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## Small Entity Compliance Guide

### **Supplemental Rate-of-Return Carrier Requirements for Recipients of High-Cost Universal Service Support**

FCC 16-33  
WC Docket Nos. 10-90 and 14-58  
CC Docket No. 01-92  
Released: March 30, 2016

47 C.F.R. §§ 51.917, 54.303, 54.308, 54.311, 54.316, 54.320, 54.903,  
69.104, 69.115, 69.130, 69.132, 69.311, 69.416

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above referenced Federal Communications Commission (FCC or Commission) rulemaking docket(s). This Guide is not intended to replace the rules. The Guide is intended to facilitate compliance with the rules, not to supersede the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. All decisions regarding a particular small entity will be based on the statute and relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties, or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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## **Rate-of-Return Carrier Annual Reporting, Certification, and Recordkeeping Requirements for Recipients of High-Cost Universal Service Support**

### **I. Objectives of the Proceeding**

On March 30, 2016, the Commission released an order establishing a new forward-looking mechanism for the distribution of universal service support in rate-of-return areas.<sup>1</sup> Specifically, the Commission adopted a voluntary path under which rate-of-return carriers may elect model-based support for a term of 10 years in exchange for meeting defined build-out obligations. We emphasize the voluntary nature of this mechanism; no carrier will be required to take model-based support.

In the Order, we also reformed the existing mechanisms for the distribution of universal service support in rate-of-return areas for those carriers that do not elect to receive model-based support. Further, we made technical corrections to modernize our existing interstate common line support (ICLS) rules to provide support in situations where the customer no longer subscribes to traditional regulated local exchange voice service, *i.e.* stand-alone broadband. Going forward, this reformed mechanism will be known as Connect America Fund Broadband Loop Support (CAF BLS). This simple change will provide support for broadband-capable loops in an equitable and stable manner, regardless of whether the customer chooses to purchase traditional voice service, a bundle of voice and broadband, or only broadband.

### **II. Compliance**

Rate-of-return carriers will have the opportunity to voluntarily elect, on a state-level basis, to receive Connect America Fund-Alternative Connect America Cost Model support as calculated by the Alternative-Connect America Cost Model (referred to herein as “model-based carriers”). Any rate-of-return carrier that does not elect support pursuant to this section (referred to herein as “legacy carriers”) will continue to receive support pursuant to legacy mechanisms, though those legacy mechanisms have been revised.

Whether a rate-of-return carrier chooses model-based support or remains on legacy mechanisms, it will be required to meet service obligations, adhere to reporting obligations, and retain records. We describe the requirements below.

#### **A. Service/Deployment Obligations**

##### **1. Each model-based carrier must:**

- *Speed*: Model-based carriers must offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream to a defined number of locations. The defined number of locations will be specified in a future public notice.<sup>2</sup>
- *Latency*: Model-based carriers must offer service with latency suitable for real-time applications, including Voice over Internet Protocol.<sup>3</sup> Specifically, rate-of-return carriers

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<sup>1</sup> *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016).

<sup>2</sup> 47 C.F.R. § 54.308(a)(1).

accepting model-based support must certify that 95 percent or more of all peak period measurements of network round-trip latency are at or below 100 milliseconds.

- *Data Usage:* Model-based carriers must offer a minimum usage allowance of 150 GB per month, subject to the requirement that usage allowances remain consistent with median usage in the United States over the course of the ten-year term.<sup>4</sup> This usage requirement is determined using the Measuring Broadband America data or similar data source, whichever is higher.<sup>5</sup> The Bureau announces the data usage requirement in a public notice.
- In addition to offering 10/1 Mbps, model-based carriers must offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to a certain number of “fully funded” locations.<sup>6</sup> Fully funded locations are those locations identified by the model where the average cost is above the funding benchmark and at or below the funding cap.<sup>7</sup>
  - The number of “fully funded” locations a model-based carrier is required to offer 25/3 Mbps to is based upon the state’s population density.
    - Model-based carriers in a state with a density of more than 10 housing units per square mile are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 75 percent of all fully funded locations in the state by the end of the ten-year period.<sup>8</sup>
    - Model-based carriers in a state with a density of 10 or fewer housing units per square mile are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 50 percent of all fully funded locations in the state by the end of the ten-year period.<sup>9</sup>
    - Model-based carriers in a state with a density of five or fewer housing units per square mile are required to offer broadband speeds of at least 25 Mbps downstream/3 Mbps upstream to 25 percent of all fully funded locations in the state by the end of the ten-year period.<sup>10</sup>
- Model-based carriers must offer broadband speeds of at least 4 Mbps downstream/1 Mbps upstream to a certain number of “capped locations.”<sup>11</sup> Capped locations are those

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<sup>3</sup> 47 C.F.R. § 54.308(a).

<sup>4</sup> 47 C.F.R. § 54.308(a)(1).

<sup>5</sup> See Federal Communications Commission, Measuring Broadband America, <https://www.fcc.gov/general/measuring-broadband-america> (last visited Sept. 22, 2016).

<sup>6</sup> 47 C.F.R. § 54.308(a)(1)(i)(A-C).

<sup>7</sup> 47 C.F.R. § 54.308(a)(1)(i).

<sup>8</sup> 47 C.F.R. § 54.308(a)(1)(i)(A).

<sup>9</sup> 47 C.F.R. § 54.308(a)(1)(i)(B).

<sup>10</sup> 47 C.F.R. § 54.308(a)(1)(i)(C).

<sup>11</sup> 47 C.F.R. § 54.308(a)(1)(ii)(A-C).

locations in census blocks for which the model calculates an average cost per location above the funding cap.<sup>12</sup>

- The number of “capped locations” a carrier is required to offer 4/1 Mbps to is also based upon the state’s population density.<sup>13</sup>
  - Model-based carriers in a state with a density of more than 10 housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 4 Mbps downstream/1 Mbps upstream to 50 percent of all capped locations in the state by the end of the ten-year period.<sup>14</sup>
  - Model-based carriers in a state with a density of 10 or fewer housing units per square mile, as specified by public notice at the time of election, are required to offer broadband speeds of at least 4 Mbps downstream/1 Mbps upstream to 25 percent of capped locations in the state by the end of the ten-year period.<sup>15</sup>
  - Model-based carriers shall provide to all other capped locations, upon reasonable request, broadband at actual speeds of at least 4 Mbps downstream/1 Mbps upstream.<sup>16</sup>
    - There are several ways that carriers may evaluate whether a request for service is reasonable — the end-user revenues taking into account the reasonable comparability pricing benchmark versus the cost to upgrade/deploy service; whether deployment would cause total high-cost support, excluding CAF-ICC, to exceed \$250 per line per month in the study area; whether the census block is served by an unsubsidized competitor.<sup>17</sup>
    - Carriers are required to retain documentation related to requests for service and must be prepared to demonstrate why a request was not reasonable.
- *Interim Buildout Obligations*: Model-based carriers must complete deployment to:
  - 40 percent of fully funded locations by the end of 2020;

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<sup>12</sup> 47 C.F.R. § 54.308(a)(1)(ii).

<sup>13</sup> 47 C.F.R. § 54.308(a)(1)(ii)(A-C).

<sup>14</sup> 47 C.F.R. § 54.308(a)(1)(ii)(A).

<sup>15</sup> 47 C.F.R. § 54.308(a)(1)(ii)(B).

<sup>16</sup> 47 C.F.R. § 54.308(a)(1)(ii)(C).

<sup>17</sup> For more detail on what constitutes a reasonable request, see *Connect America Fund*, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, 29 FCC Rcd 7051, 7071-75, paras. 62-72 (2014), available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-14-54A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-54A1_Rcd.pdf).

- 50 percent of fully funded locations by the end of 2021;
  - 60 percent of fully funded locations by the end of 2022;
  - 70 percent of fully funded locations by the end of 2023;
  - 80 percent of fully funded locations by the end of 2024;
  - 90 percent of fully funded locations by the end of 2025;
  - 100 percent of fully funded locations by the end of 2026.<sup>18</sup>
- By the end of 2026, carriers must complete deployment of broadband meeting a standard of at least 25 Mbps downstream/3 Mbps upstream to the required number of locations based on state level density, as specified above.<sup>19</sup>
  - Compliance shall be determined based on the total number of fully funded locations in a state.<sup>20</sup>
    - In other words, a carrier will be deemed in compliance with its deployment obligations if the total number of reported locations in each required speed tier (25/3 Mbps, 10/1 Mbps, 4/1 Mbps) meets the total required number of locations for each tier in the state. The locations may be in any funded census block, regardless of whether the model identifies a block as “fully funded” or “capped”.
      - For example, a carrier may find that it can offer 25/3 Mbps to locations in some of blocks where A-CAM calculated capped support, but only 4/1 Mbps to some locations in a block that is “fully funded” in A-CAM. All of these locations would be counted towards meeting the total number of locations where broadband service must be available.
    - Model-based carriers that complete deployment to at least 95 percent of the requisite number of fully funded locations will be deemed to be in compliance with their deployment obligations.<sup>21</sup>
  - *Failure to Meet Buildout Obligations*: Model-based carriers that do not buildout to the required number of locations will be subject to certain reporting requirements, support reductions, and even possible recovery of support.<sup>22</sup> The non-compliance measures are detailed in section 54.320(d), and the measures that apply will depend on the size of the

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<sup>18</sup> 47 C.F.R. § 54.311(d).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> 47 C.F.R. § 54.320.

compliance gap (i.e., the number of required locations that the ETC fails to build out to by the applicable deadline).<sup>23</sup>

## **2. Each legacy carrier must:**

- Legacy carriers must offer broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, over a five-year period, to a defined number of unserved locations as specified by public notice, according to the following methodology:<sup>24</sup>
  - Legacy carriers with less than 20 percent deployment of 10/1 Mbps broadband service in their study areas will be required to utilize 35 percent of their five-year forecasted CAF-BLS support to extend broadband service where it is currently lacking.<sup>25</sup>
  - Legacy carriers with more than 20 percent but less than 40 percent deployment of 10/1 Mbps broadband service in their study areas will be required to utilize 25 percent of their five-year forecasted CAF-BLS support to extend broadband service where it is currently lacking.<sup>26</sup>
  - Legacy carriers with more than 40 percent but less than 80 percent deployment of 10/1 Mbps broadband service in their study areas, as determined by the Wireline Competition Bureau, will be required to utilize 20 percent of their five-year forecasted CAF-BLS support to extend broadband service where it is currently lacking.<sup>27</sup>
  - Legacy carriers will be required to buildout to a certain number of locations. That number will be determined by dividing the amount of support by a cost per location figure calculated pursuant to Section 54.308(a)(2)(ii).<sup>28</sup>
- *Failure to Meet Buildout Obligations:* Legacy carriers that do not buildout to the required number of locations will be subject to certain reporting requirements, support reductions, and even possible recovery of support.<sup>29</sup> The non-compliance measures are detailed in section 54.320(d), and the measures that apply will depend on the size of the compliance gap (i.e., the number of required locations that the ETC fails to build out to by the applicable deadline).<sup>30</sup>

## **B. Restrictions on Deployment**

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<sup>23</sup> 47 C.F.R. § 54.320(d).

<sup>24</sup> 47 C.F.R. § 54.308(a)(2)(i).

<sup>25</sup> 47 C.F.R. § 54.308(a)(2)(i)(A).

<sup>26</sup> 47 C.F.R. § 54.308(a)(2)(i)(B).

<sup>27</sup> 47 C.F.R. § 54.308(a)(2)(i)(C).

<sup>28</sup> 47 C.F.R. § 54.308(a)(2)(ii).

<sup>29</sup> 47 C.F.R. § 54.320(d).

<sup>30</sup> *Id.*

- Model-based carriers and legacy carriers may not deploy terrestrial wireline technology in any census block if doing so would result in total support per line in the study area to exceed \$250 per-line per-month.<sup>31</sup>
- Model-based carriers and legacy carriers may not deploy terrestrial wireline technology to unserved locations to meet its obligations if doing so would exceed the per location/per project capital investment allowance set forth in Section 54.303(f)(1).<sup>32</sup>

### **C. Reporting/Certification/Recordkeeping Obligations**

#### **1. Each model-based carrier must report:**

- By March 1 of each year, model-based carriers with defined broadband deployment obligations must file with USAC information regarding the locations to which the carrier is offering broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.<sup>33</sup>
  - Regarding latency, specifically, model-based carriers must certify that 95 percent or more of all peak period measurements of network round-trip latency are at or below 100 milliseconds.<sup>34</sup>
- By March 1 of each year, model-based carriers must report the number of locations for each state and locational information, including geocodes, separately indicating whether they are offering service providing speeds of at least 4 Mbps downstream/1 Mbps upstream, 10 Mbps downstream/1 Mbps upstream, or 25 Mbps downstream/3 Mbps upstream.<sup>35</sup>
- Model-based carriers must provide no later than March 1, 2021, and every year thereafter ending no later than March 1, 2027, a certification that by the end of the prior calendar year, it was offering broadband meeting its service obligations to the required percentage of its “fully funded” locations in the state, pursuant to the interim deployment milestones.<sup>36</sup>
- Model-based carriers that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:

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<sup>31</sup> 47 C.F.R. § 54.308(a)(2)(iii)(A).

<sup>32</sup> 47 C.F.R. § 54.308(a)(2)(iii)(B).

<sup>33</sup> 47 C.F.R. §§ 54.316(a)(1), 54.316(c).

<sup>34</sup> *Connect America Fund et al.*, WC Docket No. s. 10-90, 14-58, CC Docket No. 01-92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3099, para. 28 (2016).

<sup>35</sup> 47 C.F.R. §§ 54.316(a)(2), 54.316(c).

<sup>36</sup> 47 C.F.R. § 54.316(b)(2)(i).

- A model-based carrier that files after the March 1 deadline, but by March 8, will have its support reduced in an amount equivalent to seven days in support;
  - A model-based carrier that files on or after March 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction,
  - *A one-time grace period:* A model-based carrier that submits the annual reporting information required by Section 54.316 after March 1, but before March 5 will not receive a reduction in support if the carrier (including its holding company, operating companies, and affiliates) has not missed a deadline before.<sup>37</sup>
- Model-based carriers must provide no later than March 1, 2027, a certification that as of December 31, 2026, it was offering broadband meeting speed, latency and data usage obligations specified in Section 54.308 to all of its fully funded locations in the state and to the required percentage of its capped locations in the state.<sup>38</sup>

## **2. Each legacy carrier must report:**

- By March 1 each year, legacy carriers with defined broadband deployment obligations must file with USAC information regarding the locations to which the carrier is offering broadband service with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.<sup>39</sup>
- By March 1 each year, legacy carriers must report the number of newly served locations for each study area and locational information, including geocodes, separately indicating whether they are offering service providing speeds of at least 4 Mbps downstream/1 Mbps upstream, 10 Mbps downstream/1 Mbps upstream, or 25 Mbps downstream/3 Mbps upstream.<sup>40</sup>
- Legacy carriers must provide no later than March 1, 2022, a certification that it fulfilled the deployment obligations meeting the requisite speed, latency, and data usage requirements to the required number of locations as of December 31, 2021.<sup>41</sup>
- Every subsequent five-year period thereafter, legacy carriers must provide a certification that it fulfilled the deployment obligation meeting the requisite public interest obligations as specified in Section 54.308(a)(4).<sup>42</sup>

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<sup>37</sup> 47 C.F.R. § 54.316(c).

<sup>38</sup> 47 C.F.R. § 54.316(b)(2)(ii).

<sup>39</sup> 47 C.F.R. § 54.316(a).

<sup>40</sup> 47 C.F.R. § 54.316(a)(2).

<sup>41</sup> 47 C.F.R. § 54.316(b)(3)(i).

<sup>42</sup> 47 C.F.R. § 54.316(b)(3)(ii).



- Legacy carriers that file their reports after the March 1 deadline shall receive a reduction in support pursuant to the following schedule:
  - A legacy carrier that files after the March 1 deadline, but by March 8, will have its support reduced in an amount equivalent to seven days in support;
  - A legacy carrier that files on or after March 9 will have its support reduced on a pro-rata daily basis equivalent to the period of non-compliance, plus the minimum seven-day reduction,
  - *A onetime grace period:* A legacy carrier that submits the annual reporting information required by this section after March 1 but before March 5 will not receive a reduction in support if the carrier has not missed a deadline before; this includes holding company, operating companies, and affiliates.<sup>43</sup>

**3. Each rate-of-return carrier receiving CAF BLS support must file with USAC:**

- To be eligible for CAF BLS, each rate-of-return carrier must file with USAC the following information:
  - The number of lines it serves, within each of its study areas showing residential and single-line business line counts, multi-line business line counts, and consumer broadband-only line counts separately.<sup>44</sup> Each rate-of-return carrier must submit this information to USAC by July 31, and may provide updates on September 30, December 30, and March 30 each year.<sup>45</sup>
  - Each rate-of-return carrier must submit to USAC annually by March 31 projected data necessary to calculate the carrier’s prospective CAF BLS, including common line and consumer broadband-only loop cost and revenue data, for each of its study areas in the upcoming funding year.<sup>46</sup>
    - The data shall be accompanied by a certification that the cost data is compliant with the Commission’s cost allocation rules and does not reflect duplicative assignment of costs to the consumer broadband-only loop and special access categories.<sup>47</sup>
  - Each rate-of-return carrier shall submit to USAC on December 31 of each year the data necessary to calculate a carrier’s Connect America Fund CAF BLS,

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<sup>43</sup> 47 C.F.R. § 54.316(c).

<sup>44</sup> 47 C.F.R. § 54.903(a)(1)-(2).

<sup>45</sup> *Id.*

<sup>46</sup> 47 C.F.R. § 54.903(a)(3).

<sup>47</sup> *Id.*

including common line and consumer broadband-only loop cost and revenue data, for the prior calendar year.<sup>48</sup>

- The data shall be accompanied by a certification that the cost data is compliant with the Commission's cost allocation rules and does not reflect duplicative assignment of costs to the consumer broadband-only loop and special access categories.<sup>49</sup>

#### **4. Model-based and legacy carriers are subject to audits and recordkeeping requirements**

- Model-based and legacy carriers are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.<sup>50</sup> To assist in complying with these audits, all model-based and legacy carriers must retain all records required, including records related to the capital budget mechanism adopted in the March 30, 2016 order,<sup>51</sup> to demonstrate to auditors that support received was consistent with universal service high-cost program rules.
  - The documentation must be maintained for at least 10 years from the receipt of funding and shall be made available upon request to the FCC, any of its Bureaus or Offices, USAC, and their respective auditors.<sup>52</sup>

### **III. Interconnection**

- For purposes of CAF ICC recovery, a rate-of-return carrier must impute an amount equal to the Access Recovery Charge for each Consumer Broadband-Only Loop line that receives support, with the imputation applied before CAF ICC recovery is determined.<sup>53</sup> The per line per month imputation amount shall be equal to the Access Recovery Charge amount prescribed by paragraph (e) of section 51.917 of the Commission rules, consistent with the residential or single-line business or multi-line business status of the retail customer.<sup>54</sup>

### **IV. Pricing Considerations**

#### **A. Charges and Rates**

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<sup>48</sup> 47 C.F.R. § 54.903(a)(4).

<sup>49</sup> *Id.*

<sup>50</sup> 47 C.F.R. § 54.320(a).

<sup>51</sup> 47 C.F.R. § 54.303.

<sup>52</sup> 47 C.F.R. § 54.320(b).

<sup>53</sup> 47 C.F.R. § 51.917(f)(4).

<sup>54</sup> 47 C.F.R. § 51.917.

- The maximum charge that model-based carriers may assess for each residential or single-line business local exchange service subscriber line, multi-line business local exchange service subscriber line, special access surcharge, and line port is the rate in effect on the last day of the month preceding the month for which model-based support is first provided.<sup>55</sup>
- Model-based carriers and legacy carriers may charge end users that subscribe to Consumer Broadband-Only Loop service.<sup>56</sup> Such charge shall be assessed for each line without regulated local exchange voice service provided by a rate-of-return incumbent local exchange carrier to a customer, for use in connection with fixed Broadband Internet access service.<sup>57</sup>
- For legacy carriers, the single-line rate or charge for the broadband-only loop shall be computed by dividing one-twelfth of the projected annual revenue requirement for the Consumer Broadband-Only Loop category (net of the projected annual Connect America Fund Broadband Loop Support attributable to consumer broadband-only loops) by the projected average number of consumer broadband-only service lines in use during such annual period.<sup>58</sup>
- The maximum monthly per line charge for each Consumer Broadband-Only Loop provided by a model-based carrier shall be \$42.<sup>59</sup>

**B. Removal of Investment and Expenses from Special Access**

- Model-based carriers and legacy carriers shall remove consumer broadband-only loop investment and expenses assigned to the special access category by Sections 69.301—310, 69.401—415, respectively from the special access category and assign it to the Consumer Broadband-Only Loop category.<sup>60</sup>

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<sup>55</sup> 47 C.F.R. §§ 69.104(s)(1)-(2), 69.115(f), 69.130.

<sup>56</sup> 47 C.F.R. § 69.132(b).

<sup>57</sup> *Id.*

<sup>58</sup> 47 C.F.R. § 69.132(c).

<sup>59</sup> 47 C.F.R. § 69.132(d).

<sup>60</sup> 47 C.F.R. §§ 69.311(a), 69.416(a).