploy broadband "on reasonable request"—provides some potential for flexibility, and it asks whether a request should be deemed unreasonable if the cost of purchasing terrestrial middle mile service to provide broadband service exceeds the high-cost support available for that line.[115] ACS seconds the Coalition's concern, arguing that the Commission should clarify that backhaul is not "available" if it cannot be had "at a price reasonably comparable to prices for backhaul links between urban areas."[116]

46. We appreciate the concerns raised by the Alaska Rural Coalition and ACS that it may not be cost-effective to serve certain customers due to the high cost of backhaul. Rather than granting a blanket exemption of the broadband obligations established for rate-of-return companies in the *USF/ICC Transformation Order*, we clarify, as the Alaska Rural Coalition requests, that our current rules provide sufficient flexibility to take into account any unique circumstances that may impact the ability of rate-of-

[108] *See id.* at 17699-700, para. 101.

[109] *See id.* at 17700, para. 101 n.162.

[110] *See id.* at 17740-41, para. 206. In contrast, price cap carriers receiving support through CAF Phase I or Phase II are required to meet separate buildout requirements specific to each of those support mechanisms. *See id.* at 17717-22, paras. 138-47 (CAF Phase I), 17726-27, paras. 160-63 (CAF Phase II).

[111] Alaska Rural Coalition Petition at 11.

[112] *Id.*

[113] *See id.* at 11-14.

[114] *Id.* at 12.

[115] *See* Letter from Shannon Heim to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Apr. 16, 2012).

[116] ACS Opposition at 5.

return companies to extend broadband to their customers, including backhaul costs. As the Coalition notes, rate-of-return carriers are required to provide service meeting the specified characteristics on *reasonable* request, which, the Commission explained in the *Order*, was an obligation similar to the voice deployment obligation many of those carriers were already subject to.[117] This obligation, enforced in the first instance by the relevant ETC-designating authority (generally the state), permits these entities to take into account backhaul costs or other unique circumstances that may make it cost-prohibitive to extend service to particular customers, in Alaska or any other area. We intend to carefully monitor developments in this regard and will consider making further clarifications or revisions if necessary.

47. We further conclude that it would be premature to modify the deployment requirements applicable to price cap carriers like ACS. Phase I of the Connect America Fund is designed to reach a significant number of relatively low-cost locations for which there is nevertheless no business case for deployment without support.[118] Areas that may be more expensive to deploy broadband to, such as those served by satellite backhaul, will be addressed in ongoing proceedings to implement CAF Phase II, which will employ a model to determine the forward-looking cost of providing broadband to a service area on a granular basis.[119] We conclude that ACS's concerns are more properly considered in the context of the effort to develop appropriate support levels in CAF Phase II, and we therefore decline, at this time, to modify our rule relating to backhaul availability.

48. The Alaska Rural Coalition also requests that we clarify that the new local rate benchmark, which reduces high-cost support to incumbent carriers that offer very low rates, applies to competitive ETCs in Alaska, or, if it does not already apply to such carriers, that we extend the rate benchmark to them.[120] The Coalition argues that imposing the rate floor on all carriers receiving high-cost support is necessary to avoid creating a "significant competitive disadvantage for anyone competing against" a competitive ETC that is not subject to the rate floor.[121]

49. We take this opportunity to clarify that the rate floor does not apply to competitive ETCs; it applies only to incumbent carriers. To eliminate any potential confusion, we modify section 54.318(c) of our rules accordingly. Further, we decline to extend the rate floor to competitive ETCs. Imposing a rate floor on competitive ETCs would be administratively complicated and time-consuming. Most competitive ETCs are mobile wireless carriers, not landline carriers, and because mobile wireless service is sold in different ways, it is not at all obvious how a rate floor could be quickly implemented for such carriers.[122] We also do not find the Alaska Rural Coalition's competitive parity argument compelling in light of the changes that have already been made to support for competitive ETCs, both wireline and wireless. We note, for example, that existing rules provide that support for competitive ETCs will be phased down in most areas of the Nation. Even in remote areas of Alaska, funding under the identical support rule is being phased out, albeit on a delayed basis. Moreover, even in the near term, for carriers serving remote areas of Alaska competitive ETC *per-line* support will decrease as total lines

[117] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17740-41, para. 206.

[118] *See Second Reconsideration Order*, para. 20.

[119] *See id.*

[120] *See* Alaska Rural Coalition Petition at 10. *See also USF/ICC Transformation Order*, 26 FCC Rcd at 17749-56, paras. 234-47; 47 C.F.R. § 54.318.

[121] Alaska Rural Coalition Petition at 9.

[122] Even setting aside the fact that wireless service is mobile service, wireless carriers do not, for example, typically offer a "local residential rate" as incumbent wireline providers do. *Cf. USF/ICC Transformation Order*, 26 FCC Rcd at 17750, para. 236. *See also* Letter from Shannon M. Heim to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 3 (filed Apr. 16, 2012) (acknowledging the complexity of applying the rate floor to mobile providers and suggesting that the Commission focus on wireline competitive ETCs).

increase as a result of the *USF/ICC Transformation Order's* cap on such support. The Alaska Rural Coalition focuses on one rule in isolation, in effect arguing that the Commission's reform is not competitively neutral. However, as we discussed in the *USF/ICC Transformation Order*, "[t]he competitive neutrality principle does not require all competitors to be treated alike, but 'only prohibits the Commission from treating competitors differently in 'unfair' ways.'"[123] Given the other rule changes that competitive ETCs face that rate-of-return carriers do not, the rule as applied to incumbents is not unfair.[124] For these reasons, we decline to alter the rules as requested by the Alaska Rural Coalition.

## IV. INTERCARRIER COMPENSATION

### A. Background

50. In the *USF/ICC Transformation Order*, we adopted a uniform national bill-and-keep framework as the ultimate intercarrier compensation end state for all telecommunications traffic exchanged with a LEC, and established a gradual, measured transition that focused initially on reducing certain terminating switched access rates.[125] The Commission also adopted a transitional recovery mechanism to mitigate the effect of reduced intercarrier revenues on carriers and to facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo ante*.[126] The Commission also noted that predictable recovery during the intercarrier compensation reform transition is "particularly important" but that "[p]roviding this stability does not require revenue neutrality."[127] In determining how the transitional recovery should be funded, the Commission concluded that "it is appropriate to first look to customers paying lower rates for some limited, reasonable recovery, and adopt[ed] a number of safeguards to ensure that rates remain affordable and that consumers are not required to contribute an inequitable share of lost intercarrier revenues."[128]

51. As part of the transitional recovery mechanism, the Commission defined, as "Eligible Recovery," the amount of intercarrier compensation revenue reductions that incumbent LECs would be eligible to recover.[129] The Commission defined Eligible Recovery differently for price cap incumbent LECs than for rate-of-return incumbent LECs.[130] For price cap carriers, Eligible Recovery equals 90

[123] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17731-32, para. 176.

[124] *See also* Letter from John Nakahata to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.* (filed Apr. 23, 2012).

[125] *Id.*, at 17676-77, para. 35.

[126] *Id.* at 17677, para. 36. In adopting the recovery mechanism, the Commission explained that it did so in large part "to provide predictability to incumbent carriers that had been receiving implicit ICC subsidies [and] to mitigate marketplace disruption during the reform transition. . . ." *Id.* at 17962, para. 858.

[127] *Id.*

[128] *Id.* at 17988, para. 906.

[129] *Id.* at 17956, para. 847. Several petitioners requested reconsideration of issues related to the calculation of Eligible Recovery. *See, e.g.*, Rural Associations Petition at 29-33, USTelecom Petition at 30-34. In this Order on Reconsideration, we address two specific proposals relating to the calculation of Eligible Recovery. To the extent that issues relating to reconsideration of this calculation methodology more broadly, including alternative proposals, are not specifically addressed herein, those issues remain pending before the Commission.

[130] To provide rate-of-return carriers predictable recovery during the transition to bill-and-keep, and to provide incentives for reducing costs and increasing productivity, the Commission determined that rate-of-return carriers' Eligible Recovery for interstate switched access costs would be based upon their interstate revenue requirement, and would include true-ups to adjust recovery should demand decline faster or slower than anticipated. *USF/ICC Transformation Order*, 26 FCC Rcd at 17977-987, paras. 891-904. Price cap carriers do not have an interstate revenue requirement, and already bore the risk of declining demand for interstate switched access. Therefore, their Eligible Recovery for interstate switched access for those carriers was based upon switched access revenues, and there is no true-up to reflect declining minutes of use ("MOUs"). *Id.* at 17971-977, paras. 879-890.

percent of relevant Fiscal Year 2011 ("FY2011" defined as October 1, 2010 through September 30, 2011) revenues, reduced five or ten percent annually beginning in 2012.[131] For rate-of-return carriers, Eligible Recovery equals 100% of the carrier's 2011 interstate switched access revenue requirement, plus FY2011 intrastate switched access revenues and FY2011 net reciprocal compensation revenues,[132] reduced by five percent annually.[133]

### B. Definition of Fiscal Year for Calculation of Eligible Recovery

52. *Background.* In the *USF/ICC Transformation Order*, we defined the period for which revenues would be used to calculate Eligible Recovery as the fiscal year October 1, 2010 through September 30, 2011 (FY2011).[134] In their petition, the Rural Associations request, among other things, that the Commission change the fiscal year definition from October 1, 2010 through September 30, 2011 to July 1, 2010 through June 30, 2011 for rate-of-return carriers, asserting that such a change would "assure that base period data are fully and fairly representative of prior-year operations and provide a greater degree of certainty and closure to all parties."[135]

53. *Discussion.* We deny the Rural Associations' request. The Rural Associations provide no explanation of why using the period July 1, 2010 through June 30, 2011 is more "fully and fairly representative of prior-year operations." Given the significant and ongoing decline of minutes of use across the industry, with minutes-of-use declining at rates in excess of 10 percent per year,[136] the Rural Associations' proposed time period would, by basing recovery on an earlier time period with correspondingly greater demand, likely permit greater recovery from consumers, through the Access Recovery Charge (ARC) and CAF, than would use of the Fiscal Year definition adopted in the *USF/ICC Transformation Order*.[137] Additionally, the Rural Associations have not quantified the impact of their proposed change on consumers or the budget for the CAF. We are likewise unpersuaded that using an earlier period would provide greater "certainty and closure" as the Rural Associations assert. Carriers currently are preparing their filings based upon the dates in the existing rules and changing them at this time would potentially disrupt that process. Accordingly, we decline to reconsider the fiscal year time period to be used for determining Eligible Recovery.

### C. Use of Revenue Forecast

54. *Background.* In the *USF/ICC Transformation Order*, we determined that the baseline for

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[131] *USF/ICC Transformation Order*, 26 FCC Rcd at 17971, para. 879.

[132] *Id.* at 17977, para. 891.

[133] *Id.* at 17979, para. 894.

[134] *Id.* at 17957, para. 851, n.1639.

[135] Rural Associations Petition at pp. 32-33. As noted above, the Order provides that rate-of-return carriers will use their 2011 interstate revenue requirement in the calculation of Eligible Recovery of interstate charges reduced or capped as part of the Order. The Fiscal Year for rate-of-return carriers is used solely for the calculation of intrastate revenues and net reciprocal compensation reduced as part of the Order. Eligible Recovery for price cap carriers is based entirely on revenues and the Fiscal Year defines the timing of such revenues. The petition for reconsideration, however, is limited to requesting that we reconsider the definition for rate of return carriers. *USF/ICC Transformation Order*, 26 FCC Rcd at 17971-984, paras. 879-899.

[136] *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17975, para. 886.

[137] Changing the time period used for calculating recovery for rate-of-return carriers, as the Rural Associations proposed, would affect only the intrastate and net reciprocal compensation components of a rate-of-return carrier's base period revenue because these components are based on certain revenues which, as described above, are decreasing steadily over time as minutes-of-use decrease. 47 C.F.R. § 57.917(c)(ii). Rate-of-return carrier's interstate base period revenue would not be affected because this component is calculated using a carrier's 2011 revenue requirement, rather than actual demand during a specified time period. 47 C.F.R. § 57.917(d).

determining a rate-of-return carrier's Eligible Recovery would be based, in part, on its 2011 interstate switched access revenue requirement, noting that average schedule carriers would use projected settlements associated with 2011 annual interstate switched access tariff filings.[138] In their petition, the Rural Associations ask that the Commission reconsider the use of tariff forecasts for calculating the baseline for rate-of-return carriers, and argue that the Commission should instead "rely on each study area's actual 2011 interstate revenue requirements."[139] The Rural Associations petition claims that "[w]hile NECA's overall tariff forecasts are reasonably accurate, there are great variations at the study area level," and that "actual revenue requirements will ... be far more accurate and fair in establishing individual company interstate baseline amounts."[140]

55. *Discussion.* The Rural Associations fail to demonstrate that the use of each study area's actual 2011 interstate revenue requirements would produce substantially more accurate baseline amounts. We believe that using projected settlements associated with 2011 annual interstate switched access tariff filings—filings which were deemed lawful, which established the charges paid by consumers, and which are based on historical costs[141]—sufficiently protects the interests of such carriers.

56. Additionally, making carriers' actual 2011 interstate revenue requirement the basis of their recovery would create opportunity and incentive for carriers to manipulate their cost studies to increase their recovery.[142] The actual interstate revenue requirements that the Rural Associations suggest we use had not been filed at the time the Order was adopted. Consequently, in preparing cost studies, carriers could adopt study procedures designed to include costs associated with one-time events, extraordinary depreciation, etc. that could improperly increase a carrier's Rate-of-Return Baseline—and thus its Eligible Recovery—for years to come. The Rural Associations cite "review and verification by independent auditors, NECA review procedures, state regulators and other entities" as sufficient to allay concerns that "cost studies might be manipulated...."[143] Given the very significant incentives that the rural carriers' proposed approach would create to increase costs—allowing them to in effect "lock in" higher recovery each year for at least the next several years based upon a single cost study—we are not persuaded that the processes the Rural Associations identify provide sufficiently robust protections compared to using tariff forecasts filed before the *USF/ICC Transformation* Order was adopted.[144] Moreover, we note that any carrier may petition for a Total Cost and Earnings Review if it believes the allowed recovery is insufficient.[145] The request for reconsideration on this matter is therefore denied.

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[138] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17978-79, para. 892; 47 C.F.R. 51.917(b).

[139] Rural Associations Petition at 31.

[140] *Id.* at 32.

[141] The Commission favors incentive regulation over recovery based on historical costs and our reference to historical costs in this context should not be construed as a general endorsement of the use of historical costs for regulatory purposes. *See e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17983-87, paras. 900-05. We note, however, that any bias from using historical costs in this context generally would be to the benefit of the filing carriers. *Cf id.* at 17983-86, paras. 900-903 ("[A]bsent incentives for efficiency, determining recovery based on the historical approach to these carriers' rate regulation could cause the Connect America Fund to grow significantly and without constraint.")

[142] Carriers' tariff filings submitted prior to the release of the *USF/ICC Transformation Order* were used to inform our assessment of the impact of our reforms on carriers, consumers and the CAF. Shifting to a different approach would have uncertain effects, and could increase the burden placed on consumers and the CAF. *See USF/ICC Transformation Order*, 26 FCC Rcd at 17962-63, paras. 858 – 859.

[143] Rural Association Petition at 32, n.82.

[144] In particular, we note that at the time the relevant documents were filed the carriers had every incentive to maximize their costs but did not have knowledge of how *USF/ICC Transformation Order* would provide for recovery.

[145] *See USF/ICC Transformation Order*, 26 FCC Rcd at 17996-8002, paras. 924 – 932.

## V. PROCEDURAL MATTERS

### A. Paperwork Reduction Act

57. This Third Order on Reconsideration contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law No. 104-13. It has been or will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

### B. Final Regulatory Flexibility Act Certification

58. The Regulatory Flexibility Act (RFA)[146] requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[147] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[148] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[149] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[150]

59. We hereby certify that the rule revisions in this Third Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. This Order adopts several revisions to our rules. First, we modify certain of our reporting requirements. Second, we change the sampling date for reporting end user rates. Third, we create a mid-year rate filing update that is voluntary for carriers that increase rates and mandatory for carriers that reduce rates and that are otherwise subject to the annual rate filing requirement. Fourth, we alter our rules so that the capped support mechanism for competitive Eligible Telecommunications Carriers serving remote areas of Alaska will continue until the phase down of support begins, and we set each carrier's baseline amount for the phase down period as the carrier's support amount for the last full month prior to the beginning of the phase down. We conclude that these minor revisions, though they may possibly have some impact on some carriers, are not likely to have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.[151] In addition, the Order (or a summary thereof) and certification will be published in the Federal Register.[152]

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

[147] 5 U.S.C. § 605(b).

[148] 5 U.S.C. § 601(6).

[149] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. S § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[150] Small Business Act, § 15 U.S.C. S 632.

[151] *Id.*

[152] *Id.*

### C. Congressional Review Act

60. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[153]

## VI. ORDERING CLAUSES

61. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and sections 1.1 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.429, that this Third Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval.

62. IT IS FURTHER ORDERED that Part 54 of the Commission's rules, 47 C.F.R. Part 54, is AMENDED as set forth in the Appendix A, and such rule amendment shall be effective 30 days after the date of publication of the rule amendment in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval.

63. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration of Alaska Rural Coalition IS GRANTED IN PART to the extent described herein, and IS DENIED IN PART to the extent described herein.

64. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration of United States Telecom Association IS GRANTED IN PART to the extent described herein, and IS DENIED IN PART to the extent described herein.

65. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration of Rock Hill Telephone Company d/b/a Comporium, Lancaster Telephone Company d/b/a Comporium, Fort Mill Telephone Company d/b/a Comporium, PBT Telecom, Inc. d/b/a Comporium, and Citizens Telephone Company d/b/a Comporium IS GRANTED IN PART to the extent described herein, and IS DENIED IN PART to the extent described herein.

66. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section and 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration of National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance IS GRANTED IN PART to the extent described herein, and IS DENIED IN PART to the extent described herein.

67. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the January 23, 2012 Joint Petition for Clarification of the Independent

[153] *See* 5 U.S.C. 801(a)(1)(A).

Telephone and Telecommunications Alliance, National Exchange Carrier Association, National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance IS GRANTED.

68. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration of Accipiter Communications Inc. IS DENIED IN PART.

69. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, the Petition for Reconsideration of General Communication, Inc., is GRANTED to the extent provided herein and DENIED to the extent provided herein.

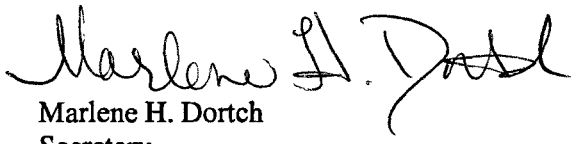
70. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Petition for Waiver of Crocket Telephone Company Inc., Peoples Telephone Company, and West Tennessee Telephone Company, Inc., is DISMISSED.

71. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Petition for Waiver of Shoreham Telephone Company is DISMISSED.

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

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

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

## APPENDIX

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 to read as follows:

**PART 54—UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

**Subpart D—Universal Service Support for High Cost Areas**

2. Amend § 54.5 by revising the definition of "Tribal lands" to read as follows:

* * * * *

Tribal lands. For the purposes of high-cost support, "Tribal lands" include 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, see § 54.400(e), as well as Hawaiian Home Lands – areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat 108, et seq., as amended.

* * * * *

3. Amend § 54.307 by revising paragraph (e) to read as follows:

* * * * *

(e) * * *

(1) * * *

(2) * * *

(3) * * *

(i) * * *

(A) The ACS-Anchorage incumbent study area;

(B) The ACS-Juneau incumbent study area;

(C) The fairbankszone1 disaggregation zone in the ACS-Fairbanks incumbent study area; and

(D) The Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matanuska Telephone Association incumbent study area.

(ii) * * *

(iii) Baseline for Delayed Phase Down. For purpose of the delayed phase down for remote areas in Alaska, the baseline amount for each competitive eligible telecommunications carrier subject to the delayed phase down shall be the annualized monthly support amount received for June 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later.

(iv) * * *

(A) From July 1, 2014, to June 30, 2015, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(B) From July 1, 2015, to June 30, 2016, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(C) From July 1, 2016, to June 30, 2017, each competitive eligible telecommunications carrier shall receive 40 percent of its monthly baseline support amount each month.

(D) From July 1, 2017, to June 30, 2018, each competitive eligible telecommunications carrier shall receive 20 percent of its monthly baseline support amount each month.

(E) Beginning July 1, 2018, no competitive eligible telecommunications carrier serving remote areas in Alaska shall receive universal service support pursuant to this section.

(v) Interim Support for Remote Areas in Alaska. From January 1, 2012, until June 30, 2014 or the last full month prior to the implementation of Mobility Fund Phase II, whichever is later, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall continue to receive the support, as calculated by the Administrator, that each competitive telecommunications carrier would have received under the frozen per-line support amount as of December 31, 2011 capped at $3,000 per year, provided that the total amount of support for all such competitive eligible telecommunications carriers shall be capped pursuant to subparagraph (A).

(A) * * *

(B) * * *

(4) * * *

(5) Implementation of Mobility Fund Phase II Required. In the event that the implementation of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iv) of this section until Mobility Fund Phase II is implemented. In the event that Mobility Fund Phase II for Tribal lands is not implemented by June 30, 2014, competitive eligible telecommunications carriers serving Tribal lands shall continue to receive support at the level described in paragraph (e)(2)(iii) of this section until Mobility Fund Phase II for Tribal lands is implemented, except that competitive eligible telecommunications carriers serving remote areas in Alaska and subject to paragraph (e)(3) of this section shall continue to receive support at the level described in paragraph (e)(3)(v) of this section.

(6) * * *

(7) Line Count Filings. Competitive eligible telecommunications carriers, except those subject to the delayed phase down described in paragraph (e)(3) of this section, shall no longer be required to file line counts beginning January 1, 2012. Competitive eligible telecommunications carriers subject to the delayed phase down described in paragraph (e)(3) of this section shall no longer be required to file line counts beginning July 1, 2014, or the date after the first line count filing following the implementation of Mobility Fund Phase II, whichever is later.

4. Amend § 54.313 to read as follows:

**§ 54.313 Annual reporting requirements for high-cost recipients.**

(a) * * *

* * * * *

(10) Beginning July 1, 2013. A letter certifying that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the Wireline Competition Bureau and Wireless Telecommunications Bureau; and

(11) Beginning July 1, 2013. The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology and the information and data required by this paragraphs (a)(1)through (7) of this section separately broken out for both voice and broadband service.

* * * * *

(c) * * *

(1) By July 1, 2013. A certification that frozen high-cost support the company received in 2012 was used consistent with the goal of achieving universal availability of voice and broadband;

(2) By July 1, 2014. A certification that at least one-third of the frozen-high cost support the company received in 2013 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor;

(3) By July 1, 2015. A certification that at least two-thirds of the frozen-high cost support the company received in 2014 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor; and

(4) By July 1, 2016 and in subsequent years. A certification that all frozen-high cost support the company received in the previous year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.

(d) In addition to the information and certifications in paragraph (a) of this section, beginning July 1, 2013, price cap carriers receiving high-cost support to offset reductions in access charges shall provide a certification that the support received pursuant to § 54.304 in the prior calendar year was used to build and operate broadband-capable networks used to offer provider's own retail service in areas substantially unserved by an unsubsidized competitor.

(e) * * *

* * * * *

(3) Beginning July 1, 2014. A progress report on the company's five-year service quality plan pursuant to § 54.202(a), including the following information:

(f) * * *

(1) Beginning July 1, 2014. A progress report on its five-year service quality plan pursuant to §54.202(a) that includes the following information:

* * * * *

(h) Additional voice rate data. (1) All incumbent local exchange carrier recipients of high-cost support must report all of their rates for residential local service for all portions of their service area, as well as state fees as defined pursuant to § 54.318(e) of this subpart, to the extent the sum of those rates and fees are below the rate floor as defined in § 54.318 of this subpart, and the number of lines for each rate specified. Carriers shall report lines and rates in effect as of June 1. (2) In addition to the annual filing, local exchange carriers may file updates of their rates for residential local service, as well as state fees as defined pursuant to § 54.318(e) of this subpart, on January 2 of each year. If a local exchange carrier reduces its rates and the sum of the reduced rates and state fees are below the rate floor as defined in § 54.318 of this subpart, the local exchange carrier shall file such an update. For the update, carriers shall report lines and rates in effect as of December 1.

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(j) Filing deadlines. In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section no later than July 1, 2012, except as otherwise specified in this section to begin in a subsequent year, and thereafter annually by July 1 of each year. Eligible telecommunications carriers that file their reports after the July 1 deadline shall receive support pursuant to the following schedule:

(1) Eligible telecommunication carriers that file no later than October 1 shall receive support for the second, third and fourth quarters of the subsequent year.

(2) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.

(3) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

* * * * *

5. Amend paragraphs (a), (b), (c), and (f) of § 54.318 and add paragraph (h) to § 54.318 to read as follows:

**§ 54.318 High-cost support; limitations on high-cost support.**

(a) Beginning July 1, 2012, each carrier receiving high-cost support in a study area under this subpart will receive the full amount of high-cost support it otherwise would be entitled to receive if its rates for residential local service plus state regulated fees as defined in paragraph (e) of this section exceed a local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in paragraph (f) of this section.

(b) Carriers whose rates for residential local service plus state regulated fees offered for voice service are below the specified local urban rate floor under the schedule below plus state regulated fees shall have high-cost support reduced by an amount equal to the extent to which its rates for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.

(c) This rule will apply only to rate-of-return carriers as defined in § 54.5 and carriers subject to price cap regulation as that term is defined in § 61.3 of this chapter.

(f) *Schedule.* High-cost support will be limited where the rate for residential local service plus state regulated fees are below the local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in this paragraph. To the extent end user rates plus state regulated fees are below local urban rate floors plus state regulated fees, appropriate reductions in high-cost support will be made by the Universal Service Administrative Company.

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(h) If, due to changes in local service rates, a local exchange carrier makes an updated rate filing pursuant to section 54.313(h)(2) of this subpart, the Universal Service Administrative Company will update the support reduction applied pursuant to paragraphs (b) and (f) of this section.

(i) For the purposes of this section and the reporting of rates pursuant to paragraph 313(h) of this subpart, rates for residential local service provided pursuant to measured or message rate plans or as part of a bundle of services should be calculated as follows:

> (1) Rates for measured or message service shall be calculated by adding the basic rate for local service plus the additional charges incurred for measured service, using the mean number of minutes or message units for all customers subscribing to that rate plan multiplied by the applicable rate per minute or message unit. The local service rate includes additional charges for measured service only to the extent that the average number of units used by subscribers to that rate plan exceeds the number of units that are included in the plan. Where measured service plans have multiple rates for additional units, such as peak and off-peak rates, the calculation should reflect the average number of units that subscribers to the rate plan pay at each rate.
>
> (2) For bundled service, the residential local service rate is the local service rate as tariffed, if applicable, or as itemized on end-user bills. If a carrier neither tariffs nor itemizes the local voice service rate on bills for bundled services, the local service rate is the rate of a similar stand-alone local voice service that it offers to consumers in that study area.

6. Amend § 54.1009 by revising paragraph (a) to read as follows:

**<u>§ 54.1009 Annual Reports.</u>**

(a) A winning bidder authorized to receive Mobility Fund Phase I support shall submit an annual report no later than July 1 in each year for the five years after it was so authorized. Each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

> (1) * * *
>
> (2) * * *
>
> (3) * * *
>
> (4) * * *

(5) * * *

(6) * * *

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