

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

In the Matter of)
Connect America Fund) WC Docket No. 10-90
Universal Service Reform – Mobility Fund) WT Docket No. 10-208
Connect America Fund – Alaska Plan) WC Docket No. 16-271

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Commissioner O’Rielly issuing a statement; Commissioners Clyburn and Pai
dissenting and issuing separate statements.

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I. INTRODUCTION

1. In this Order, the Commission adopts an integrated plan to address both fixed and mobile voice and broadband service in high-cost areas of the state of Alaska, building on a proposal submitted by the Alaska Telephone Association. In February 2015, the Alaska Telephone Association (ATA) proposed a consensus plan designed to maintain, extend, and upgrade broadband service across all areas of Alaska served by rate-of-return carriers and their wireless affiliates.¹ Given the unique climate and geographic conditions of Alaska, we find that it is in the public interest to provide Alaskan carriers with the option of receiving fixed amounts of support over the next ten years to deploy and maintain their fixed and mobile networks. If each of the Alaska carriers elects this option, we expect this plan to bring broadband to as many as 111,302 fixed locations and 133,788 mobile consumers at the end of this 10-year term.

II. ALASKA PLAN FOR RATE-OF-RETURN CARRIERS

A. Background

2. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to maintain voice service and extend broadband-capable infrastructure to millions of Americans.² In adopting these reforms, the Commission recognized that “Alaska faces uniquely challenging operating conditions,” and that “national solutions may require modification to serve the public interest in Alaska.”³ Accordingly, when adopting various reforms in the *USF/ICC Transformation Order*, the Commission ensured the approach was “flexible enough to take into account the unique conditions in places like Alaska,” and made a “number of important modifications to the national rules . . . to account for those special circumstances.”⁴

3. In February 2015, ATA proposed a consensus plan designed to maintain, extend, and upgrade broadband service across all areas of Alaska served by rate-of-return carriers and their wireless affiliates.⁵ Specifically, ATA proposed to freeze support for Alaskan incumbent rate-of-return local

¹ Letter from Christine O’Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. (filed Feb. 20, 2015) (ATA Feb. 20, 2015 *Ex Parte* Letter). In the *April 2014 Connect America Order*, the Commission sought comment on proposals to support broadband-only loops and on alternative approaches, including on a rule under which no new investment would be included in cost studies used to determine high-cost loop support (HCLS) and interstate common line support (ICLS) after a date certain and instead new investment would be recovered through a new mechanism. See *Connect America Fund et al.*, Report and Order et al., 29 FCC Rcd 7051, 7136-39, paras. 267-75 (2014) (*April 2014 Connect America Order and/or FNPRM*). The Commission also sought comment on a voluntary transition to incentive regulation. *Id.* at 7139-45, paras. 276-99.

² See generally *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

³ See *id.* at 17829, para. 507.

⁴ See *id.* at 17829, para. 508.

⁵ See *supra* note 1.

exchange carriers (ILECs) at adjusted 2011 levels for a 10-year period.⁶ Alaskan rate-of-return carriers receiving frozen support would be required to meet specific performance obligations during the 10-year funding period.⁷ ATA proposed that each Alaskan rate-of-return carrier would be subject to carrier-specific performance requirements, “sufficient to demonstrate that support is being used to advance voice and broadband service in Alaska,”⁸ after evaluation of the carrier’s access to middle mile, its geographic location within Alaska, and other limiting factors.⁹ In May 2016, ATA publicly submitted to the Commission proposed performance plans from Alaskan carriers that included carrier-specific obligations that collectively would increase broadband penetration throughout the course of the 10-year frozen support funding period.¹⁰

4. In the recent *2016 Rate-of-Return Reform Order*, the Commission modified certain aspects of its longstanding mechanisms for the distribution of support in rate-of-return areas, and adopted a voluntary path under which rate-of-return carriers may elect model-based support calculated by the Alternative Connect America Model (A-CAM) for a term of 10 years in exchange for meeting defined deployment obligations.¹¹ These reforms included measures to ensure high-cost universal service support is distributed more efficiently. However, the Commission specifically exempted Alaskan rate-of-return carriers from certain reforms adopted in the *2016 Rate-of-Return Reform Order*, noting “that a framework tailored to the unique circumstances that exist in Alaska merits serious consideration.”¹² The Commission also noted that Alaskan rate-of-return carriers “remain free to elect the voluntary path to the model if they so choose.”¹³

B. Discussion

5. Today we adopt ATA’s proposed consensus plan for rate-of-return carriers serving Alaska, subject to the minor modifications described herein.¹⁴ Alaskan rate-of-return carriers face unique circumstances including Alaska’s large size, varied terrain, harsh climate, isolated populations, shortened construction season, and lack of access to infrastructure that make it challenging to deploy voice and

⁶ ATA Feb. 20, 2015 *Ex Parte* Letter at 3.

⁷ *See id.* at 3.

⁸ *Id.*

⁹ *Id.* at 3-4.

¹⁰ Letter from Christine O’Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed May 9, 2016) (ATA May 9, 2016 *Ex Parte* Letter).

¹¹ *See Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016) (*2016 Rate-of-Return Reform Order*). In April 2016, ATA proposed draft rules for its proposed Alaska support mechanism in light of the newly adopted reforms for rate-of-return carrier support mechanisms. Letter from Christine O’Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed Apr. 18, 2016) (ATA Apr. 18, 2016 *Ex Parte* Letter).

¹² *See 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3090, para. 4, n.10.

¹³ *Id.*

¹⁴ We make some minor modifications to the Plan as submitted in order to ensure that the approved performance plans take into account changes in marketplace conditions over the ten-year term, including: (1) Participants must revise obligations upon access to new backhaul, (2) WCB will monitor on a biennial basis those carriers committing only to maintain existing service. We also make minor modifications to the Plan in order to align it with existing Commission policies that recipients cannot count towards their deployment obligation locations in census blocks that are competitively served, although we provide flexibility to Alaska carriers to count unserved locations in partially served census blocks in certain circumstances.

broadband-capable networks.¹⁵ Not only do Alaskan rate-of-return carriers face conditions that are unique to the state, unlike challenges in the Lower 48, the circumstances and challenges can also vary widely from carrier to carrier depending on where their service areas are located within Alaska.¹⁶

6. Accordingly, we adopt the Alaska Plan to provide Alaskan rate-of-return carriers with the option to obtain a fixed level of funding for a defined term in exchange for committing to deployment obligations that are tailored to each Alaska rate-of-return carrier's circumstances. Specifically, we will provide a one-time opportunity for Alaskan rate-of-return carriers to elect to receive support frozen at adjusted 2011 levels for a 10-year term in exchange for meeting individualized performance obligations to offer voice and broadband services meeting the service obligations we adopt in this Order at specified minimum speeds by five-year and 10-year service milestones to a specified number of locations. As proposed by ATA, we delegate to the Wireline Competition Bureau authority to approve such plans if consistent with the public interest and in compliance with the requirements adopted in this Order.¹⁷

7. As a result of today's action, Alaska rate-of-return carriers have the option of receiving support pursuant to the Alaska Plan, electing to receive support calculated by A-CAM,¹⁸ or remaining on the reformed legacy rate-of-return support mechanisms.¹⁹ Like all other Connect America programs, Alaska Plan participants will report on their progress in meeting their deployment obligations throughout the 10-year term, allowing the Commission, the Regulatory Commission of Alaska, and other interested stakeholders to monitor their progress.

¹⁵ See, e.g., ATA May 9, 2016 *Ex Parte* Letter at Attach. (submitting initial performance plans that identify Alaska-specific challenges, such as the lack of access to and cost of middle mile); Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Feb. 3, 2016) (ATA Feb. 3, 2016 *Ex Parte* Letter) (noting "Alaska's unique circumstances, including its vast geography, extreme climate, limited supporting infrastructure, lack of ubiquitous fiber networks, necessary continued reliance, in some areas, on microwave and satellite backhaul, and historical position lagging the rest of the country with respect to all types of broadband deployment"); Letter from David B. Cohen, Senior Policy Advisor, GVNW Consulting, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed June 24, 2015) (GVNW June 24, 2015 *Ex Parte* Letter) ("From the Arctic Slope service territory in the north that would in and of itself be the tenth largest *state* in the country, to the Aleutian island chain, to difficult-to-reach areas on the thousands of miles of coastline, to the largely unpopulated regions around the state, Alaska Telephone Association members provide state-of-the-art communications in some of the most desolate and harshest geographic, topographic and climatic conditions anywhere on earth."); *USF/ICC Transformation Order*, 26 FCC Rcd at 17829, para. 508 (noting unique conditions in Alaska "such as its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season").

¹⁶ See Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2 (filed Jan. 14, 2016) (GCI Jan. 14, 2016 *Ex Parte* Letter) (noting the "substantial diversity" within Alaska, and that "[t]his diversity presents a significant challenge both in fitting Alaska into any high cost universal service reform plan that works in the Lower 48, and also in developing mechanisms that work in all parts of Alaska").

¹⁷ Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed Nov. 19, 2015) (ATA Nov. 19, 2015 *Ex Parte* Letter).

¹⁸ We note, however, that a number of Alaska rate-of-return carriers would not be able meet the performance obligations associated with A-CAM support; those carriers that are unable to offer even 4/1 Mbps service would not be permitted to elect A-CAM support.

¹⁹ Carriers that choose to remain on the legacy rate-of-return support mechanisms will be subject to the Commission's recent reforms, including limitations on capital and operating expenses, as well as to deployment obligations. See, e.g., *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3090, 3124, 3127, para. 4, n.10, sec. II.B.3, n.196, II.B.4, n.213 (deferring implementation of the operating expense limits and capital investment allowance for Alaska carriers), and see *id.* at 3145-54, paras. 156-180 (discussing deployment obligations).

8. ATA represents that collectively, as of year-end 2015, the Alaska rate-of-return carriers served 124,166 remote locations, with 49,062 of those locations lacking broadband at speeds of 10/1 Mbps or above. If all Alaska rate-of-return carriers that have submitted proposed performance plans participate in the Alaska Plan, and those performance plans are approved as submitted, over 36,000 locations will become newly served with broadband at speeds of 10/1 Mbps or above, and the number of locations with 25/3 Mbps service will increase from 8,823 to 77,516 locations.²⁰ Moreover, under ATA's proposed plan, the 24,138 locations that were unserved by any benchmark at the end of 2015 would be reduced from 24,138 locations to only 758 locations over the term of the Plan.²¹

1. Support Amounts

9. As proposed by ATA,²² each carrier with an approved performance plan in the Alaska Plan will receive annually an amount of support equal to its HCLS and ICLS frozen at 2011 levels, subject to certain adjustments, as was determined by the Universal Service Administrative Company (USAC) on January 31, 2012. This support will be provided in monthly installments over the 10-year term that we adopt below.²³ The frozen support that participants receive will be adjusted downward to account for the \$3,000 per line annual support cap²⁴ and for the corporate operations expense limits on ICLS.²⁵

10. Our decision to freeze support at 2011 levels for Alaska Plan participants is consistent with our decision in 2014 to permit price cap carriers serving non-contiguous areas, such as Alaska Communications Systems (ACS), to elect to receive support that has been frozen at 2011 levels,

²⁰ ATA May 9, 2016 *Ex Parte* Letter at Attach.

²¹ *Id.*

²² ATA Feb. 20, 2015 *Ex Parte* Letter at Attach.; ATA May 9, 2016 *Ex Parte* Letter at Attach. *See also* Letter from Richard Cameron, Alaska Communications Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 3 (filed Feb. 10, 2016) (ACS Feb. 10, 2016 *Ex Parte* Letter) (noting that ACS "reiterated its full support for continuation of existing levels of high-cost support for Alaska's rate-of-return carriers for a period of ten years, as requested in the Alaska Plan").

²³ If a portion or all of an Alaska Plan rate-of-return carrier's lines are transferred to any other ETC, that acquiring ETC may receive Alaska Plan support for the transferred lines in a proportion determined by the Wireline Competition Bureau during the study area waiver process, as long as the acquiring ETC certifies it will meet the associated obligations agreed to in the approved performance plan. *See* 47 CFR pt. 36 App. (defining "study area"); ATA May 9, 2016 *Ex Parte* Letter at Attach. We delegate authority to the Wireline Competition Bureau to make appropriate adjustments to Alaska Plan recipients' adopted performance plans, consistent with approach in the Order, to reflect any transfers of customer lines during the support term.

²⁴ 47 CFR § 54.302; *USF/ICC Transformation Order*, 26 FCC Rcd at 17765, para. 274 (adopting a \$3,000 per line annual support cap (or \$250 per line per month)); *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3152, para. 172 (concluding that the Commission will not require deployment for any rate-of-return carrier in any census block if doing so would result in total support per line in the study area exceeding the \$250 per line per month cap). *See also April 2014 Connect America Order*, 29 FCC Rcd at 7073, para. 67 (finding that a request for support is not reasonable if it would require a carrier to undertake new network upgrades merely for the purpose of newly providing broadband service in study areas where total support is already subject to the \$250 per line monthly cap).

²⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17743, para. 214 (adopting a cap on reimbursable capital expenses and operating expenses). *See also* GCI Jan. 14, 2016 *Ex Parte* Letter at 3; Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 2 (filed Jan. 15, 2016) (ATA Jan. 15, 2016 *Ex Parte* Letter) (proposing that 2011 frozen support would be adjusted downward to account for the \$3,000 per line annual support cap and the corporate operations expense limits on ICLS). For carriers whose support is currently above the \$3,000 per line annual support cap, the Alaska Plan will freeze their support at \$3,000 per line for each line for which the company is receiving support as of the effective date of this Order.

recognizing the unique circumstances and challenges such carriers face.²⁶ We are persuaded by the Alaska rate-of-return carriers that making available the adjusted 2011 support levels will provide carriers participating in the Alaska Plan the certainty they need to commit to investing in maintaining and deploying voice and broadband-capable networks in Alaska.²⁷ We also note that the average annual support amounts for locations that would be covered under the Alaska Plan is \$449, which is within the range of the model-based support offers to the price cap carriers for Phase II.²⁸

2. Public Interest Obligations

11. Recognizing the unique, individualized challenges faced by each rate-of return carrier serving Alaska, we address here the general public interest obligations that would apply to individual carriers electing to participate in the Alaska Plan. We also adopt general parameters for deployment obligations in this Order. As initially proposed by ATA,²⁹ rate-of-return carriers wishing to participate in the Alaska Plan must submit a performance plan, and the Wireline Competition Bureau will have delegated authority to review and approve each carrier's performance plan. Since submitting the initial filing regarding the Alaska Plan, ATA has submitted proposed performance plans for its individual members. We authorize the Wireline Competition Bureau to approve performance plans that adhere to the requirements we have adopted in this Order and that serve the public interest.

12. To merit approval by the Wireline Competition Bureau, these plans shall commit, to the extent possible, to offer at least one voice service and one broadband service that meets these minimum service requirements to a specified number of locations served by the submitting carrier. Carriers must make a binding commitment to serve a specific number of locations in their service area with such minimum speed(s) by the five-year and 10-year service milestones we adopt below. This approach will advance our statutory mandate of using Connect America support to maintain and advance the deployment of voice and broadband services that are reasonably comparable to those offered in urban areas,³⁰ while at the same time providing individualized flexibility for the distinctive geographic, climate, and infrastructure challenges of deploying and maintaining voice and broadband services in Alaska.

²⁶ *December 2014 Connect America Order*, 29 FCC Rcd at 15662, para. 46. See also ATA Jan. 15, 2016 *Ex Parte* Letter at 3 (noting that the Alaska Plan proposal is consistent with the approach taken for price cap carriers serving non-contiguous areas). ACS elected to receive \$20 million in frozen support for Phase II. See Letter from Karen Brinkman, Counsel to Alaska Communications Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed Jan. 2, 2015).

²⁷ See Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Dec. 18, 2015) (GCI Dec. 18, 2015 *Ex Parte* Letter) (stating that the “key to the Alaska Plan for all participants is to have a defined level of support, accompanied by defined deployment obligations”); ATA Jan. 15, 2016 *Ex Parte* Letter at 2 (stating that Alaskan rate-of-return carriers “need to know how much funding they will have” and that “[t]hey cannot commit to the necessary investments and planning if they do not know what the support levels will be”). See also ATA Feb. 3, 2016 *Ex Parte* Letter at Attach.) (claiming that “[f]ixed funding automatically enforces operating efficiencies”).

²⁸ For Connect America Phase II, the Commission offered support to price cap carriers based on a cost model that calculated an average annual support amount of \$411 per location nationwide, with some states higher than that and other states lower. See *Wireline Competition Bureau Announces Connect America Phase II Support Amounts Offered to Price Cap Carriers to Expand Rural Broadband*, Public Notice, 30 FCC Rcd 3905 (WCB 2015).

²⁹ See, e.g., ATA Apr. 18, 2016 *Ex Parte* Letter at Attach.; Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-2 (filed Feb. 2, 2016) (GCI Feb. 2, 2016 *Ex Parte* Letter) (describing ATA's proposal to require Alaska Plan participants to submit performance plans subject to review and approval by the relevant Bureau).

³⁰ 47 U.S.C. § 254(b)(3). See also Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Apr. 29, 2016) (ACS Apr. 29, 2016 *Ex Parte* Letter) (supporting Alaska rate-of-return carriers receiving frozen support for 10 years “in exchange for appropriate broadband obligations and accountability safeguards that are established before support is distributed”); Letter from

(continued....)

13. Below we provide more specific descriptions of our expectations for the general parameters with respect to speed, latency, data usage, and reasonably comparable prices.

14. *Speed.* We recognize that there is a significant disparity today among the Alaska carriers in terms of the different speed of services that they can offer and propose to offer in the future. We seek to advance to the extent possible the number of locations in Alaska that have access to at least 10/1 Mbps service. We also recognize that some carriers may be able to upgrade service to provide speeds greater than 10/1 Mbps. Therefore, we require carriers to report the number of locations in their service areas that will receive broadband at speeds of 25/3 Mbps or higher, as well as 10/1 Mbps, as a result of their deployment. We also grant the flexibility for participants in the Alaska plan to relax the speed requirements to a specified number of locations to account for limitations due to geography, climate, and access to infrastructure, as discussed below.

15. The Commission has adopted a minimum speed standard of 10/1 Mbps for price cap carriers receiving Phase II model-based support, winning bidders in the Phase II auction, and rate-of-return carriers receiving A-CAM and legacy support.³¹ At the same time, we also are requiring recipients of A-CAM support to offer 25 Mbps/3 Mbps service in more dense areas and have established a baseline speed for the Phase II auction of 25/3 Mbps.³² We see nothing in the record to suggest that a fundamentally different approach should be followed here, and accordingly we find it reasonable for Alaska carriers to commit to offer service at these speeds where feasible. But we recognize that not all carriers in Alaska will be able to offer service meeting these speeds due to the unique limitations they face in access to backhaul. While the Commission has noted that our minimum requirements for such carriers is likely to evolve over the next decade and that our policies should take into account evolving standards in the future, we have also recognized that it is difficult to plan network deployment not knowing the performance obligations that might apply by the end of the 10-year term.³³

16. Given that we also adopt a 10-year support term for rate-of-return carriers electing to participate in the Alaska Plan, we conclude that the same principles described above apply here, subject to modifications that account for the unique circumstances and challenges faced by each Alaskan carrier. Accordingly, we authorize the Wireline Competition Bureau to approve performance plans submitted by carriers that maximize the number of locations that receive broadband at speeds of at least 10/1 Mbps and that also identify a set number of locations that will receive broadband at speeds at a minimum 25/3 Mbps as a result of the carrier's deployment, to the extent feasible based on each carrier's individual circumstances. Consistent with our goal of ensuring access to reasonably comparable broadband service

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B. Lynn Follansbee, Vice President, Law & Policy, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed May 4, 2016) (expressing “interest in more clarity surrounding obligations associated with support”).

³¹ See 47 CFR §§ 54.308, 54.309(a); *December 2014 Connect America Order*, 29 FCC Rcd at 15650, para. 19 (adopting 10/1 as the minimum speed for price cap carriers and rate-of-return carriers); *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3097, 3100, 3150 (adopting 10/1 Mbps as the minimum speed for fully funded locations for rate-of-return carriers electing A-CAM support and 10/1 Mbps as the minimum speed for rate-of-return carriers remaining on legacy support); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 5956, para. 14 (2016) (*Phase II Auction Order*) (setting 10/1 Mbps as minimum standard tier for Phase II auction support recipients over a 10-year term).

³² *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3097-98, (requiring that carriers electing to receive A-CAM support to offer at least 10/1 Mbps broadband to all locations that are “fully funded” by the model, and at least 25/3 Mbps to a certain percentage of those locations based on density); *Phase II Auction Order*, 31 FCC Rcd at 5959, paras. 24-25 (setting 25/3 Mbps as baseline speed tier for Phase II auction support recipients over a 10-year term).

³³ See also 47 U.S.C. § 254(c)(1) (defining universal service as “an evolving level of telecommunications services”); *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3097-98, paras. 24-25.

to as many unserved consumers as possible,³⁴ we expect that Alaska Plan recipients will prioritize their deployment of broadband at speeds of 10/1 Mbps before upgrading speeds for locations that are already served with 10/1 Mbps, to the extent feasible.³⁵

17. At the same time, we recognize that due to limitations in access to middle mile infrastructure and the variable terrain, Alaskan carriers may not be able to serve all of their locations at the current minimum speeds for Connect America Fund recipients of 10/1 Mbps speeds with the support they are provided through the Alaska Plan. Accordingly, we authorize the Wireline Competition Bureau to approve performance plans that propose to offer Internet service at relaxed speeds to a set number of locations to the extent carriers face such limitations. We conclude it will serve the public interest to balance our goal of deploying reasonably comparable voice and broadband services with our goals of maintaining existing voice service and of ensuring that universal service support is used efficiently and remains within the budgeted amount for each carrier. This approach is also consistent with the approach the Commission has taken for other Connect America funding mechanisms. For example, for rate-of-return carriers that elect to receive A-CAM support, the Commission requires that such carriers offer Internet access at speeds of at least 4/1 Mbps to locations that are not fully funded, to the extent they are unable to do better.³⁶ And as discussed below, for areas that lack terrestrial backhaul, the Commission has permitted ETCs serving such areas to certify that they are providing speeds of at least 1 Mbps downstream and 256 kbps upstream.³⁷

18. Finally, as we discuss in more detail below,³⁸ we acknowledge that in some limited cases Alaska Plan recipients may face circumstances such that at the beginning of their support terms they can only commit to maintaining Internet service at then-existing speeds below 10/1 Mbps. In such circumstances, carriers will be required to explain why they are unable to commit to upgrade their existing services or deploy service to new locations and the status of these limitations will be revisited throughout the support term.

19. *Latency.* We adopt a roundtrip provider network latency requirement of 100 milliseconds or less for participants in the Alaska Plan. This is consistent with the latency standard we adopted for price cap carriers accepting Phase II model-based support, rate-of-return carriers electing A-CAM support, and for purposes of identifying competitive overlap in rate-of-return served areas.³⁹ Based on the record before us, we do not see any reason to apply a different standard to Alaska Plan participants.⁴⁰

20. Accordingly, Alaska Plan carriers will be required to certify that 95 percent or more of all peak period measurements of network round-trip latency are at or below 100 milliseconds. Consistent

³⁴ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17681, para. 51.

³⁵ See ATA Nov. 19, *Ex Parte* Letter at 1-2 (stating “it is a priority for Alaskan companies participating in the Alaska Plan to provide [10/1 Mbps] service to as many locations as possible in the early years of the Plan, followed by upgrades to higher speeds where possible”).

³⁶ See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 17674.

³⁷ 47 CFR § 54.313(g); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101.

³⁸ See *infra* para. 62.

³⁹ *Connect America Fund*, Report and Order, 28 FCC Rcd 15060, 1568-72, paras. 19-25 (WCB 2013) (*Phase II Service Obligations Order*); *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3099, 3137, paras. 28, 131 n.281. See also *USF/ICC Transformation Order*, 26 FCC Rcd at 17698, para. 96 (adopting the requirement that ETCs receiving high-cost support offer sufficiently low latency to enable the use of real-time applications, such as VoIP).

⁴⁰ See *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7104, para. 152 (proposing to apply the same latency standards the Wireline Competition Bureau had previously adopted for price cap carriers accepting model-based support to rate-of-return carriers that are subject to broadband performance obligations). When evaluating performance plans, the Bureau may consider whether modified latency obligations are required in light of a particular carrier’s circumstances.

with the standards the Wireline Competition Bureau adopted for price cap carriers serving non-contiguous areas, Alaska Plan participants should conduct their latency network testing from the customer location to a point at which traffic is consolidated for transport to an Internet exchange point in the continental United States.⁴¹ The measurements should be conducted over a minimum of two consecutive weeks during peak hours for at least 50 randomly selected customer locations within the census blocks for which the provider is receiving frozen support using existing network management systems, ping tests, or other commonly available network measurement tools.⁴²

21. *Data Usage.* Participants in the Alaska Plan will be required to provide a usage allowance that evolves over time to remain reasonably comparable to usage by subscribers in urban areas, similar to the approach adopted for price cap carriers and other rate-of-return carriers.

22. In the *USF/ICC Transformation Order*, the Commission adopted the requirement that to the extent an eligible telecommunications carrier (ETC) imposes a usage limit on its Connect America-supported broadband offering, that usage limit must be reasonably comparable to usage limits for comparable broadband offerings in urban areas.⁴³ Today, rate-of-return carriers must offer a minimum usage allowance of 150 GB per month, or a usage allowance that reflects the average usage of a majority of consumers, using Measuring Broadband America data or a similar data source, whichever is higher.⁴⁴

23. We see nothing in the record that suggests that participants in the Alaska Plan should not be held to the same standards.⁴⁵ Accordingly, such carriers will be required to certify that they offer a minimum usage allowance of 150 GB per month, or a usage allowance that reflects the average usage of a majority of consumers, using Measuring Broadband America data or a similar data source, whichever is higher. As is the case for other ETCs subject to broadband performance obligations, the Wireline Competition Bureau will announce annually the relevant minimum usage allowance.⁴⁶

24. *Satellite Backhaul Exception.* Consistent with the *USF/ICC Transformation Order*,⁴⁷ we will exempt from the speed, latency, and data usage standards we adopt above those areas where the carriers rely exclusively on the use of performance-limiting satellite backhaul to deliver service because they lack the ability to obtain terrestrial backhaul or satellite backhaul service providing middle mile service with technical characteristics comparable to at least microwave backhaul. This exception will be implemented via an annual certification by such carriers.⁴⁸ The Commission has recognized that satellite backhaul “may limit the performance of broadband networks as compared to terrestrial backhaul” and

⁴¹ *Phase II Service Obligations Order*, 28 FCC Rcd at 15075, para. 35

⁴² *Id* at 15070-71, para. 23.

⁴³ *See, e.g.*, 47 CFR § 54.308(a)(1); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17698, para. 98.

⁴⁴ *2016 Rate-of-Return Reform Order* at 13, para. 27; *Wireline Competition Bureau Announces Results of 2016 Urban Rate Survey for Fixed Voice and Broadband Services, et al.*, WC Docket No. 10-90, 31 FCC Rcd 3393, 3395 (WCB Apr. 5, 2016) (*2016 Urban Rate Survey*). *See also Phase II Service Obligations Order*, 28 FCC Rcd at 15068, para. 18 (adopting data allowance limits for recipients of model-based support that remain consistent with trends in usage for 80 percent of consumers using cable or fiber-based fixed broadband services and that is at least 100 GB).

⁴⁵ *See April 2014 Connect America FNPRM*, 29 FCC Rcd at 7104, para. 152 (proposing to apply the same data usage allowance standards the Wireline Competition Bureau had previously adopted for price cap carriers accepting model-based support to rate-of-return carriers that are subject to broadband performance obligations).

⁴⁶ The Wireline Competition Bureau recently announced that, based on the most recent publicly available Measuring Broadband America data, 80 percent of cable subscribers nationwide are using 156 GB, and it therefore set the 2016 minimum usage allowance for eligible telecommunications carriers subject to broadband public interest obligations at 150 GB per month. *See 2016 Urban Rate Survey*, 31 FCC Rcd at 3395.

⁴⁷ *USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101.

⁴⁸ 47 CFR § 54.313(f)(3), (g).

noted that the Regulatory Commission of Alaska had reported “for many areas of Alaska, satellite links may be the only viable option to deploy broadband.”⁴⁹ Some Alaska Plan recipients have proposed to offer Internet access service speeds of at least 1 Mbps downstream and 256 kbps upstream to some or all locations within the areas served by exclusively satellite middle mile facilities. As noted below, the Wireline Competition Bureau is authorized to approve performance plans where a carrier does not even commit to offer speeds of at minimum 1 Mbps/256 kbps to locations that are served exclusively by performance-limiting satellite backhaul, but where it does commit to upgrade or newly deploy service at higher minimum speeds to areas served by terrestrial or microwave backhaul.⁵⁰ The data usage allowance and latency standards will not apply to those locations that are served exclusively by performance-limiting satellite backhaul.⁵¹

25. Under our existing rules, to the extent that new terrestrial backhaul facilities are constructed, or existing facilities improve sufficiently to meet the public interest obligations, ETCs are generally required to satisfy the public interest obligations in full within 12 months of the new backhaul facilities becoming commercially available.⁵² We similarly expect Alaska Plan recipients to meet latency and data usage requirements for these locations within 12 months. But given that other limiting factors, such as cost or transport limits, in addition to the lack of access to infrastructure, may make it challenging for Alaska carriers to offer a minimum of 10/1 Mbps speeds once they gain access to new backhaul,⁵³ we do not require carriers participating in the Alaska Plan to meet the 10/1 Mbps speed minimum within the usual 12-month timeframe. We instead direct the Wireline Competition Bureau to consider adopting revised minimum speeds for these carriers when it reassesses their performance plans half way through the 10-year term.⁵⁴ We conclude that adjusting speed obligations at that time will alleviate the administrative burden of re-examining performance plans every time backhaul becomes commercially available. We direct the Bureau to work with carriers that seek to participate in the Alaska Plan to include objective metrics for determining when backhaul is available at a price point that would enable the carrier to offer 10/1 Mbps service. We also anticipate that the Commission will consider any additional backhaul that becomes available in determining next steps after the 10-year support term.⁵⁵

26. *Reasonably Comparable Rates.* Participants in the Alaska Plan will be subject to the same obligations as all other recipients of high-cost universal service support to provide voice and broadband service at rates that are reasonably comparable to those offered in urban areas.⁵⁶

27. For voice service, ETCs are required to make an annual certification that the rates for their voice service are in compliance with the reasonable comparability benchmark.⁵⁷ For broadband, an

⁴⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17699-700, para. 101 (quoting Comments of the Regulatory Commission of Alaska, WC Docket No. 10-90 et al., at 22 (filed Apr. 18, 2011)).

⁵⁰ *See infra* para. 52.

⁵¹ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17700, para. 101.

⁵² 47 CFR § 54.313(g); *USF/ICC Transformation Order*, 26 FCC Rcd at 17699-70, para. 101.

⁵³ *See supra* notes 15-16.

⁵⁴ *See infra* paras. 60-61. We have directed the Wireline Competition Bureau to determine halfway through the term of support whether any adjustments should be made to performance obligations of carriers that have committed to upgrade or deploy new broadband service and reassess on a biennial basis the performance of carriers that only commit to maintain existing service. If new backhaul becomes available in an area after the Wireline Competition Bureau’s mid-term assessment, the affected carrier shall submit a revised performance commitments for Wireline Competition Bureau review.

⁵⁵ *See infra* para. 52.

⁵⁶ 47 U.S.C. § 254(b)(3); 47 CFR § 54.308(a); *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 113.

⁵⁷ 47 CFR § 54.313(a)(10). The Wireline Competition Bureau announced the 2016 reasonable comparability benchmark for voice services was \$41.07. *See 2016 Urban Rate Survey*, 31 FCC Rcd at 3393.

ETC has two options for demonstrating that its rates comply with this statutory requirement: certifying compliance with reasonable comparability benchmarks⁵⁸ or certifying that it offers the same or lower rates in rural areas as it does in urban areas.⁵⁹

28. Consistent with our other Connect America programs, we adopt this approach for the Alaska Plan. However, due to the unique challenges in deploying voice and broadband-capable networks in Alaska,⁶⁰ those carriers that elect to receive Alaska Plan support will be subject to an Alaska-specific reasonable comparability benchmark to be established by the Wireline Competition Bureau. We direct the Wireline Competition Bureau to establish a benchmark using data from its urban rate survey or other sources, as appropriate.

29. We conclude that the public interest obligations we adopt strike the appropriate balance of ensuring that as many Alaska consumers as feasible receive reasonably comparable voice and broadband service while also allowing Alaska Plan participants, who are most familiar with the limitations in access to infrastructure and the climate and geographies they serve, the flexibility to provide service in a way that is logical, maximizes the reach of their network, and is reasonable considering the unique circumstances of each individual carrier's service territory. For price cap carriers serving non-contiguous areas, we determined that due to the circumstances and challenges faced by such carriers that were unique to the areas they serve, a "one-size-fits-all" approach would leave some of those carriers potentially unable to fulfill their deployment obligations.⁶¹ Accordingly, we concluded that "tailoring specific service obligations to the individual circumstances" of each of these carriers "will best ensure that Connect America funding is put to the best possible use."⁶² We conclude that the same principles apply here where the potential recipients within the state of Alaska face their own unique challenges and circumstances due to the variable terrain and their varying levels of access to infrastructure.⁶³

30. *Intermediate Milestones.* Consistent with the framework proposed by ATA members, participants in the Alaska Plan will commit to upgrade or deploy new voice and broadband service to a specified number of locations by the end of the fifth year of their support term and complete their deployment to the required number of locations as specified in their approved performance plan by the end of the 10th year of their support term. This is similar to the approach adopted for rate-of-return carriers that remain on legacy support mechanisms.⁶⁴

⁵⁸ 47 CFR § 54.313(a)(12). The Wireline Competition Bureau announced the 2016 reasonable comparability benchmark was \$71.17 for broadband service providing 10/1 Mbps with 150 GB usage allowance. *See 2016 Urban Rate Survey*, 31 FCC Rcd at 3394.

⁵⁹ 47 CFR § 54.313(a)(12).

⁶⁰ *See* ATA Apr. 25, 2016 *Ex Parte* Letter at 2 (noting that "[a]ll Alaskan providers must provide connections to the Internet via undersea cable to the Lower 48, and many must also traverse vast additional distances via microwave and satellite links" which "creates great variability in cost and in many cases drives rates to exceed national urban benchmarks exponentially"); Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1, Attach. (filed May 12, 2016) (providing "information about pricing and usage which can be provided at various price points, all of which are driven by the cost of middle mile in the particular region of Alaska being served").

⁶¹ *December 2014 Connect America Order*, 29 FCC Rcd at 15662, para. 46.

⁶² *Id.*

⁶³ Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at Attach. (filed Mar. 13, 2015) (ATA Mar. 13, 2015 *Ex Parte* Letter) (supporting "flexibility in determining both rate of return and price cap carrier obligations, recognizing the unique challenges and conditions in Alaska").

⁶⁴ In particular, those rate-of-return carriers electing to remain on reformed legacy support mechanisms that are subject to a five-year deployment obligations do not have interim service milestones during that five-year period, but

(continued....)

31. Based on the shortened construction season for Alaska and the limited availability of personnel to construct networks, we conclude that ATA's proposal to have one service milestone at the mid-point of the term and one service milestone at the end of the support term is reasonable. This will give carriers the flexibility to build out their networks based on the unique conditions and challenges they face and give the Commission an objective measure halfway through the term to monitor the carrier's progress. This data will also be useful for the Bureau to consider when reassessing Alaska Plan recipients' individual deployment obligations halfway through the term of support. We find that because we give participants the flexibility to propose in their performance plans the number of locations that they commit to offering specified speeds by the five- and 10-year milestones, they will be able to set achievable milestones for themselves based on their individual circumstances. We also note that while carriers are required to meet these service milestones at a minimum, we anticipate that some carriers will complete their deployment in a shorter timeframe. Carriers will still be required to report their progress on an annual basis, as described below.

3. Term of Support

32. Consistent with the framework proposed by ATA, we adopt a support term of 10 years for carriers that are authorized to receive support through the Alaska Plan. In the *2016 Rate-of-Return Reform Order*, we adopted a 10-year term for carriers that elected to receive A-CAM support.⁶⁵ We conclude that a 10-year support term for the Alaska carriers that elect to participate in this plan is in the public interest. We acknowledge ATA's position that 10 years of frozen support "will create stability which will assure continued service in remote Alaska and allow deployment to underserved and unserved areas."⁶⁶

33. Before the 10-year support term has ended, we expect that the Commission will conduct a rulemaking to decide how support will be determined after the end of the 10-year support term for Alaska Plan participants. As we noted in the *2016 Rate-of-Return Reform Order*,⁶⁷ we expect that prior to the end of the 10-year term, the Commission will have adjusted its minimum broadband performance standards for all ETCs, and other changes may well be necessary then to reflect marketplace realities at that time.

4. Appropriate Use of Support

34. Like rate-of-return carriers electing A-CAM support,⁶⁸ Alaska Plan recipients will be permitted to use their Alaska Plan support for both operating expenses and capital expenses for new deployment, upgrades, and maintenance of voice and broadband-capable networks.⁶⁹ Like recipients of model-based support, they may use that support anywhere in their network to upgrade their ability to offer improved service; they are not limited to using the support only for last mile facilities that traditionally have been supported through the HCLS and ICLS support mechanisms. They no longer will be required to submit line counts; support will be provided for the entire network.⁷⁰ An Alaska Plan recipient will be

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rather may meet their service obligation at any time during a five-year period. *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3153, para. 174.

⁶⁵ *2016 Rate-of-Return Reform Order* 31 FCC Rcd at 3097, para. 22. We also have adopted a 10-year term of support for entities awarded funding through the Phase II competitive bidding process. See *April 2014 Connect America Order*, 29 FCC Rcd at 7061, para. 35.

⁶⁶ ATA Feb. 20, 2015 *Ex Parte* Letter at Attach.

⁶⁷ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3097, para. 22.

⁶⁸ *Id.* at 3097-98, 3100, paras. 25, 30-31.

⁶⁹ ATA Mar. 13, 2015 *Ex Parte* Letter at Attach.

⁷⁰ *Id.* (proposing that Alaska Plan "[s]upport will be used for data-only broadband lines as well as those used for voice").

deemed to be offering service if it is willing and able to provide qualifying service to a requesting customer within 10 business days.

35. Alaska Plan participants – like all other ETCs – remain subject to limitations on the appropriate use of universal service support. The Commission recently released a public notice in which it reminded ETCs of their obligation to use high-cost support only for its intended purpose of maintaining and extending communications services to rural, high-cost areas.⁷¹ The public notice listed a number of expenses ETCs are not permitted to recover through high-cost support.⁷² These restrictions apply to recipients of frozen support, not just to those who receive support based on traditional cost-of-service rate-of-return principles. In addition, to the extent the Commission revises its expectations for appropriate expenditures in the future, carriers participating in the Alaska Plan will of course be subject to those new rules.⁷³

36. *Focusing Deployment on Unserved Areas.* Like our other Connect America programs, we will not dictate the specific locations Alaska Plan participants must serve, but Alaska Plan recipients will generally not be permitted to use Alaska Plan support to upgrade or deploy new broadband service to locations that are located in census blocks that are served by a qualifying unsubsidized competitor. To determine which census blocks are competitively served, we direct the Wireline Competition Bureau to conduct a challenge process similar to the challenge process we adopted for rate-of-return carriers receiving Connect America Fund Broadband Loop Support (CAF BLS) support. We will allow them, however, to count towards their deployment obligation unserved locations in partially served census blocks in specific circumstances, as explained more fully below.

37. In the *USF/ICC Transformation Order*, the Commission adopted reforms to eliminate inefficiencies and instances in which “universal service support provides more support than necessary to achieve our goals,” by eliminating certain support in areas that are served by a qualifying unsubsidized competitor.⁷⁴ In the *2016 Rate-of-Return Reform Order*, the Commission adopted a rule to eliminate CAF BLS in competitive areas, finding that “[p]roviding support to a rate-of-return carrier to compete against an unsubsidized provider distorts the marketplace, is not necessary to advance the principles in section 254(b), and is not the best use of our finite resources.”⁷⁵ Specifically, under the new rule, a census block is deemed to be served by a qualifying unsubsidized competitor if the competitor holds itself out to the public as offering “qualifying voice and broadband service” to at least 85 percent of the residential locations in a given census block.⁷⁶ The Commission established a robust challenge process to determine which census blocks are competitively served.⁷⁷

38. We adopt the same general approach for determining the presence of a qualifying unsubsidized competitor for the Alaska Plan that we adopted for purposes of determining competitive

⁷¹ See *All Universal Service High-Cost Support Recipients are Reminded that Support Must be Used for its Intended Purpose*, WC Docket Nos. 10-90 and 14-58, Public Notice, 30 FCC Rcd 11821 (2015) (*High-Cost Oct. 19, 2015 Public Notice*).

⁷² See *id.* at 11822. The Commission will reduce frozen support amounts for any carrier in the event it is determined that the carrier received amounts in the past to which it was not entitled.

⁷³ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3212, para. 327 et seq. (seeking comment on permitted expenses, cost allocation and affiliate transactions).

⁷⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, 17723, 17729, 17766-68, paras. 103, 150, 170, 280-84 (adopting rules that make ineligible for support areas served by price cap carriers where unsubsidized competitors offer service and areas served by rate-of-return carriers where unsubsidized competitors offer service throughout an incumbent’s service area)

⁷⁵ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd 3132-33, paras. 120-21.

⁷⁶ *Id.* at 3133, para. 121.

⁷⁷ *Id.* at 3133-38, paras. 122-33.

overlap for CAF BLS. Specifically, a census block will be deemed to be served by an unsubsidized competitor if that competitor offers a qualifying voice and broadband service to at least 85 percent of the residential locations within a given census block.⁷⁸ To qualify, the unsubsidized competitor must be a facilities-based provider of residential fixed voice service with the ability to port numbers in the relevant census block,⁷⁹ and must offer a broadband service at speeds of at least 10/1 Mbps, at a latency of 100 milliseconds or less, with a usage allowance of at least 150 GB at reasonably comparable rates, utilizing the Alaska-specific benchmark.⁸⁰ For purposes of implementing this requirement, we note that there are certain areas where GCI currently is receiving support for its wireline competitive ETC, but has committed to relinquishing that support as part of the overall Alaska Plan. In implementing this requirement, therefore, we will treat GCI as an unsubsidized competitor in those study areas where it has committed to relinquish its support, to the extent it meets all of the requisite requirements. Like with our other Connect America programs, we find that it would be an inefficient use of Alaska Plan support to permit recipients to use that support to upgrade or deploy new voice and broadband services where unsubsidized competitors already offer services that meet our standards.

39. Accordingly, we adopt a challenge process for identifying which census blocks that are in Alaska rate-of-return carriers' service areas are served by qualifying unsubsidized competitors and delegate authority to the Wireline Competition Bureau to take any necessary steps to conduct the challenge process. The challenge process shall be conducted using the same general format and rules adopted by the Commission for the challenge process for CAF-BLS recipients.⁸¹ In summary, the Wireline Competition Bureau will publish a public notice with a link to the preliminary list of unsubsidized competitors serving the relevant census blocks according to the most recent publicly available Form 477 data.⁸² There will then be a comment period in which unsubsidized competitors, which carry the burden of persuasion, must certify that they offer qualifying voice and broadband services to 85 percent of locations in the relevant census blocks, accompanied by supporting evidence.⁸³ The Wireline Competition Bureau will then accept submissions from the incumbent or other interested parties seeking to contest the showing made by the competitor.⁸⁴ After the conclusion of the comment cycle, the Wireline Competition Bureau will make a final determination of which census blocks are competitively served, weighing all of the evidence in the record.⁸⁵

40. Once the challenge process results have been announced, Alaska Plan participants may petition the Wireline Competition Bureau if they believe adjustments to their approved performance plans

⁷⁸ *Id.* at 3133, para. 121. The competitor must hold itself out to the public as offering the qualifying voice and broadband service to at least 85 percent of residential locations. To offer service, the competitor must be willing and able to provide qualifying voice and broadband service to a requesting customer within 10 business days. *Id.* Competitive ETCs receiving universal service support and affiliates of the rate-of-return carriers are not considered qualifying competitors. *Id.* at 3136, para. 129; *see also* 47 CFR § 54.5 (defining unsubsidized competitor).

⁷⁹ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3137-38, para. 131.

⁸⁰ *Id.*; Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1-2 (filed May 2, 2016). For purposes of meeting the reasonable comparability benchmark, the competitor must offer the requisite service at or below the reasonable comparability benchmark established by the Wireline Competition Bureau for the state of Alaska.

⁸¹ *2016 Rate-of-Return Reform Order* at 47-52, paras. 122-33.

⁸² *Id.* at 3133-34, paras. 122-23.

⁸³ *Id.* at 3133, 3137-38, paras. 122, 131. If a competitor fails to submit such information in response to the Wireline Competition Bureau's public notice, the block will not be deemed competitively served. *Id.* at 48, para. 122.

⁸⁴ *Id.* at 3138, para. 132.

⁸⁵ *Id.* at 3138, para. 133. Any determination by the Wireline Competition Bureau is subject to review by the Commission. *See* 47 U.S.C. § 155(c); 47 CFR § 1.115.

are warranted. That is, to the extent an Alaska Plan recipient committed to upgrade or deploy new service to locations that are located in census blocks that are determined to be served as a result of the challenge process, they may need to identify other locations that they can serve in eligible census blocks in order to offer service to the requisite number of locations that they have committed to serve at the specified minimum speeds. In those circumstances, we conclude it would serve the public interest to allow Alaska Plan participants to deploy service to unserved locations in partially served census blocks. In particular, if a carrier seeks to adjust its deployment obligations in its approved performance plan because certain census blocks are deemed competitively served at the conclusion of the challenge process, the Bureau has delegated authority to work with such carriers to determine whether there are unserved locations in partially served blocks that could count towards their deployment obligations. To the extent they are unable to identify additional locations, the Wireline Competition Bureau has delegated authority to modify the obligations in their performance plans consistent with the approach we adopt today.

41. In addition, we direct the Wireline Competition Bureau to reassess the competitive landscape prior to the beginning of the Alaska Plan recipients' fifth year of support. This will provide refreshed competitive coverage data to consider when the Wireline Competition Bureau reassesses whether any adjustments in the Alaska Plan recipients' performance plans should be made for the second half of the 10-year term.

5. Opportunity to Participate in Alaska Plan

42. Alaskan rate-of-return carriers will have a one-time opportunity to elect to participate in the Alaska Plan. Those carriers that choose not to participate have the option of electing to receive A-CAM support by the applicable deadline or remaining on the reformed legacy support mechanisms.⁸⁶

43. Consistent with our other programs that provide a fixed support amount for a set term, we will require rate-of-return carriers choosing to participate in the Alaska Plan to do so on a state-level basis rather than at the study area level.⁸⁷ The Commission has required price cap carriers and rate-of-return carriers electing model-based support to do so at the state-level to prevent carriers from cherry-picking the study areas that would receive more money from the relevant model and to allow carriers to make business decisions about managing different operating companies on a more consolidated basis.⁸⁸ Given Alaska's large size and variable terrain, we recognize that there may be major differences in the geographic conditions and infrastructure availability for a carrier's various study areas. However, carriers will have the flexibility to take these factors into account when they specify how many locations they will be able to serve and at what broadband speeds in their performance plans at the state-level. Given that this extra flexibility is already provided to carriers electing to participate in the Alaska Plan, we are not convinced that carriers serving Alaska should be given even more flexibility than other rate-of-return carriers by having the ability to choose different funding mechanisms for each of their study areas.

⁸⁶ See Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 2-3 (filed Feb. 8, 2016) (noting that the "Alaska Plan is designed as an optional alternative to national reforms, such that an Alaska rate-of-return carrier could elect the Alaska Plan or alternatively elect model-based or cost-based support, however revised by the Commission").

⁸⁷ See ATA Apr. 18, 2016 *Ex Parte* Letter at Attach. (proposing that Alaska Plan participants be permitted to elect into the Alaska Plan on a study area basis). We note that rate-of-return carriers may make this decision independent of the decision of their competitive eligible telecommunications carrier affiliates, if any, regarding participation in the Alaska Plan for mobile carriers. ATA May 9, 2016 *Ex Parte* Letter at Attach.

⁸⁸ 2016 *Rate-of-Return Reform Order* at 3113, para. 65 (requiring rate-of-return carriers electing A-CAM support to do so at the state-level); *USF/ICC Transformation Order*, 26 FCC Rcd at 17729-30, paras. 171-73 (requiring price cap carriers electing CAM support to do so for all of their study areas in a state).

44. We note that 18 Alaska rate-of-return carriers have already submitted 17 proposed performance plans to the Wireline Competition Bureau.⁸⁹ Given that this Order is consistent with ATA's proposal, subject to minor modifications, we presumptively consider these plan commitments to constitute an election to participate in the plan. Alaskan rate-of-return carriers that have already submitted proposed performance plans that choose to update their proposed performance commitments or not participate in the plan in light of this Order should file such updates or provide such notice no later than 30 days from the effective date of this Order.⁹⁰ Carriers that have already submitted proposed performance plans should submit any such updated performance plans or provide such notice in WC Docket No. 16-271. Also in light of this Order, we direct the Wireline Competition Bureau to further review the proposed performance commitments on file (or any timely update).⁹¹ While review of their performance plan is pending, carriers will remain on the revised legacy support mechanisms.⁹²

45. If the Wireline Competition Bureau concludes that a proposed performance plan meets the applicable requirements and will serve the public interest, it will release a public notice approving the performance plan. The public notice will authorize the carrier to begin receiving support and directing USAC to obligate and disburse Alaska Plan support once certain conditions are met. Support will be conditioned on an officer of the company submitting a letter in WC Docket No. 16-271 certifying that the carrier will comply with the public interest obligations adopted in this Order and the deployment obligations set forth in the adopted performance plan within five days of the release of the public notice or such longer period of time, not to exceed fifteen days, as the Bureau's public notice specifies.

46. Because carriers that are authorized to begin receiving Alaska Plan support will be receiving a frozen support amount for a specified term, like carriers that elected A-CAM support, they must refile their special access tariffs removing the costs of consumer broadband-only loops from the Special Access category, consistent with the *2016 Rate-of-Return Order*. The costs that would be included in the revenue requirement for the Common Line category will be removed from rate-of-return regulation. The carriers are permitted—but not required—to assess a wholesale consumer broadband-only loop charge that does not exceed \$42 per line per month.⁹³ Alternatively, they may detariff such a charge.⁹⁴ Alaska Plan recipients must also exit the National Exchange Carrier Association (NECA)

⁸⁹ United Utilities and Yukon Telephone Company, Inc., which have a common holding company, General Communication, Inc., submitted a combined plan. See ATA May 9, 2016 *Ex Parte* Letter at Attach.

⁹⁰ We presume that the submitted performance plans will also comply with the usage and latency requirements adopted above, as appropriate.

⁹¹ If the Wireline Competition Bureau concludes that a proposed performance plan is inadequate, the Bureau may deny the request or work with the carrier to submit a revised request that meets applicable requirements. Any action by the Bureau is subject to review by the Commission. See 47 U.S.C. § 155(c); 47 CFR § 1.115.

⁹² Any Alaskan rate-of-return carrier that has not already submitted a performance plan still has the opportunity to do so. Such carrier shall submit a proposed plan no later than 30 days from the effective date of this Order. If the Wireline Competition Bureau does not receive a proposed plan, the carrier will remain on legacy support mechanisms and has the opportunity to elect to receive model-based support. See *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90, Public Notice, DA 16-869 (WCB rel. Aug. 3, 2016) (A-CAM Offer Public Notice). Any carrier that has already submitted a proposed plan but then provides notice to not participate in the plan will also remain on legacy support. That carrier has the opportunity to elect to receive model-based support as well.

Alaskan rate-of-return carriers that have already submitted a performance plan will have the opportunity to elect to receive A-CAM support by the November 1, 2016 deadline. See A-CAM Offer Public Notice at 1. If the carrier elects the A-CAM support and is authorized to receive such support, its support will come from the A-CAM budget and not from the Alaska Plan budget.

⁹³ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3157-60, paras. 189-94.

⁹⁴ *Id.*

common line pool, and they have the option of continuing to use NECA to tariff their end-user charges.⁹⁵ Once USAC confirms that these steps have been taken, support under the Alaska Plan may be disbursed.

6. Budget

47. If all 19 Alaskan rate-of-return carriers were to participate in the Alaska Plan, this would result in approximately \$55.7 million being disbursed annually.⁹⁶ This represents an increase over their current support levels, in the aggregate.⁹⁷ As described below,⁹⁸ to the extent that Alaska Plan recipients' adjusted 2011 frozen support exceeds their 2015 support levels, the excess will be funded using funds that are saved through the phasing down of the competitive ETC support that is currently used to provide service in non-Remote Alaska.⁹⁹

48. Because carriers participating in the Alaska Plan will be receiving a set amount of support over a defined support term in exchange for defined performance obligations over that term, their support will not be subject to the budget controls that the Commission has adopted for HCLS and CAF BLS.¹⁰⁰ This is consistent with our approach for rate-of-return carriers electing A-CAM support.¹⁰¹ For the purpose of determining the budget amount available for rate-of-return carriers not electing A-CAM support or participating in the Alaska plan, USAC shall treat Alaska Plan support in the same manner as A-CAM support.

49. Consistent with the action taken when price cap carriers' support was frozen at 2011 levels and the recent decision with respect to rate-of-return carriers that elect A-CAM support,¹⁰² we also direct NECA to rebase the cap on HCLS once Alaska Plan support is authorized for electing rate-of-return carriers that formerly received HCLS. In the first annual HCLS filing following the initial disbursement of Alaska Plan support, NECA shall calculate the amount of HCLS that those carriers would have received in absence of their election, subtract that amount from the HCLS cap, and then recalculate HCLS for the remaining carriers using the rebased amount.

7. Accountability and Oversight

50. ATA proposes that participants be subject to the recordkeeping and compliance requirements set forth in section 54.320(d) of the Commission's rules.¹⁰³ We build on that proposal and require participants in the Alaska Plan to comply with our existing high-cost reporting and oversight mechanisms, unless otherwise modified as described below.¹⁰⁴

⁹⁵ *Id.* at 3160, paras. 195-196.

⁹⁶ ATA May 9, 2016 *Ex Parte* Letter at Attach.

⁹⁷ ATA Jan. 15, 2016 *Ex Parte* Letter at 2 (noting that support for Alaska rate-of-return carriers has declined since 2011).

⁹⁸ *See infra* Section III.C.

⁹⁹ *See* ATA Feb. 3, 2016 *Ex Parte* Letter at Attach. ATA notes that adjusted 2011 support levels for all Alaska rate-of-return carriers exceed the amount of support that was disbursed for ICLS and HCLS in 2015 by approximately \$9.2 million. ATA May 9, 2016 *Ex Parte* Letter at Attach.

¹⁰⁰ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3144-45, paras. 150-53; Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 1 (filed Apr. 25, 2016) (ATA Apr. 25, 2016 *Ex Parte* Letter).

¹⁰¹ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3143-44, para. 149.

¹⁰² *Id.* at 3145, para. 154; *USF/ICC Transformation Order*, 26 FCC Rcd at 17760, paras. 258-59.

¹⁰³ ATA May 9, 2016 *Ex Parte* Letter at Attach. (proposed section 54.306(b)).

¹⁰⁴ ACS Apr. 29, 2016 *Ex Parte* Letter (supporting the implementation of "accountability mechanisms" for rate-of-return carriers); ATA Feb. 20, 2015 *Ex Parte* Letter at 1.

51. *Annual Reporting Requirements.* Pursuant to section 54.313 of the Commission's rules, Alaska Plan participants must continue to file their FCC Form 481 on July 1 each year.¹⁰⁵ Further, consistent with the relief granted to other rate-of-return carriers in the *2016 Rate-of-Return Reform Order*, we eliminate the requirement that Alaska Plan participants file annual updates to their five-year service quality improvement plans once we receive Paperwork Reduction Act approval for the geocoded location reporting requirement we adopt below.¹⁰⁶

52. We add a reporting requirement to the Form 481 for Alaska Plan recipients to help the Commission monitor the availability of infrastructure for these carriers. For Alaska Plan recipients that have identified in their adopted performance plans that they rely exclusively on performance-limiting satellite backhaul for certain number of locations, we will require that they certify whether any terrestrial backhaul, or any new generation satellite backhaul service providing middle mile service with technical characteristics comparable to at least microwave backhaul, became commercially available in the previous calendar year in areas that were previously served exclusively by performance-limiting satellite backhaul. If a recipient certifies that such new backhaul has become available, it must provide a description of the backhaul technology, the date on which that backhaul was made commercially available to the carrier and the number of locations that are newly served by such new backhaul. Within twelve months of the new backhaul facilities becoming commercially available, funding recipients must certify that they are 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 reasonably comparable rates (using the Alaska-specific reasonable comparability benchmark). Given that we will be adopting tailored deployment obligations for Alaska Plan providers, we exempt them for the requirement that ETCs certify they are offering Internet service at speeds of at least 1 Mbps downstream and 256 kbps upstream to areas served exclusively by performance-limiting satellite backhaul.¹⁰⁷

53. The Wireline Competition Bureau will be able to consider this data at the mid-point in the 10-year term when it reviews carriers' minimum speed commitments in light of the current marketplace.¹⁰⁸ This data will also be useful for the Commission in determining what steps to take after the 10-year support term for Alaska Plan participants.¹⁰⁹ We conclude that the benefits to the public interest of this oversight will outweigh any potential burdens on Alaska Plan participants, particularly given that we expect Alaska Plan carriers will be monitoring available backhaul to ensure they are maximizing their Alaska Plan support in deploying voice and broadband services.

54. Additionally, consistent with the requirements that apply to all ETCs subject to broadband public interest obligations, we will require each Alaska Plan recipient to certify on an annual basis that it is commercially offering voice and broadband services that meet the public interest obligations we have adopted in this Order at the speeds committed to in its own performance plan, to the locations they reported as required below. This requirement will ensure that the Commission is able to monitor that Alaska Plan recipients are continuing to use their Alaska Plan support for its intended use throughout their support term, and they are continuing to offer service meeting the relevant minimum requirements.

55. For Alaska Plan recipients that propose to maintain their existing networks throughout the 10-year support term without newly deploying or upgrading service to locations within their service areas, we require that such carriers retain documentation on how much of their Alaska Plan support was

¹⁰⁵ 47 CFR § 54.313.

¹⁰⁶ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3167, para. 217.

¹⁰⁷ 47 CFR § 54.313(g).

¹⁰⁸ *See infra* para. 61.

¹⁰⁹ *See supra* Section II.B.3.

spent on capital expenses and operating expenses and be prepared to produce such documentation upon request. Given that these recipients will not be able to demonstrate that they are meeting new service milestones, we conclude that it is reasonable to require them to be prepared to produce documentation to demonstrate how they are using Alaska Plan support. We expect that this requirement will not impose an undue burden on these recipients because they track their capital and operating expenditures in the regular course of business.

56. Finally, the Regulatory Commission of Alaska will submit the annual section 54.314 intended use certification on behalf of Alaska Plan participants, like all ETCs subject to the jurisdiction of a state commission.¹¹⁰

57. *Location Reporting Requirements.* In the *2016 Rate-of-Return Reform Order*,¹¹¹ we adopted geocoded location reporting requirements that we now extend to Alaska Plan participants.¹¹² Specifically, starting on March 1, 2018, and on a recurring basis thereafter, we will require all Alaska Plan participants to submit to USAC the geocoded locations for which they have newly deployed or upgraded broadband meeting the minimum speeds in their approved performance plans and their associated speeds.¹¹³ The geocoded location information should reflect those locations that are broadband-enabled where the company is prepared to offer voice and broadband service meeting the speeds committed to in the deployment plan and the relevant public interest obligations, within 10 business days.

58. Alaska Plan participants will be required to submit geocoded location information for their newly offered and upgraded broadband locations starting March 1, 2018 and then by March 1 following each support year.¹¹⁴ However, like other ETCs subject to this reporting obligation, we expect that Alaska Plan participants will report the information on a rolling basis.¹¹⁵ A best practice would be to submit the information no later than 30 days after service is initially offered to locations in satisfaction of their deployment obligations.

59. Like other high-cost recipients that are required to meet service milestones for broadband public interest obligations,¹¹⁶ Alaska Plan participants will also be required to file certifications with their location submission to ensure their compliance with their public interest obligations. Each participant must certify that it has met its five-year service milestone by March 1 following its fifth year of support and certify that it has met its 10-year service milestone by March 1 following its 10th year of support.

¹¹⁰ 47 CFR § 54.314.

¹¹¹ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3164, para. 210.

¹¹² For the purpose of deployment obligations, location has the same meaning as in other Connect America Fund mechanisms that support service to fixed locations.

¹¹³ See ATA Apr. 25, 2016 *Ex Parte* Letter at 1 (proposing that Alaska Plan participants submit “geocoded locations for new service as it is deployed”). In the *2016 Rate-of-Return Reform Order*, we directed the Wireline Competition Bureau to work with USAC to develop a means of accepting alternative information in those instances where a postal code or other standardized means of geocoding is not readily available. We also delegated authority to the Wireline Competition Bureau to act on individual requests for waiver of the geocode requirement in those cases where the parties can demonstrate other unique circumstances that make compliance with the geocoding requirement for a subset of locations impracticable. *2016 Rate-of-Return Reform Order* at 79, para. 211 n.465.

¹¹⁴ See 47 CFR § 54.316(a) & (c). The Wireline Competition Bureau has delegated authority to adjust these deadlines as needed for administrative convenience.

¹¹⁵ *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3165, para. 212 n.465.

¹¹⁶ 47 CFR § 54.316(b).

Participants that fail to file their geolocation data and associated deployment certifications on time will be subject to the penalties described in section 54.316(c) of our rules.¹¹⁷

60. We also adopt a reporting requirement for newly deployed backhaul. We will require Alaska Plan participants to submit fiber network maps or microwave network maps in a format specified by the Bureaus covering eligible areas and to update such maps if they have deployed middle-mile facilities in the prior calendar year that are or will be used to support their service in eligible areas.

61. *Reassessment.* We direct the Wireline Competition Bureau to reassess the deployment obligations in the approved performance plans before the end of the fifth year of support. We therefore require that participating carriers update their end-of-term commitments no later than the end of the fourth year of support, and we delegate to the Wireline Competition Bureau the authority to review and approve modifications that serve the public interest. This will be an opportunity to assess whether local conditions have changed,¹¹⁸ and any adjustments to the performance plan might be appropriate. A number of Alaska rate-of-return carriers have represented that they cannot offer broadband services at 10/1 Mbps speeds at the present time due to limitations in access to middle mile infrastructure.¹¹⁹ To the extent such conditions have improved, we delegate authority to the Wireline Competition Bureau to adopt modifications to approved performance plans to ensure that Alaska Plan support is being maximized to offer reasonably comparable services to the carrier's service area.¹²⁰

62. We acknowledge that certain Alaska rate-of-return carriers may only be able to commit at this point to maintaining existing Internet access at speeds below 10/1 Mbps due to limitations in their access to infrastructure. To the extent that a carrier faces such limitations, it should specify in its performance plan the number of locations where it commits to maintain its existing voice and Internet access service and provide a justification for why it cannot commit to upgrading Internet access to faster speeds within in its service area. We direct the Wireline Competition to monitor these carriers more closely to determine when it is feasible to implement specific deployment obligations. We expect that to the extent such limiting conditions have changed, the Wireline Competition Bureau will revise the carrier's deployment obligations to require that they upgrade their existing service or deploy service to new locations. We conclude that reviewing such carrier's performance plans on a biennial basis rather than at the mid-point of the term will serve the public interest. The Wireline Competition Bureau will be able to monitor that such carriers are effectively utilizing their Alaska Plan support instead of only maintaining the status quo throughout the support term, rather than at a point when they have already received half of their support.

63. *Monitoring.* To ensure that Connect America support is used as effectively as possible, the Commission must be able to measure and monitor the service commitments in each Alaska Plan recipient's performance plan. We expect to monitor the progress of all rate-of-return carriers in meeting their respective deployment obligations, including those participating in the Alaska Plan, and are willing to make future adjustments where warranted.¹²¹ In addition to the reassessment,¹²² we delegate to the Wireline Competition Bureau the authority to approve changes to the deployment obligations in the

¹¹⁷ 47 CFR § 54.316(c).

¹¹⁸ As discussed more fully above, we expect the Wireline Competition Bureau to assess whether competitive conditions have changed, which could warrant adjustments to prior deployment commitments.

¹¹⁹ See May 9, 2016 AT&T *Ex Parte*, at Attach.

¹²⁰ See *supra* para. 52. Above we require Alaska Plan recipients to certify if any new backhaul became commercially available in the previous calendar year so that we can track the availability of such infrastructure. We also require that Alaska Plan recipients report geocoded location data by March 1 of each year to monitor progress in meeting existing service obligations. See *supra* para. 58.

¹²¹ See *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3154, para. 177.

¹²² See *supra* para. 61.

adopted performance plans during the support term if such changes are due to circumstances that did not exist at the time the performance plans were adopted and are consistent with the public interest and the requirements adopted in this Order.¹²³

64. *Reductions in support.* We have generally adopted a five-year and 10-year service milestone for the Alaska Plan that will be more specifically defined based on each participant's approved performance plan. Based on the record before us, we find no reason to relax our compliance standards for Alaska Plan participants, and indeed, we note that ATA proposes that participants in the plan be subject to the existing rule.¹²⁴ Thus, Alaska Plan participants that fail to meet these milestones will be subject to the same potential reductions in support as any other carrier subject to defined obligations.¹²⁵ If, by the end of the 10-year term an Alaska Plan participant is unable to meet its final service milestone, it will be required to repay 1.89 times the average amount of support per location received over the 10-year term for the relevant number of locations that the carrier has failed to deploy to, plus 10 percent of its total Alaska Plan support received over the 10-year term.¹²⁶

65. *Audits.* Like all ETCs, Alaska carriers will be subject to ongoing oversight to ensure program integrity and to deter and detect waste, fraud and abuse. All ETCs that receive high-cost support are subject to compliance audits and other investigations to ensure compliance with program rules and orders. Our decision today to provide frozen support based on past support amounts does not limit the Commission's ability to recover funds or take other steps in the event of waste, fraud or abuse.

III. ALASKA PLAN FOR MOBILE CARRIERS

66. In this section, we adopt that part of ATA's integrated plan that addresses high-cost support for competitive ETCs providing mobile service in remote areas of Alaska, subject to the minor modifications described herein.¹²⁷ The Commission has previously recognized that competitive ETCs in Alaska's remote regions face conditions unique to the state, and much of Alaska's remote areas remain unserved or underserved by mobile carriers. The Alaska Plan includes a consensus plan among the mobile providers in remote areas of Alaska that provides predictable, stable support to those providers, frozen at 2014 levels for a term of 10 years. As in the Alaska Plan for rate-of-return carriers, we will provide a one-time opportunity for Alaskan competitive ETCs to elect to participate in the Alaska Plan for mobile carriers. Eligible competitive ETCs who elect not to participate in the Alaska Plan will have their support phased out over a period of three years, as proposed by ATA.¹²⁸

¹²³ Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, at 2 (filed Apr. 19, 2016) (GCI Apr. 19, 2016 *Ex Parte* Letter) (requesting that the Commission delegate to the Wireline Competition Bureau the authority "to make adjustments to the performance plans, as needed").

¹²⁴ ATA Apr. 18, 2016 *Ex Parte* Letter at Attach. (proposing in draft rules that Alaska Plan recipients be subject to 54.320(d)).

¹²⁵ 47 CFR § 54.320(d); *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54.

¹²⁶ 47 CFR § 54.320(d)(2); *December 2014 Connect America Order*, 29 FCC Rcd at 15697, para. 148.

¹²⁷ We modify the Alaska Plan as adopted to include public interest obligations specified below and to require certain specific certification and reporting requirements regarding access to new middle mile and use of funding on an annual basis.

¹²⁸ Because the Alaska Plan is a comprehensive alternative plan for high-cost mobile support in Alaska, Alaska will not be eligible for any additional support for mobile services under any other proposed Mobility Fund Phase II and Tribal Mobility Fund Phase II programs. See ATA May 9, 2016 *Ex Parte* Letter, Attach. "Updates to Proposed Alaska Plan Rules Since April 13, 2016" ("Proposed Rules Attach.") at 5 (draft rules stating "support for all competitive eligible telecommunications carriers in Alaska is governed by the Remote Alaska Mobile Infrastructure Plan described in rule 54.317"), 18 (imposing a phase down of competitive ETCs that serve non-remote areas of Alaska or that do not elect to receive support under the Alaska Plan, and providing that, after the phase down, "these carriers shall not receive support for the relevant study areas."). We find that our adoption of the Alaska Plan

(continued....)

67. We require that participating competitive ETCs submit individual performance plans with deployment commitments at the end of year five and year 10 meeting the requirements adopted in this Order, discussed below. We delegate to the Wireless Telecommunications Bureau authority to approve proposed performance plans if they are consistent with the public interest and comply with the requirements we adopt in this Order. We will require progress reports of the Alaska Plan participants throughout the 10-year term, and we establish specific measures to help ensure verifiability and compliance. In addition, we delegate authority to the Wireless Telecommunications Bureau to approve minor revisions in each carrier's commitments throughout the plan term when in the public interest and to effectuate plan implementation and administration as detailed below. We also require that each carrier revisit its 10-year deployment commitments no later than the end of year four, as described in detail below.

A. Background

68. Many mobile providers in remote Alaska receive universal service funds to provide mobile services in high cost areas where such services might otherwise not be available. This support is in a state of transition. The Commission adopted comprehensive reforms to universal service in 2011, in the *USF/ICC Transformation Order*.¹²⁹ Among the reforms adopted in that order, the Commission eliminated the identical support rule and provided a phase down schedule for competitive ETC providers that were reliant on identical support commencing on July 1, 2012.¹³⁰ To reflect the unique conditions in Alaska, however, the Commission determined that competitive ETCs served remote areas of Alaska would be subject to a special delayed phase down that would begin on July 1, 2014, or upon the implementation of Mobility Fund Phase II and Tribal Mobility Fund Phase II, whichever is later, in order to preserve newly initiated service and facilitate additional investment in still unserved and underserved areas.¹³¹ "Remote" areas in Alaska were defined as all areas of Alaska "other than the study areas, or portions thereof, that include the three major cities in Alaska with over 30,000 in population, Anchorage, Juneau, and Fairbanks."¹³² Because the Mobility Fund Phase II was not operational by June 30, 2014, the total amount of support going to competitive ETCs subject to the delayed phase down has remained at the level received at the end of 2011.¹³³

69. In the *April 2014 Connect America FNPRM*, in addition to seeking further comments regarding universal service to fixed locations, the Commission sought comment on a number of issues

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support mechanism as an alternative to Mobility Fund II for Alaska is consistent with section 631 of the Consolidated Appropriations Act of 2016. Section 631's restrictions on the Commission's authority to change mobile high-cost funding prior to implementation of Mobility Fund II specifically provides that "this section shall not prohibit the Commission from considering, developing, or adopting other support mechanisms as an alternative to Mobility Fund Phase II." See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, § 631, 129 Stat. 2242, 2470 (2015). The legislative history of this provision expressly indicates that such alternatives might include an Alaska-specific solution. See S. Rep. No. 114-97, at 80 (2015) (providing that the restrictions are not intended to "limit the Commission's consideration, development, or adoption of a replacement mechanism other than Mobility Fund Phase II or a separate Alaska-specific support mechanism."). Competitive ETCs who were not signatories to the Alaska Plan will have their phase down of support begin no earlier than 12 months after release of this Report and Order. See para. 99, *infra*.

¹²⁹ *USF/ICC Transformation Order*, 26 FCC Rcd 17663.

¹³⁰ *Id.* at 17674-75, 17771-73, 17825-27, paras. 28-29, 295-300, 498-502; 47 C.F.R. § 54.307(e).

¹³¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17835, para. 529; *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7132, 7133, paras. 251-52, 255.

¹³² *USF/ICC Transformation Order*, 26 FCC Rcd at 17835, para. 529 n.876; see also *id.* at 17834, para. 526 n.872; 47 C.F.R. § 54.307(e)(3)(i).

¹³³ 47 C.F.R. § 54.307(e)(5); *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7132, paras. 251-52; *USF/ICC Transformation Order*, 26 FCC Rcd at 17674-75, 17827, para. 29.

related to universal mobile service, particularly based on marketplace developments that had occurred after adoption of the *USF/ICC Transformation Order*.¹³⁴ With respect to Alaska, the Commission sought comment on the possibility of freezing Alaskan competitive ETCs' phase down support and asked whether remote areas in Alaska should be subject to exceptions or other conditions for phase down in frozen support.¹³⁵

70. In response in part to the *April 2014 Connect America FNPRM*, ATA proposed a consensus plan—supported by all of ATA's members except Alaska Communications Systems (ACS)—and submitted it to the Commission on February 20, 2015.¹³⁶ The proposal is an integrated plan proposing support in order to maintain and improve the services offered by competitive ETCs serving remote Alaska and their affiliated rate-of-return carriers. The wireless component of the Alaska Plan proposes to freeze wireless competitive ETC support as of December 31, 2014, for carriers serving remote Alaska and proposes that funding be frozen for a period of 10 years on a per company basis.¹³⁷ As currently proposed, the support would be used to support mobile voice and broadband service in areas not receiving 4G LTE service directly from any facilities-based nationwide commercial mobile radio service (CMRS) provider as of December 31, 2014.¹³⁸ As proposed by ATA, each wireless competitive ETC will use its frozen support primarily to sustain and upgrade service to remote Alaskan communities within its current service area.¹³⁹ The plan proposes a separate funding mechanism to address extending mobile service to areas that are currently unserved by any provider. Specifically, the plan proposes that funding currently allocated to competitive ETCs serving the non-remote communities of Anchorage,¹⁴⁰ Fairbanks, and Juneau be retargeted to fund, in part, the deployment of wireless service in currently unserved remote Alaskan communities.¹⁴¹ ATA argues that its plan would provide the necessary stability to enable the

¹³⁴ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7127-28, paras. 238-39.

¹³⁵ *Id.* at 7134, para. 257. Additionally, the *FNPRM* proposed to “freeze the total amount provided to each competitive ETC service remote areas in Alaska” to simplify support calculations for the USF Administrator, “while not disturbing existing support levels for existing competitive ETCs. *Id.* at 7133, para. 256. The baseline for support, under that proposal, “would be set as of a date certain, such as December 31, 2014, or the effective date of the rule, whichever is later.” *Id.*

¹³⁶ ATA Feb. 20, 2015 *Ex Parte* Letter, Attach. ATA subsequently revised certain specific elements of the plan. *Compare, e.g.*, ATA Nov. 19, 2015 *Ex Parte* Letter at 27-39 with Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed June 16, 2016) (ATA June 16, 2016 *Ex Parte* Letter).

¹³⁷ ATA Feb. 20, 2015 *Ex Parte* Letter, Attach. at 2.

¹³⁸ In its original proposal, ATA proposed to exclude areas covered by Verizon or AT&T 4G LTE service specifically. *See* ATA Feb. 20, 2015 *Ex Parte* Letter, Attach. at 2. ATA subsequently revised this aspect of the plan to exclude areas with 4G LTE coverage by any nationwide CMRS provider. *See* ATA June 16, 2016 *Ex Parte* Letter, Attach. at 17 (altering language in proposed § 54.317(e)). In addition, under the plan as revised, frozen support may be used by a competitive ETC that is a partner of nationwide CMRS providers to provide service in eligible areas if the service is provided using the competitive ETC's infrastructure. *Id.*

¹³⁹ *See, e.g.*, Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed June 10, 2016) (ATA June 10, 2016 *Ex Parte* Letter); GCI Apr. 19, 2016 *Ex Parte* Letter at 1-2 (discussing “served census blocks” as those census blocks where providers would use frozen support to meet their performance obligations and “unserved census blocks” as those areas that are subject to the “reverse-auction mechanism”).

¹⁴⁰ Included in the non-remote areas are certain disaggregation zones of the Matanuska Telephone Association incumbent study area that are adjacent to Anchorage. *See* 47 C.F.R. § 54.307(e)(3)(i).

¹⁴¹ ATA June 16, 2016 *Ex Parte* Letter, Attach. at 18 (proposing 47 CFR § 54.317(g) to support unserved remote Alaska areas). Under the plan, the funds available for support in unserved areas over the plan term are the reallocated funds less an amount allocated for a rate-of-return funding adjustment. *Id.*

competitive ETC carriers to “operate, extend and upgrade existing broadband networks and operate and deploy wireless service in remote Alaska.”¹⁴²

71. ACS, although supporting ATA’s proposal for rate-of-return carrier support, objects to ATA’s proposal for support of mobile carriers, arguing that it does not do enough to extend affordable middle mile to remote areas of Alaska.¹⁴³ ACS advocates adoption of an alternative proposal for the creation of a public middle mile network administered by a new Alaska state agency or non-profit entity.¹⁴⁴ ACS proposes funding the new network by redirecting a portion of the support provided to Alaska through the rural health care, E-Rate, Mobility Fund II, and Remote Areas Fund mechanisms, with total investments of roughly \$65 million per year for 10 years.¹⁴⁵ ACS asserts that “[a]t an estimated continuing support level of roughly \$40-\$60 million per year, the Alaska Middle Mile Network should enable competing retail providers to deliver data services and prices to remote communities that are affordable and reasonably comparable to those available in Anchorage.”¹⁴⁶ ACS further proposes conditions the Commission should place on the receipt of funding in the event the Commission adopts the ATA proposal, focused on requiring and regulating the provision of a wholesale middle-mile service by competitive ETC recipients under the Alaska Plan.¹⁴⁷

B. Discussion

72. We adopt the Alaska Plan for mobile carriers, subject to certain conditions and modifications herein, for the provision of high cost support to competitive ETCs offering mobile service to consumers in remote Alaska. In the course of eliminating the identical support rule, the Commission observed that carriers in remote Alaska had unique concerns and recognized that Mobility Funds needed to be flexible enough to accommodate special conditions in places like Alaska, to account for “its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season.”¹⁴⁸ These challenges can drive up costs while the low population bases in these areas strain revenue.¹⁴⁹ The Commission expressed particular concern that “[o]ver 50 communities in Alaska have no access to mobile voice service today, and many remote Alaskan communities have access to only 2G services.”¹⁵⁰ We find that, given these unique concerns, the Alaska Plan, as modified, is a

¹⁴² ATA Feb. 20, 2015 *Ex Parte* Letter, Attach. at 3.

¹⁴³ Letter from Karen Brinkmann, Counsel to Alaska Communications Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1 (filed Mar. 11, 2016).

¹⁴⁴ Letter from Karen Brinkmann, Counsel to Alaska Communications Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., Attach. A (“Closing the Middle Mile Gap”) at ii, 5-7, 10 (filed Nov. 19, 2015).

¹⁴⁵ *Id.*, Attach. A at ii, 5, 10.

¹⁴⁶ *Id.*, Attach. A at 6.

¹⁴⁷ Letter from Karen Brinkmann, Counsel to Alaska Communications Systems, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 6-13 (filed May 24, 2016) (ACS May 24, 2016 *Ex Parte* Letter); ACS Apr. 29, 2016 *Ex Parte* Letter at 1, 6-9.

¹⁴⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17829, para. 507.

¹⁴⁹ See ATA May 9, 2016 *Ex Parte* Letter at 21-28 (showing that, except for GCI, mobile providers in remote Alaska serve populations between 325 and 15,200). GCI submitted a detailed cost model by The Brattle Group, the “Modified Alaska Mobile Broadband Cost Model,” specifically analyzing Alaska. Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. (filed May 10, 2016). This model, many of whose assumptions are specific to Alaska mobile broadband deployment, estimated the total cost for deployment of 4G LTE services to the areas of remote Alaska addressed by the Alaska Plan to be approximately \$1.5 billion. *Id.*, Attach. at 1, 4; see also Letter from Julie A. Veach, Counsel, GCI, to Marlene H. Dortch and Katie King, FCC, WC Docket No. 10-90 et al., Attach. (filed July 15, 2016).

¹⁵⁰ *USF/ICC Transformation Order*, 26 FCC Rcd at 17835, para. 529.

reasonable approach to promote the provision of mobile voice and broadband service in Alaska.¹⁵¹ The plan will freeze at current levels the funds that are currently going to mobile providers in remote Alaska in return for specified network deployment commitments.¹⁵² The plan will also create a separate fund that will reallocate a majority of the annual funding currently dedicated to mobile providers in non-remote areas of Alaska and create a reverse auction to expand service in unserved areas of remote Alaska. We find that the plan we adopt will enable competitive ETCs offering service in remote Alaska to continue operating their current services and to extend and upgrade their existing networks.

73. ATA represents that as of December 31, 2014, the competitive ETCs serving remote Alaska served a population of 143,991 in the areas eligible for frozen support, with only 13,452 of that population receiving 4G LTE service and 66,025 receiving only 2G/voice service. The remaining 64,514 of the population received only 3G service as of that date. If all eight of the competitive ETCs serving remote Alaska that have submitted proposed performance plans participate in the Alaska Plan, by the end of the 10-year term the population receiving 4G LTE service in eligible areas will increase from 9 percent as of December 2014 to 85 percent, or 122,119. Alaskans receiving only 2G/voice will decrease from 46 to 7 percent of the population, or 10,202, while those receiving 3G service only will drop from 45 to 8 percent or 11,669. Moreover, additional support of up to approximately \$22 million will be redirected to a reverse auction in which competitive ETCs may bid to receive annual support for 10 years to extend service to areas that do not have any commercial mobile radio service.

74. In adopting the Alaska Plan, we decline to instead adopt ACS's proposed alternative plan involving the creation of a State or non-profit provider of middle mile. As an initial matter, the ACS proposal would require changes to several different universal service mechanisms outside the scope of this proceeding, such as the rural health care and E-Rate mechanisms. We also find that the alternative plan would involve significant implementation and operational issues regarding the proposed middle mile provider that, at a minimum, would lead to substantial delay and may well not be practical. In addition, we take into account that the Alaska Plan was developed and presented as a part of an integrated plan for competitive ETCs serving remote Alaska and their affiliated rate-of-return carriers, and that it represents a consensus approach supported by all mobile carriers providing subsidized service in remote Alaska, whereas the ACS alternative appears to have the support of only ACS itself, which does not provide any mobile service in Alaska. Further, while the ACS plan seeks to address the critical need in remote Alaska for new terrestrial middle-mile deployment, it does not provide any specific plan for the high cost support of retail mobile voice and broadband services to consumers—which is the ultimate goal of this proceeding. We also note that service providers are entitled to use support to construct the facilities required for them to meet their deployment obligations, including using support for improved backhaul and middle mile.¹⁵³ Accordingly, we reject ACS's proposed alternative plan. For the reasons discussed below, we decline to adopt the conditions proposed by ACS, but do provide that the phase down of competitive ETC support of mobile carriers who were not signatories of the Alaska Plan¹⁵⁴ will begin no earlier than 12 months after release of this Order.

¹⁵¹ See ATA Feb. 20, 2015 *Ex Parte* Letter, Attach. at 2; GCI Jan. 14, 2016 *Ex Parte* Letter, Attach. at 2-3 (noting the need for stable funding in order to improve service).

¹⁵² For purposes of this plan, and as explained in detail below, we treat a carrier's service in remote areas of Alaska as equivalent to service provided in non-remote areas if in connection with this service, the carrier did not previously claim the "covered locations" exception to the interim cap on competitive ETC support that the Commission established in 2008. See *infra* para 89.

¹⁵³ See, e.g., Letter from John Nakahata, Counsel, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed July 7, 2016) (discussing using funds to deploy middle mile).

¹⁵⁴ ATA Feb. 20, 2015 *Ex Parte* Letter, Attach. at 4-6 (providing the signatories to the Alaska Plan).

1. Support Amounts

75. Each qualifying mobile carrier that elects to participate in the Alaska Plan will receive annually an amount of support equal to their competitive ETC support frozen at December 2014 levels,¹⁵⁵ and participating carriers shall no longer be required to file line counts.¹⁵⁶ This support will be frozen at these levels for 10 years and replaces the identical support phase down schedule for participating competitive ETCs.¹⁵⁷ Our decision to freeze support at December 31, 2014 levels for mobile carriers participating in the Alaska Plan is consistent with our determination that certain areas require ongoing support in order for mobile service to continue to be offered¹⁵⁸ and our goal to ensure universal availability of voice and broadband to homes in rural, insular, and high-cost areas.¹⁵⁹ If the eight eligible competitive ETCs participate in the Alaska Plan, this would result in approximately \$74 million being dispersed annually for each of the 10 years that the plan is in effect.¹⁶⁰

2. Public Interest Obligations

76. We adopt certain public interest obligations for the mobile services that are supported by the Alaska Plan.

77. *Provision of Service.* At a minimum, we find that mobile carriers in remote Alaska must provide a stand-alone voice service and, at a minimum, offer to maintain the level of data service they were providing as of the respective dates their individual plans are adopted by the Wireless Telecommunications Bureau and to improve service consistent with their approved performance plans.

78. *Reasonably Comparable Rates.* Section 254(b)(3) provides the universal service principle that consumers in all regions in the nation, including “rural, insular, and high cost areas,” should have access to advanced communications that are reasonably comparable to those services and rates available in urban areas. We require participating carriers to certify their compliance with this obligation in their annual compliance filings described below, and to demonstrate compliance at the end of the five-year milestone and 10-year milestone, also described below. Further, consistent with the conclusions in Tribal Mobility Fund Phase I,¹⁶¹ we provide that a carrier may demonstrate compliance by showing that its required stand-alone voice plan, and one service plan that offers broadband data services, if it offers such plans, are (1) substantially similar to a service plan offered by at least one mobile wireless service provider in the cellular market area (CMA) for Anchorage, Alaska, and (2) offered for the same or a lower rate than the matching plan in the CMA for Anchorage.¹⁶² Because of the unique conditions in

¹⁵⁵ See ATA May 9, 2016 *Ex Parte* Letter at 29 (providing schedule 4).

¹⁵⁶ See *id.*, Proposed Rules Attach. at 8.

¹⁵⁷ *Id.* at 29 (providing schedules 2, 5), Proposed Rules Attach. at 17.

¹⁵⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17824, para. 493.

¹⁵⁹ *Id.* at 17681, para. 51.

¹⁶⁰ ATA May 9, 2016 *Ex Parte* Letter at 29 (providing schedule 4). The level of support for Windy City Cellular is calculated based on the waiver decision in Docket No. 10-208. See *Adak Eagle Enterprises, LLC, and Windy City Cellular, LLC, Petitions for Waiver of Certain High-Cost Universal Service Rules*, Order, 29 FCC Rcd 10083 (WTB & WCB, Aug. 21, 2014); see also *Adak Eagle Enterprises, LLC, and Windy City Cellular, LLC, Petitions for Waiver of Certain High-Cost Universal Service Rules*, Order on Reconsideration and Memorandum Opinion and Order, 30 FCC Rcd 5080 (2015).

¹⁶¹ *Tribal Mobility Fund Phase I Auction Rescheduled for December 9, 2013, Notice and Filing Requirements and Other Procedures for Auction 902*, 28 FCC Rcd 11628, 11682-85, paras. 193-98 (WTB 2013) (*Tribal Mobility Fund Phase I Procedures PN*); see also *Mobility Phase I Auction Scheduled for September 27, 2012, Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725, 4774-75, paras. 179-80 (2012) (*Mobility Fund Phase I Procedures PN*).

¹⁶² *Tribal Mobility Fund Phase I Procedures PN*, 28 FCC Rcd at 11682-85, paras. 193-98; *Mobility Fund Phase I Procedures PN*, 27 FCC Rcd at 4774-75, paras. 179-80.

remote Alaska, however, and the variety of circumstances and costs of the affected carriers, we authorize the Wireless Telecommunications Bureau to employ alternative benchmarks appropriate for specific competitive ETCs under the Alaska Plan in assessing carrier offerings.

79. We reject ACS's request that we require recipients to ensure reasonably comparable rates in their middle mile offerings.¹⁶³ While recipients of the plan are free to invest in middle mile to bolster their last-mile mobile offerings, this support is not directly for improving middle-mile offerings to other carriers.¹⁶⁴ As noted above, our overarching goal is to preserve and enhance the provision of broadband service to consumers.

3. Term of Support

80. We adopt a support term of 10 years for recipients of the Alaska Plan. Given the conditions faced by carriers specifically in remote Alaska, including the vast distance, the extreme weather, and the very short construction seasons, we conclude that a 10-year term of support will serve the public interest. The provision of predictable support over this timeframe will enable providers to undertake long-term plans to invest in and upgrade their mobile network services, while the requirement to file updated proposed deployment obligations during the 10-year term, as discussed below, will ensure that participating competitive ETCs are using their support in a manner that furthers universal service goals.¹⁶⁵

4. Appropriate Use of Support

81. Alaska Plan recipients will be permitted to use their Alaska Plan support for both operating expenses and capital expenses for new deployment, upgrades, and maintenance of mobile voice and broadband-capable networks, including middle-mile improvements needed to those ends.¹⁶⁶ As long as an Alaska Plan participant is offering service in an eligible area, as defined below, and consistent with the public interest obligations delineated in this Order, service in that area will be eligible for support.¹⁶⁷

82. We reject ACS's request that the Commission condition support under the plan by requiring recipients "to spend at least 70% of their support to deploy and operate terrestrial middle-mile facilities on routes where such facilities do not exist with sufficient capacity to meet demand based on speed and usage benchmarks the Commission has adopted across its universal service mechanisms."¹⁶⁸ We are not persuaded that requiring that each recipient dedicate 70% of its support to this specific task would best serve the interest of Alaskan consumers. For instance, the Quintillion Subsea Cable System could provide high speed broadband access to mobile providers along the west coast of Alaska, such as for ASTAC and OTZ Wireless, without those carriers having to spend 70% of their support to invest in separate middle-mile buildout.¹⁶⁹ We find that allowing recipients to invest in middle-mile facilities as

¹⁶³ ACS Apr. 29, 2016 *Ex Parte* Letter at 8.

¹⁶⁴ See 47 U.S.C. § 254(b)(3) (stating "Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services . . .") (emphasis added).

¹⁶⁵ See ATA Feb. 20, 2015 *Ex Parte* Letter, Attach. at 2.

¹⁶⁶ *Id.*, Attach. Appropriate use of support for middle-mile improvements includes the use of support to build or upgrade middle mile that lays outside a participating competitive ETC's service area but that is necessary for service in that carrier's service area.

¹⁶⁷ *Id.*, Attach. at 2 (proposing that Alaska Plan "[w]ireless carriers receiving frozen support will use that support to provide mobile voice and broadband services . . ."). The Commission will reduce frozen support amounts for any carrier in the event it is determined that the carrier received amounts in the past to which it was not entitled.

¹⁶⁸ ACS Apr. 29, 2016 *Ex Parte* Letter at 7.

¹⁶⁹ Quintillion Subsea Operations, Application for Cable Landing License—Request for Streamlined Treatment, File No. SCL-LIC-20160325-00009 (filed Mar. 24, 2016).

needed based on their respective situations would allow these carriers to better target the support that they receive in accordance with their circumstances to meet their deployment obligations.

83. Moreover, we determine that it is not in the public interest to regulate carriers that choose to build middle-mile facilities using support from the plan under dominant carrier regulations. ACS requests that “[c]arriers constructing and operating middle mile facilities where there is no unaffiliated competitive terrestrial service provider . . . be regulated as dominant telecommunications carriers on those routes.”¹⁷⁰ It is not clear what ACS intends to be the consequences of such a condition, or that such a condition is either necessary or in the public interest. We note that GCI has already indicated that its provision of middle-mile service on the TERRA network is a Title II service provided subject to the common carriage requirements of sections 201 and 202 of the Act.¹⁷¹

84. Finally, we decline to adopt ACS’s proposed condition to deny transfer of support received by a competitive ETC participating in the Alaska Plan in all instances of transfer of customers or other affiliation or acquisition of one participating carrier by another.¹⁷² We instead delegate to the Wireless Telecommunications Bureau to determine in the context of a particular proposed transaction involving a competitive ETC that is an Alaska Plan participant the extent to which a transfer of a proportionate amount of the transferring carrier’s Alaska Plan support, along with what specific performance obligations, would serve the public interest.

85. *Performance Plans.* We appreciate the particular challenges that providing mobile service in Alaska presents to wireless carriers, and at this time we choose to adopt general, rather than specific, deployment parameters. We adopt ATA’s proposal that remote competitive ETCs that choose to participate in the Alaska Plan must submit a performance plan consistent with the requirements found in this Order.¹⁷³ Each competitive ETC that would like to participate in the Alaska Plan must identify in its performance plan: 1) the types of middle mile used on that carrier’s network; 2) the level of technology (2G, 3G, 4G LTE, etc.) that carrier provides service at for each type of middle mile used; 3) the delineated eligible populations served, as described below, at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term; and 4) the minimum download and upload speeds at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term. Accordingly, each performance plan must specify the population covered by the five-year and 10-year milestones we adopt below, broken down for each type of middle mile, and within each type of middle mile, for each level of data service offered. The proposed performance plans must reflect any improvements to service, through improved middle mile, improved technology, or both. We expect participants in the Alaska Plan for mobile carriers to offer service meeting the deployment standard described below. Alaska Plan participants must offer service meeting the milestones they commit to in their adopted service plans. We delegate to the Wireless Telecommunications Bureau authority to require additional information, including during the Bureau’s review of the proposed performance plans, from individual participants that it deems necessary to establish clear standards for determining whether or not they meet their five- and 10-year commitments, which may include geographic location of delineated-eligible populations, as well as specific

¹⁷⁰ ACS Apr. 29, 2016 *Ex Parte* Letter at 7.

¹⁷¹ Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 19 (filed May 3, 2016) (GCI May 3, 2016 *Ex Parte* Letter). For the same reasons, we reject ACS’s additional request that the Commission impose additional conditions on GCI as a condition adoption of the Alaska Plan. ACS May 24, 2016 *Ex Parte* Letter at 12-13.

¹⁷² ACS Apr. 29, 2016 *Ex Parte* Letter at 9.

¹⁷³ See, e.g., ATA June 16, 2016 *Ex Parte* Letter, Attach.; Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1-2 (filed Feb. 2, 2016) (GCI Feb. 2, 2016 *Ex Parte* Letter) (describing ATA’s proposal to require Alaska Plan participants to submit performance plans subject to review and approval by the relevant Bureau).

requirements for demonstrating that they have met their commitments regarding broadband speeds. This approach allows Alaska Plan participants the ability to deploy service and technology achievable and tailored to the challenges faced by the carriers. We also require, however, that participating carriers update their end-of-term commitments no later than the end of year four,¹⁷⁴ and we delegate authority to the Wireless Telecommunications Bureau to review these updates in light of any new developments, including newly available infrastructure, and require revised commitments if it serves the public interest.

86. *Deployment Standard.* We expect that Alaska Plan participants will work to extend 4G LTE service to populations who are currently served by 2G or 3G. However, we recognize that there are unique limitations to extending 4G LTE—and in certain locations 3G—in remote Alaska due to infrastructure and the cost of upgraded middle mile. Participants may also be permitted in particular circumstances to maintain lower levels of technology to a subset of locations due to such limitations as difficult terrain or lack of access to either terrestrial middle mile infrastructure or satellite backhaul providing middle-mile service with technical characteristics comparable to at least microwave backhaul. We therefore authorize the Wireless Telecommunications Bureau to approve plans in particular circumstances that may propose not to provide 4G LTE service, but only to maintain service at 2G or 3G or to upgrade to service from 2G to 3G. We have determined that it will serve the public interest to balance our goal of deploying reasonably comparable voice and broadband service with our goal of ensuring that universal service support is used efficiently and remains within the amounts budgeted to each participating competitive ETC. This approach is also consistent with our stated goal of ensuring that funding is “focused on preserving service that otherwise would not exist and expanding access to 4G LTE in those areas that the market otherwise would not serve,”¹⁷⁵ while accounting for the special challenges faced by mobile carriers in remote Alaska.

87. *Coverage.* We provide that frozen support provided to mobile carriers pursuant to the Alaska Plan may only be used to provide mobile voice and broadband service in those census blocks in remote Alaska where, as of December 31, 2014, less than 85% of the population was covered by the 4G LTE service of providers that are either unsubsidized or not eligible for frozen support in Alaska and accordingly subject to a phase down of all current support.¹⁷⁶ Thus, mobile carriers receiving frozen support may only satisfy their performance commitments through service coverage in the eligible areas.

88. We find that the ATA plan’s refocus of competitive ETC support in Alaska to the remote areas is reasonable and in the public interest. First, the vast majority of the population of non-remote Alaska is already receiving 4G LTE from a nationwide CMRS provider. Further, while a very small number of people within non-remote Alaska are covered by only subsidized 4G LTE service from a nationwide CMRS provider—AT&T—we are persuaded that AT&T does not need the support that it receives for this small area to continue providing service, given the success of both Verizon and AT&T in providing unsubsidized 4G LTE throughout the majority of non-remote Alaska and the willingness of GCI to forgo future support for its 4G LTE service in that area as well. We note also that AT&T makes no claim to needing support for this small area and that its own proposed standard of ineligibility would terminate support throughout non-remote Alaska.¹⁷⁷ In addition, while non-remote Alaska is already extensively covered by LTE, numerous small communities in remote Alaska lack adequate or even the

¹⁷⁴ Updates to commitments should be submitted by December 31, 2020.

¹⁷⁵ See *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7128, para. 240.

¹⁷⁶ See *ATA June 10, 2016 Ex Parte Letter*. The remote areas include all of Alaska except the ACS—Anchorage incumbent study area, the ACS—Juneau incumbent study area, the fairbankszone 1 disaggregation zone in the ACS—Fairbanks incumbent study area, and the Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of the Matanuska Telephone Association incumbent study area (collectively, the non-remote areas). See 47 CFR § 54.307(e)(3)(i).

¹⁷⁷ See Letter from Mary L. Henze, Assistant Vice President for Federal Regulatory, AT&T, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 10, 2016) (AT&T June 10, 2016 *Ex Parte Letter*).

most basic mobile service. Under the plan we adopt today, funds will be allocated to help improve service and extend deployment to these remote areas, which we find will better serve the goals of universal service than further investment in the significant level of service already enjoyed by consumers living in non-remote Alaska.

89. For this purpose, we will treat a carrier's service in remote areas of Alaska as equivalent to service provided in non-remote areas (and accordingly subject to a three-year phase down in support) if in connection with this service, the carrier did not previously claim the "covered locations" exception to the interim cap on competitive ETC support that the Commission established in 2008.¹⁷⁸ In so doing, we are guided by the Commission's approach to high cost support in remote Alaska in the 2011 *USF/ICC Transformation Order*, which provided remote Alaskan carriers with a two-year delay in the phase down of legacy support applicable to carriers elsewhere, but only if the Alaskan carriers had previously claimed the covered locations exception. As a result, a carrier serving remote areas that had been eligible for the covered locations exception (which would have included any competitive ETC in remote Alaska) but that chose not to claim it was treated the same as providers in non-remote areas, for whom the Commission found "no evidence . . . that any accommodation is necessary to preserve service or protect consumers . . ." ¹⁷⁹ Consistent with the eligibility for the remote Alaska delayed phase down established in the *USF/ICC Transformation Order*, we restrict competitive ETC eligibility for frozen support in remote Alaska to those competitive ETCs that both serve remote Alaska and claimed the covered locations exception, and we provide that support going to carriers in remote Alaska who did not claim the covered locations exception will, like support in non-remote areas, be phased out and reallocated.¹⁸⁰

90. We further provide that, in remote Alaska, eligible areas will include only those census blocks where, as of December 31, 2014, less than 85% of the population was covered by the 4G LTE service of providers that are either currently unsubsidized under the high cost mechanism or subject to a phase down of all current mobile support in the relevant census block. We find that excluding blocks where there is 4G LTE service being provided that is either unsubsidized or subject to a phase down of support will further our goal of targeting universal service support to areas that will not be served by the

¹⁷⁸ In order to rein in the growth in the high-cost universal service disbursements, the Commission adopted an interim cap on the amount of support that competitive ETCs could receive. *High-Cost Universal Service Support Federal-State Joint Board on Universal Service et al.*, WC Docket No. 05-337 et al., Order, 23 FCC Rcd 8834, 8834, para. 1 (2008) (*Interim Cap Order*). Support was capped at the level of support that competitive ETCs in that state were eligible to receive during March 2008, subject to two exceptions. *Id.* The first exception to the cap, consistent with the *AT&T/Dobson Order*, allowed a competitive ETC to file cost data demonstrating its costs met the support threshold in the same manner as the incumbent local exchange carrier. *Id.* at 8848, para. 31; *see also Applications of AT&T Inc. and Dobson Communications Corporation*, WT Docket No. 07-153, Memorandum Opinion and Order, 22 FCC Rcd 20295, 20329-30, paras. 70-72 (2007) (*AT&T/Dobson Order*) (agreeing to an interim cap on competitive ETC support, unless it filed cost data showing its per-line cost of providing service to a support area). Under the second exception, if a competitive ETC served tribal lands or Alaska Native regions (i.e., "covered locations"), then the competitive ETC would not be subject to the interim cap, and this exception would remain in place until the Commission adopted comprehensive high-cost universal service reform. *Interim Cap Order*, 23 FCC Rcd at 8834, para. 1; *see also* 47 CFR § 54.400(e) (defining "Tribal lands" and "Alaska Native regions"). The Commission concluded that the covered location exception to the interim cap was needed because many tribal lands have low penetration rates for basic telephone service and, therefore, competitive ETCs were not believed to be offering merely complementary services in those areas. *Interim Cap Order*, 23 FCC Rcd at 8848, para. 32. Participation in this exception was voluntary, and competitive ETCs that did not opt into the exception were excluded from it. *Interim Cap Order*, 23 FCC Rcd at 8848, para. 33.

¹⁷⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17835, para. 529 n.876.

¹⁸⁰ We note that the only carrier that was eligible to claim the covered locations exception for service in remote Alaska but which chose not to do so is AT&T. *See Connect America Fund et al.*, Third Order on Reconsideration, 27 FCC Rcd 5622, 5634, para. 32 (2012) (noting that "[t]here 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 . . .").

market without such support.¹⁸¹ We also find the proposed 85% coverage threshold reasonable for remote Alaska. As GCI notes, the use of an 85% threshold is analogous to the threshold used to determine competitive census blocks for rate-of-return carriers in the *2016 Rate-of-Return Reform Order*.¹⁸² Further, because census blocks in Alaska are quite large, it would not be surprising that a part of the census block would need further support even when another part of the block does not.

91. We decline to adopt AT&T's proposal that all areas covered by 4G LTE service, including remote areas receiving only subsidized 4G LTE service, should be ineligible for support absent a case-by-case waiver.¹⁸³ We find, on the current record, including the unique costs and challenges of service in remote Alaska, the specific cost evidence submitted in the Brattle Group study, the limited extent of 4G LTE deployment in remote Alaska, and the consensus support for the ATA plan, that the approach we adopt will better advance universal service in that region. In sum, we conclude that it is in the public interest to allow competitive ETCs participating in the Alaska Plan to use support provided by the Alaska Plan to provide service in remote census blocks where, as of December 31, 2014, less than 85% of the population received 4G LTE service from providers that are either unsubsidized or not eligible for frozen support in Alaska and accordingly subject to a phase down of all current support.¹⁸⁴

92. *Duplicative funding.* As a general policy, since the reforms of the Commission's high cost support mechanisms adopted in 2011, the Commission has sought to eliminate the provision of high-cost support to more than one competitive ETC in the same area.¹⁸⁵ The Alaska Plan as proposed by ATA makes no provisions, however, for addressing the potential for high-cost funds to support overlapping networks in remote Alaska at any time over the plan's 10-year term. We are particularly concerned that it does not address the potential that high-cost funds could be used to support more than one 4G LTE

¹⁸¹ We decline to adopt ATA's proposal to define eligible areas as those that did not receive 4G LTE service from a facilities-based nationwide CMRS provider, as the standard adopted better reflects the Commission's policies for high cost support distribution. We note, however, that, aside from AT&T's 4G LTE network, 4G LTE networks of nationwide CMRS providers in remote Alaska are unsubsidized, and that, as discussed above, AT&T's support will be subject to a phase down. Accordingly, we find that the definition of eligible areas we adopt reaches the same result as the one proposed by ATA. *See, e.g.*, Letter from John T. Nakahata, Counsel to General Communication, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 4 (filed June 27, 2016) (GCI June 27, 2016 *Ex Parte* Letter) (stating that "excluding areas in which an 'unsubsidized competitor' provided 4G LTE service as of December 31, 2014 and excluding areas in which a Tier 1 nationwide CMRS carrier provided 4G LTE service as of December 31, 2014 reach the same result, provided that AT&T is treated as an 'unsubsidized competitor'").

¹⁸² GCI Apr. 19, 2016 *Ex Parte* Letter at 1; *see also 2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3133, para. 121.

¹⁸³ AT&T June 10, 2016 *Ex Parte* Letter at 2.

¹⁸⁴ To the extent that competitive ETCs participating in the Alaska Plan were receiving support as of December 31, 2014 for service in areas that will be ineligible for further support under the Alaska Plan, we permit such carriers to continue to receive that support, but require them to use it only for service in eligible areas and to reflect that full level of frozen support in their performance commitments (which may be satisfied only with service provided in eligible areas). As with the Commission's recently-adopted rules for rate-of-return high-cost support, we find that this approach will ensure that support "will be more effectively targeted to support existing and new broadband infrastructure in areas lacking" an unsubsidized provider." *2016 Rate-of-Return Reform Order*, 31 FCC Rcd at 3093, para. 9.

¹⁸⁵ In 2011, as one of its reforms of universal service, the Commission eliminated the identical support rule, in part to eliminate the duplicative support that had been provided under that rule. *USF/ICC Transformation Order*, 26 FCC Rcd at 17827, 17829, paras. 503, 507 ("We believe that the package of reforms adopted in the Order targeting funding for broadband and mobility, eliminating duplicative support, and ensuring all mechanisms provide incentives for prudent and efficient network investment and operation is the best approach for all parts of the Nation, including Alaska."); *see also* Section III.A, *supra*.

deployment in the same area.¹⁸⁶ The analysis of overlap submitted by the ATA signatories and independent staff analysis of the parties' Form 477 submissions indicates that there is no current overlap of 4G LTE service provided by the eligible carriers. The same data suggest, however, that there is a potential for such overlap as eligible carriers upgrade their networks to 4G LTE to meet their performance commitments.¹⁸⁷ At this time, however, we cannot know with certainty whether such overlap will occur and, if so, in which locations and to what extent.

93. Today, we conclude that support provided to overlapped areas in the future should be redistributed to eliminate any instances of duplicate support for 4G LTE service in the manner to be determined once 4G LTE overlap is reevaluated during the fifth year of the plan. As discussed below and in the Further Notice of Proposed Rulemaking (FNPRM), we therefore adopt a process for revisiting whether and to what extent there is duplicative funding for 4G LTE service during the first part of the 10-year term, and seek comment on mechanisms for eliminating any such duplicative funding, and for determining how to redistribute any such funds.

94. We will maintain the support levels we adopt today for the first five years of the term to spur 4G LTE deployment in remote Alaska, consistent with the carriers' performance commitments, in order to further our goal of promoting mobile broadband deployment in areas where such deployment has seriously lagged behind the rest of the Nation. To address the potential for duplicative support over time, however, we will evaluate whether there is any overlap in subsidized 4G LTE coverage areas in the fifth year, with the expectation of eliminating any such duplicative support during the second half of the Plan's 10-year term. To do so, we will assess 4G LTE deployment and any overlap in subsidized areas as of December 31, 2020, as reflected in the March 2021 Form 477 filing. Thereafter, based on that assessment as well as additional information in the record in response to the FNPRM and in the resulting Order, the Commission will implement a process, at the beginning of the sixth year, to eliminate duplicative support to areas where there is more than one provider offering subsidized 4G LTE service. We find that this approach strikes the appropriate balance in promoting the deployment of 4G LTE services in remote Alaska, where such service has lagged significantly, while providing a mechanism to eliminate any duplicative support that may arise, consistent with our principles of fiscal responsibility and maximizing the impact of limited universal service funds.¹⁸⁸

95. *Timeline.* We will require competitive ETCs participating in the Alaska Plan to meet one interim milestone by the end of their fifth year of their support term and complete their deployment to the required population in their eligible service areas by the end of the tenth year of their support term.

5. Opportunity to Participate in Alaska Plan

96. The Alaska Plan is limited to support of remote areas of Alaska, given the unique challenges faced by providers in those areas. A competitive ETC will be eligible for frozen support pursuant to the Alaska Plan if it serves remote areas in Alaska, and it certified that it served covered locations anywhere in remote areas in Alaska in its September 30, 2011 filing of line counts with the

¹⁸⁶ We focus on the potential for overlap between two subsidized 4G LTE networks, anticipating that, based on the performance commitments filed to date and the record overall, the majority of support provided under the Alaska Plan will be attributable to such deployments. *See, e.g.*, ATA May 9, 2016 *Ex Parte* Letter at 20 (reflecting that over the first five years, 4G LTE population coverage in aggregate will increase by 22% of the population, while 3G coverage will expand only 5%).

¹⁸⁷ *See* GCI Apr. 19, 2016 *Ex Parte* Letter, Attach. B. Commission staff analysis of the carriers' latest Form 477 filings indicates no change in the extent of provision of 4G LTE deployment in Alaska.

¹⁸⁸ *See* Letter from Christine O'Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. (filed July 13, 2016) ("support should continue to be provided to CETCs at frozen 2014 levels unless and until the Commission modifies those levels on a going-forward basis in response to the overlap analysis"); *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7128, para. 241.

USAC.¹⁸⁹ Competitive ETCs eligible for frozen support under the Alaska Plan will have a one-time opportunity to elect to participate in the Plan.

97. We note that eight Alaskan mobile carriers have submitted proposed performance plans to the Wireless Telecommunications Bureau. Given that this Order is consistent with ATA's proposal, subject to minor modifications, we presumptively consider these plan commitments to constitute an election to participate in the plan.¹⁹⁰ Alaskan carriers that choose to update their proposed performance commitments or not participate in the plan in light of this Order should file such updates or provide such notice no later than 30 days from the effective date of this Order. Competitive ETCs should submit any such updated performance plans or provide such notice in WC Docket No. 16-271.¹⁹¹ Also in light of this Order, we direct the Wireless Telecommunications Bureau to further review the proposed performance plans on file (or any timely filed update).¹⁹² While review of their performance plan is pending, carriers will remain on the revised legacy support mechanism. If the Wireless Telecommunications Bureau concludes that a proposed performance plan meets the applicable requirements we adopt in this Order and will serve the public interest,¹⁹³ it will release a public notice approving the relevant performance plan. The public notice will authorize the carrier to begin receiving support and direct USAC to obligate and disburse Alaska Plan support once the conditions are met. Support will be conditioned on an officer of the company submitting a letter in WC Docket No. 16-271 certifying that the carrier will comply with the public interest obligations adopted in this Order and the deployment obligations set forth in the adopted performance plan within five days of the release of the Bureau's public notice or such longer period of time, not to exceed fifteen days, as the Bureau's public notice specifies.

98. Competitive ETCs that are eligible but choose not to participate in the Alaska Plan, will have their current support phased down over a three-year period, as proposed in the Alaska Plan, beginning January 1, 2017.¹⁹⁴ Competitive ETCs who are participants in the proposed Alaska Plan and who receive support in non-remote areas of Alaska will have such support phased down over the same period. Because we adopt the Alaska Plan for mobile carriers as an Alaska-specific comprehensive substitute mechanism for mobile high-cost support, we further provide that there will be no support provided under Mobility Fund Phase II or Tribal Mobility Fund Phase II for mobile service within Alaska.¹⁹⁵

99. We provide a 12-month period from the release date of the Report and Order before the commencement of the three-year phase down of competitive ETC support insofar as it applies to carriers that are not signatories to the Alaska Plan, i.e., AT&T/Dobson.¹⁹⁶ Specifically, the phase down will commence on the beginning of the month that immediately follows the expiration of the 12-month period. We find this accommodation to be reasonable, as such a carrier may require additional transition time to reduce any disruptions.

¹⁸⁹ See ATA June 16, 2016 *Ex Parte* Letter, Attach. at 17 (proposing § 54.317(b)).

¹⁹⁰ Further, consistent with proposed funding schedules submitted by ATA, we provide that competitive ETCs that were signatories to the plan but did not submit a performance plan by the adopted date of this Order are not eligible to receive frozen support.

¹⁹¹ The docket for submitting performance plans will be the same for rate-of-return carriers and competitive ETCs. See *supra* paras. 44, 45.

¹⁹² If the Wireless Telecommunications Bureau concludes that a proposed performance plan is inadequate, the Bureau may deny the request or work with the carrier to submit a revised request that meets applicable requirements. Any action by the Bureau is subject to review by the Commission. See 47 U.S.C. § 155(c); 47 CFR § 1.115.

¹⁹³ See *supra* Section III.B.2.

¹⁹⁴ ATA May 9, 2016 *Ex Parte* Letter, Proposed Rules Attach. at 18.

¹⁹⁵ See *supra* note 128.

¹⁹⁶ AT&T June 10, 2016 *Ex Parte* Letter at 1.

6. Accountability and Oversight

100. ATA proposes that, like the rate-of-return participants, competitive ETC participants be subject to the reporting requirements set forth in 54.313 and the recordkeeping and compliance requirements set forth in section 54.320(d) of the Commission's rules.¹⁹⁷ We adopt and build on that proposal, as described below.

101. *Annual Reporting Requirements.* Pursuant to section 54.313 of the Commission's rules, competitive ETCs that participate in the Alaska Plan must continue to file FCC Form 481 on July 1 each year.¹⁹⁸ Alaska Plan participants, like all ETCs subject to the jurisdiction of a State, are also required to have Alaska submit the section 54.314 intended use certification on their behalf.¹⁹⁹ Alaska Plan participants will no longer be required to file line counts as required by section 54.307.²⁰⁰

102. As with the reporting requirements of Alaskan rate-of-return carriers, we also establish certain additional reporting requirements for carriers receiving support under the Alaska Plan. First, we add a reporting requirement to the Form 481 for competitive ETCs that participate in the Alaska Plan to help the Commission monitor the availability of infrastructure for these carriers. For Alaska Plan recipients that have identified in their adopted performance plans that they rely exclusively on performance-limiting satellite backhaul for a certain portion of the population in their service area, we will require that they certify whether any terrestrial backhaul, or any new-generation satellite backhaul service providing middle-mile service with technical characteristics comparable to at least microwave backhaul, became commercially available in the previous calendar year in areas that were previously served exclusively by performance-limiting satellite backhaul. If a recipient certifies that such new backhaul has become available, it must provide a description of the backhaul technology, the date on which that backhaul was made commercially available to the carrier, and the number of the population served by the new backhaul option. Further, we require those Alaska Plan providers that have not already committed to providing 4G LTE at 10/1 Mbps speeds to the population served by the newly available backhaul by the end of the plan term to submit revised performance commitments factoring in the availability of the new backhaul option no later than the due date of the Form 481 in which they have certified that such backhaul became commercially available. We have not been persuaded to adopt ACS's first three proposed conditions and accordingly also decline to adopt reporting conditions related to these conditions. We do find it appropriate, however, to impose a requirement that all competitive ETCs receiving support under the plan must retain documentation on how much of their Alaska Plan support was spent on capital expenses and operating expenses and be prepared to produce such documentation upon request, which will assist the Commission in enforcing the terms of the plan and ensuring funds are spent efficiently and in the public interest. We expect that this requirement will not impose an undue burden on these recipients because they track their capital and operating expenditures in the regular course of business. Moreover, while we reject ACS's particular proposal that competitive ETCs should state by December 31, 2017 where they intend to deploy broadband and what middle-mile facilities they will build or lease, we will require Alaska Plan participants to submit fiber network maps or microwave network maps in a format specified by the Bureaus covering eligible areas and to update such

¹⁹⁷ See ATA June 16, 2016 *Ex Parte* Letter, Attach. at 17-18 ("If performance requirements in the plan are not achieved, the carrier shall be subject to the compliance and recordkeeping requirements of § 54.320(d).")

¹⁹⁸ 47 CFR § 54.313.

¹⁹⁹ *Id.* § 54.314(a) ("States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended").

²⁰⁰ *Id.* § 54.307(e)(7); ATA May 9, 2016 *Ex Parte* Letter, Proposed Rules Attach. at 17 (proposed rule 47 CFR § 54.317(d)).

maps if they have deployed middle-mile facilities in the prior calendar year that are or will be used to support their service in eligible areas. We find it will be more helpful to our ongoing assessment of the performance commitments of the recipients to have information on middle mile actually deployed rather than information regarding planned middle-mile deployment.

103. *Milestone Reporting Requirements.* We further determine that like other high-cost recipients that are required to meet milestones, each Alaska Plan participant will also be required to file certifications that it has met its milestones, including minimum download and upload speeds as stated in the approved performance plans.²⁰¹ Each participant must certify that it has met its five-year milestone by the second month following its fifth year of support and certify that it has met its 10-year milestone by the second month following its tenth year of support. We will rely on participating carriers' Form 477 submissions in determining whether each carrier's five-year and 10-year milestones have been met. Additionally, we require minimum upload and download speed certifications from carriers receiving more than \$5 million annually in high cost funding to be supported by data from drive tests showing mobile transmissions to and from the network meeting or exceeding the speeds delineated in the approved performance plans. Based on the unique circumstances of remote Alaska, we will not require drive-testing data from participating carriers receiving less than this amount. As with Tribal Mobility Fund Phase I, we conclude that the required drive tests may be conducted by means other than in automobiles on roads, recognizing the unique terrain and lack of road networks in remote Alaska.²⁰² Providers may demonstrate coverage of an area with a statistically significant number of tests in the vicinity of residences being covered. Equipment used to conduct the testing may be transported by off-road vehicles, such as snow-mobiles or other vehicles appropriate to local conditions.

104. *Reductions in support.* We have generally adopted a five-year and 10-year build-out milestone for the Alaska Plan that will be more specifically defined based on each participant's approved performance plan. Once a carrier's performance plan is approved by the Wireless Telecommunications Bureau, the carrier is required to meet the performance benchmarks of the plan. Alaska Plan participants that fail to meet these milestones will be subject to the same potential reductions in support as any other carrier subject to defined obligations.²⁰³ If, by the end of the 10-year term an Alaska Plan participant is unable to meet its final build-out milestone, it will be required to repay 1.89 times the average amount of support per location received over the 10-year term for the relevant number of locations that the carrier has failed to deploy to, plus 10 percent of its total Alaska Plan support received over the 10-year term.²⁰⁴

105. *Audits.* Like all ETCs, Alaska mobile carriers will be subject to ongoing oversight to ensure program integrity and to deter and detect waste, fraud and abuse. All ETCs that receive high-cost support are subject to compliance audits and other investigations to ensure compliance with program rules and orders. Our decision today to provide frozen support based on past support amounts does not limit the Commission's ability to recover funds or take other steps in the event of waste, fraud or abuse.

C. Funding for Unserved Remote Areas of Alaska

106. We adopt ATA's proposal to reallocate that support subject to the phase down under the Alaska Plan to support the provision of mobile service in currently unserved Alaskan remote areas, less

²⁰¹ The Alaska Plan calls for population-based measurements of service, similar to *Tribal Mobility Fund Phase I. USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488.

²⁰² *USF/ICC Transformation Order*, 26 FCC Rcd at 17822, para. 488 n.806.

²⁰³ 47 CFR § 54.320(d); *December 2014 Connect America Order*, 29 FCC Rcd at 15694-700, paras. 142-54; see also ATA June 16, 2016 *Ex Parte* Letter, Attach. at 17-18 (proposing in 47 CFR § 54.317(f) that performance failures be addressed under 47 CFR § 54.320(d)).

²⁰⁴ 47 CFR § 54.320(d); *December 2014 Connect America Order*, 29 FCC Rcd at 15697, para. 148. We direct the Wireless Telecommunications Bureau to issue guidance on what constitutes a location for mobile recipients of Alaska Plan support.

an amount that we reallocate to Alaska rate-of-return carriers to adjust their support levels, and we provide that the new funding for unserved areas will be distributed through a reverse auction process.²⁰⁵ We find that allocating this additional support to fund the deployment of service to currently unserved areas will further the goal of ensuring “universal availability of modern networks capable of providing mobile voice and broadband service where Americans live, work, and travel.”²⁰⁶ As support to non-remote competitive ETCs phases down, up to approximately \$22 million of support annually will be available to support mobile service in currently unserved remote areas, with such support to be awarded through a reverse auction.²⁰⁷ Any competitive ETC, including competitive ETCs that do not otherwise receive support for mobile service in remote Alaska, may bid in the auction to receive annual support through the remainder of the Plan term to extend service to areas that do not have commercial mobile radio service as of December 31, 2014.²⁰⁸ We provide that, for the purposes of this support, “unserved” areas are those census blocks where less than 15% of the population within the census block was within any mobile carrier’s coverage area.²⁰⁹ We further provide that the reverse auction will be subject to the competitive bidding rules codified at Part 1 Subpart AA of the Commission’s rules and delegate to the Wireless Telecommunications Bureau authority to otherwise determine the applicable procedures and performance requirements to implement the reverse auction as established today.²¹⁰

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

107. As discussed above, the Commission’s policy has been to eliminate the provision of high-cost support to more than one competitive ETC in the same geographic area. Although there currently is no duplicative support for 4G LTE service in remote Alaska, we have established a process in the Report and Order to identify the existence of any such overlap mid-way through the 10-year term, and to take steps to eliminate duplicative support levels in the second half of the 10-year term of the Plan. This FNPRM seeks comment on various specific issues involved in implementing that process.

108. In the Report and Order, we adopt, for purposes of identifying where duplicative support is occurring, a definition that includes those areas where there is subsidized 4G LTE service provided by more than one carrier. We will identify such areas and evaluate the extent of overlap, if any, based on the

²⁰⁵ Specifically, while a majority of the support previously provided to non-remote competitive ETCs will be put towards mobile service in currently unserved areas, approximately \$9 million of that support annually shall be reallocated to those rate-of-return carriers taking part in the Alaska Plan to return their support levels to their 2011 level, subject to certain adjustments. *See supra* paras. 47-49. We further reallocate to the unserved area funds, as proposed by ATA, the approximately \$4 million in competitive ETC support previously provided to Matanuska-Kenai, Inc. (MTA), which it will no longer receive under the Alaska Plan due to 4G LTE overlap. *See* ATA May 9, 2016 *Ex Parte* Letter at 29 (providing schedules 2, 5). As discussed below, once the phase-out of non-remote funding is complete, the total of these reallocated funds and the MTA funds, less the amount allocated for the rate-of-return funding adjustment, is expected to provide approximately \$22 million a year for unserved remote areas in Alaska.

²⁰⁶ *USF/ICC Transformation Order*, 26 FCC Rcd at 17680, para. 48.

²⁰⁷ ATA May 9, 2016 *Ex Parte* Letter at 29 (providing schedules 2, 5). ATA submitted a revised schedule reflecting that MTA’s remote support would be subject to the three year phase out. *See* Letter from Christine O’Connor, Executive Director, ATA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al., at 1, Attach. (filed July 20, 2016) (providing schedule 7). Consistent with their earlier filings, however, MTA’s remote area funding will be fully reallocated in the first year and made available to support the rate-of-return adjustment and the extension of mobile service to unserved areas.

²⁰⁸ ATA June 16, 2016 *Ex Parte* Letter; *see also* ATA Feb. 20, 2015 *Ex Parte* Letter, Attach. at 2; ATA May 9, 2016 *Ex Parte* Letter, Proposed Rules Attach. at 18.

²⁰⁹ *See* GCI Apr. 19, 2016 *Ex Parte* Letter at 2.

²¹⁰ *See* 47 CFR Part 1 Subpart AA (Competitive Bidding for Universal Service Support).

Form 477 data filed by the carriers in March, 2021, which will represent deployment as of December 31, 2020.

109. We seek comment on how best to eliminate duplicative funding consistent with our universal service goals, should the evaluation of that Form 477 data reveal areas where more than one carrier is receiving support for the provision of 4G LTE service. How should the Commission identify the relevant amount of support to attribute to any overlap area? Once the amount of support is identified, what mechanism should the Commission apply to eliminate the duplicative funding? For example, should the Commission eliminate support to all carriers receiving duplicative support in any given area? To the extent the Commission continues to provide support to one provider in any such area, how should the amount of support, and the recipient of that support, be determined? For example, should the Commission award support by auction in areas receiving duplicative support? Alternatively, should it award support to whichever provider serves the larger service area? If so, how should the relevant service area be defined? Should the Commission adopt an approach that would award support for any overlap area to the carrier that builds out 4G LTE in an area first? Are there other mechanisms the Commission could use to eliminate any identified overlap in 4G LTE supported service? If any of these or other proposals would result in an area being served by one subsidized provider and one unsubsidized provider, how should the Commission address that, consistent with our general policy of not providing funding where there is an unsubsidized provider?

110. Given the distinct needs and unique nature of Alaska, and the extent to which it lags much of the rest of the Nation in 4G LTE deployment, we propose that any funds no longer provided as a result of the elimination of duplicative support be used to support other mobile services in high-cost areas of Alaska. We seek comment on this proposal and, more specifically, on how any affected funds should best be used.

111. We also seek comment on how to address a carrier's performance obligations and support payments to the extent it loses funding eligibility as a consequence of the elimination of duplicative support. In such instances, we propose that a carrier amend its performance plan and that it should neither be required nor permitted to include the population in the relevant overlap area in order to meet its performance commitments. We also seek comment on whether, for carriers losing support, we should provide a phase down of support for such carriers, such as over two or three years.

112. As discussed above, the Commission will not evaluate whether there is any duplicative support or make adjustments to support payments until year five of the Alaska Plan. Given the important role of high-cost support in bringing mobile broadband service to remote Alaska, however, we think that it is critical to engage in this process now in order to ensure a smooth transition should any modifications to the Plan be necessary to address duplicative support. Commenters are invited to address the proposals set forth above. In addition, are there other issues or alternatives that the Commission should consider in defining or eliminating duplicative competitive ETC support in Alaska?

V. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

113. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). It 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. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002,²¹¹ we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that

²¹¹ Pub. L. No. 107-198, *see* 44 U.S.C. § 3506(c)(4).

might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B, *infra*.

114. The FNPRM contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements contained in this document, as required by the PRA. In addition, pursuant to the Small Business Paperwork Relief Act, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

B. Congressional Review Act

115. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.²¹²

C. Final Regulatory Flexibility Analysis

116. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, we have prepared a FRFA concerning the possible impact of the rule changes contained in the Report and Order on small entities. The FRFA is set forth in Appendix B.

D. Initial Regulatory Flexibility Analysis

117. As required by the RFA, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the FNPRM. The analysis is found in Appendix C. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the FNPRM and must have a separate and distinct heading designating them as responses to the IRFA. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

E. Ex Parte Presentations

118. *Permit-But-Disclose*. The proceeding that this Report and Order and Further Notice of Proposed Rulemaking initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.²¹³ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that

²¹² See 5 U.S.C. § 801(a)(1)(A).

²¹³ 47 C.F.R. §§ 1.1200 *et seq.*

proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

F. Filing Requirements

119. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,²¹⁴ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).²¹⁵

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. Because more than one docket number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

120. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

121. *Additional Information.* For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, Alexander.Minard@fcc.gov, (202) 418-7400, Matthew Warner of the Wireless Telecommunications Bureau, Competition and Infrastructure Policy Division, Matthew.Warner@fcc.gov, (202) 418-2419, or Audra Hale-Maddox of the Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, Audra.Hale-Maddox@fcc.gov, (202) 418-0794.

VI. ORDERING CLAUSES

122. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 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), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302 that this Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED.

123. IT IS FURTHER ORDERED that Part 54 and Part 69, of the Commission's rules, 47 CFR Parts 54 and 69, ARE AMENDED as set forth in Appendix A.

²¹⁴ 47 C.F.R. §§ 1.415, 1.419.

²¹⁵ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

124. IT IS FURTHER ORDERED that the rules adopted herein WILL BECOME EFFECTIVE 30 days after the date of publication in the *Federal Register*, except for 47 CFR §§ 54.313(f)(1)(i), 54.313(f)(3), 54.313(l), 54.316(a)(1), 54.316(a)(5)-(6), 54.316(b)(6), 54.317(f), 54.320(d), and 54.321, which contain new or modified information collection requirements that require approval by the OMB under the PRA and WILL BECOME EFFECTIVE after the Commission publishes a notice in the *Federal Register* announcing such approval and the relevant effective date.

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

126. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

PART 54—UNIVERSAL SERVICE

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

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Add §54.306 to read as follows:

§54.306 Alaska Plan for Rate-of-Return Carriers Serving Alaska.

(a) *Election of support.* For purposes of subparts A, B, C, D, H, I, J, K and M of this Part, rate-of-return carriers (as that term is defined in §54.5) serving Alaska have a one-time option to elect to participate in the Alaska Plan on a state-wide basis. Carriers exercising this option shall receive the lesser of (1) support as described in paragraph (c) of this section or (2) \$3,000 annually for each line for which the carrier is receiving support as of the effective date of this rule.

(b) *Performance plans.* In order to receive support pursuant to this section, a rate-of-return carrier must be subject to a performance plan approved by the Wireline Competition Bureau. The performance plan must indicate specific deployment obligations and performance requirements sufficient to demonstrate that support is being used in the public interest and in accordance with the requirements adopted by the Commission for the Alaska Plan. Performance plans must commit to offer specified minimum speeds to a set number of locations by the end of the fifth year of support and by the end of the tenth year of support, or in the alternative commit to maintaining voice and Internet service at a specified minimum speeds for the 10-year term. The Bureau may reassess performance plans at the end of the fifth year of support. If the specific deployment obligations and performance requirements in the approved performance plan are not achieved, the carrier shall be subject to §54.320(c) and (d) of this chapter.

(c) *Support amounts and support term.* For a period of 10 years beginning on or after January 1, 2017, at a date set by the Wireline Competition Bureau, each Alaska Plan participant shall receive monthly Alaska Plan support in an amount equal to:

(1) one-twelfth (1/12) of the amount of Interstate Common Line Support disbursed to that carrier for 2011, less any reduction made to that carrier's support in 2012 pursuant to the corporate operations expense limit in effect in 2012, and without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012; plus

(2) one-twelfth (1/12) of the total expense adjustment (high cost loop support) disbursed to that carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012.

(d) *Transfers.* Notwithstanding any provisions of §54.305 or other sections in this Part, to the extent an Alaska Plan participant (as defined in §54.306 or §54.317) transfers some or all of its customers in Alaska to another eligible telecommunications carrier, it may also transfer a proportionate amount of its Alaska Plan support and any associated performance obligations as determined by the Wireline Competition

Bureau or Wireless Telecommunications Bureau if the acquiring eligible telecommunications carrier certifies it will meet the associated obligations agreed to in the approved performance plan.

3. Amend §54.308 to add paragraphs (c) and (d) to read as follows:

§54.308 Broadband public interest obligations for recipients of high-cost support.

* * * * *

(c) Alaskan rate-of-return carriers receiving support from the Alaska Plan pursuant to §54.306 are exempt from paragraph (a) of this section and are instead required to offer voice and 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, subject to any limitations in access to backhaul as described in §54.313(g). Alaska Plan recipients' specific broadband deployment and speed obligations shall be governed by the terms of their approved performance plans as described in §54.306(b). Alaska Plan recipients must also comply with paragraph (b) of this section.

(d) Mobile carriers that are receiving support from the Alaska Plan pursuant to 54.317(e) shall certify in their annual compliance filings that their rates are reasonably comparable to rates for comparable offerings in urban areas. The mobile carrier must also demonstrate compliance at the end of the five-year milestone and 10-year milestone and may do this by showing that its required stand-alone voice plan, and one service plan that offers broadband data services, if it offers such plans, are (1) substantially similar to a service plan offered by at least one mobile wireless service provider in the cellular market area (CMA) for Anchorage, Alaska, and (2) offered for the same or a lower rate than the matching plan in the CMA for Anchorage.

* * * * *

4. Amend §54.313 to revise paragraphs (f) and (g) and add paragraph (l) to read as follows:

§54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(f) In addition to the information and certifications in paragraph (a) of this section, any rate-of-return carrier shall provide:

(1) * * *

(i) A certification that it is taking reasonable steps to provide upon reasonable request broadband service at actual speeds of at least 10 Mbps downstream/1 Mbps upstream, 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 as determined in an annual survey, and that requests for such service are met within a reasonable amount of time; or if the rate-of-return carrier is receiving Alaska Plan support pursuant to §54.306, a certification that it 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, and at speeds committed to in its approved performance plan to the locations it has reported pursuant to §54.316(a), subject to any limitations due to the availability of backhaul as specified in paragraph (g) of this section.

* * * * *

(3) For rate-of-return carriers participating in the Alaska Plan, funding recipients must certify as to whether any terrestrial backhaul or other satellite backhaul became commercially available in the previous calendar year in areas that were previously served exclusively by performance-limiting satellite backhaul. To the extent that such new terrestrial backhaul facilities are constructed, or other satellite backhaul become commercially available, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the Alaska Plan, the funding recipient must provide a description of the backhaul technology, the date at which that backhaul was made commercially available to the carrier, and the number of locations that are newly served by the new terrestrial backhaul or other satellite backhaul. Within twelve months of the new backhaul facilities becoming commercially available, funding recipients must certify that they are 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. Funding recipients' minimum speed deployment obligations will be reassessed as specified by the Commission.

* * * * *

(g) Areas with No Terrestrial Backhaul. Carriers without access to terrestrial backhaul that are compelled to rely exclusively on satellite backhaul in their study area must certify annually that no terrestrial backhaul options exist. Any such funding recipients must certify they offer broadband service at actual speeds of at least 1 Mbps downstream and 256 kbps upstream within the supported area served by satellite middle-mile facilities. To the extent that new terrestrial backhaul facilities are constructed, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the Connect America Fund, within twelve months of the new backhaul facilities becoming commercially available, funding recipients must provide the certifications required in paragraphs (e) or (f) of this section in full. Carriers subject to this paragraph must comply with all other requirements set forth in the remaining paragraphs of this section. These obligations may be modified for carriers participating in the Alaska Plan.

* * * * *

(l) In addition to the information and certifications in paragraph (a) of this section, any competitive eligible telecommunications carrier participating in the Alaska Plan must provide the following:

(1) Funding recipients that have identified in their approved performance plans that they rely exclusively on satellite backhaul for a certain portion of the population in their service area must certify as to whether any terrestrial backhaul or other satellite backhaul became commercially available in the previous calendar year in areas that were previously served exclusively by satellite backhaul. To the extent that new terrestrial backhaul facilities are constructed or other satellite backhaul become commercially available, the funding recipient must:

(a) provide a description of the backhaul technology;

(b) provide the date on which that backhaul was made commercially available to the carrier;

(c) provide the number of the population within their service area that are served by the newly available backhaul option; and

(d) to the extent the funding recipient has not already committed to providing 4G LTE at 10/1 Mbps to the population served by the newly available backhaul by the end of the plan term,

submit a revised performance commitment factoring in the availability of the new backhaul option no later than the due date of the Form 481 in which they have certified that such backhaul became commercially available.

5. Amend §54.316 to revise paragraphs (a) and (b) to read as follows:

§54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

(a) * * *

(1) Recipients of high-cost support with defined broadband deployment obligations pursuant to § 54.308(a), 54.308(c), or § 54.310(c) shall provide to the Administrator on a recurring basis information regarding the locations to which the eligible telecommunications carrier is offering broadband service in satisfaction of its public interest obligations, as defined in either § 54.308 or § 54.309.

* * * * *

(5) Recipients subject to the requirements of §54.308(c) shall report the number of newly deployed and upgraded locations and locational information, including geocodes, where they are offering service providing speeds they committed to in their adopted performance plans pursuant to §54.306(b).

(6) Recipients subject to the requirements of §54.308(c) or §54.317(e) shall submit fiber network maps or microwave network maps covering eligible areas. At the end of any calendar year for which middle-mile facilities were deployed, these recipients shall also submit updated maps showing middle-mile facilities that are or will be used to support their services in eligible areas.

(b) * * *

(6) A rate-of-return carrier authorized to receive Alaska Plan support pursuant to §54.306 shall provide:

(i) No later than March 1, 2022 a certification that it fulfilled the deployment obligations and is offering service meeting the requisite public interest obligations as specified in §54.308(c) to the required number of locations as of December 31, 2021.

(ii) No later than March 1, 2027 a certification that it fulfilled the deployment obligations and is offering service meeting the requisite public interest obligations as specified in §54.308(c) to the required number of locations as of December 31, 2026.

* * * * *

6. Add §54.317 to read as follows:

§54.317 Alaska Plan for competitive eligible telecommunications carriers serving remote Alaska.

(a) *Election of support.* Subject to the requirements of this section, certain competitive eligible telecommunications carriers serving remote areas in Alaska, as defined in §54.307(e)(3)(i), shall have a one-time option to elect to participate in the Alaska Plan. Carriers exercising this option with approved performance plans shall have their support frozen for a period of ten years beginning on or after January 1, 2017, at a date set by the Wireless Telecommunications Bureau, notwithstanding §54.307.

(b) *Carriers eligible for support.* A competitive eligible telecommunications carrier shall be eligible for frozen support pursuant to the Alaska Plan if that carrier serves remote areas in Alaska as defined by §54.307(e)(3)(i) and if that carrier certified that it served covered locations in Alaska in its September 30, 2011, filing of line counts with the Administrator and submitted a performance plan by August 23, 2016.

(c) *Interim support for remote areas in Alaska.* From January 1, 2012, until December 31, 2016, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska pursuant to §54.307(e)(3) shall receive support as calculated in §54.307(e)(3)(v).

(d) *Support amounts and support term.* For a period of 10 years beginning on or after January 1, 2017, at a date set by the Wireless Telecommunications Bureau, notwithstanding §54.307, each Alaska Plan participant shall receive monthly Alaska Plan support in an amount equal to the annualized monthly support amount it received for December 2014. Alaska Plan participants shall no longer be required to file line counts.

(e) *Use of frozen support.* Frozen support allocated through the Alaska Plan may only be used to provide mobile voice and mobile broadband service in those census blocks in remote areas of Alaska, as defined in §54.307(e)(3)(i), that did not, as of December 31, 2014, receive 4G LTE service directly from providers that were either unsubsidized or ineligible to claim the delayed phase down under §54.307(e)(3) and covering, in the aggregate, at least 85 percent of the population of the block. Nothing in this section shall be interpreted to limit the use of frozen support to build or upgrade middle-mile infrastructure outside such remote areas of Alaska if such middle mile infrastructure is necessary to the provision of mobile voice and mobile broadband service in such remote areas. Alaska Plan participants may use frozen support to provide mobile voice and mobile broadband service in remote areas of Alaska served by competitive eligible telecommunications carrier partners of ineligible carriers if those areas are served using the competitive eligible telecommunications carrier's infrastructure.

(f) *Performance plans.* In order to receive support pursuant to this section, a competitive eligible telecommunications carrier must be subject to a performance plan approved by the Wireless Telecommunications Bureau. The performance plan must indicate specific deployment obligations and performance requirements sufficient to demonstrate that support is being used in the public interest and in accordance with paragraph (e) of this section and the requirements adopted by the Commission for the Alaska Plan. For each level of wireless service offered (2G/Voice, 3G, and 4G LTE) and each type of middle mile used in connection with that level of service, the performance plan must specify minimum speeds that will be offered to a specified population by the end of the fifth year of support and by the end of the tenth year of support. Alaska Plan participants shall, no later than the end of the fourth year of the ten-year term, review and modify their end-of-term commitments in light of any new developments, including newly available infrastructure. The Wireless Telecommunications Bureau may require the filing of revised commitments at other times if justified by developments that occur after the approval of the initial performance commitments. If the specific performance obligations are not achieved in the time period identified in the approved performance plans the carrier shall be subject to §54.320(c) and (d) of this chapter.

(g) *Phase down of non-participating competitive eligible telecommunications carrier high-cost support.* Notwithstanding §54.307, and except as provided in paragraph (h) of this section, support distributed in Alaska on or after January 1, 2017 to competitive eligible telecommunications carriers that serve areas in Alaska other than remote areas of Alaska, that are ineligible for frozen support under paragraphs (b) or (e) of this section, or that do not elect to receive support under this section, shall be governed by this paragraph. Such support shall be subject to phase down in three years as provided below, except that carriers that are not signatories to the Alaska Plan will instead be subject to a three-year phase down commencing on September 1, 2017, and competitive eligible telecommunications carriers that are

signatories to the Alaska Plan but did not submit a performance plan by August 23, 2016 shall not receive support in remote areas beginning January 1, 2017.

(1) From January 1, 2017, to December 31, 2017, each such competitive eligible telecommunications carrier shall receive two-thirds of the monthly support amount the carrier received for December 2014 for the relevant study area.

(2) From January 1, 2018, to December 31, 2018, each such competitive eligible telecommunications carrier shall receive one-third of the monthly support amount the carrier received for December 2014 for the relevant study area.

(3) Beginning January 1, 2019, no such competitive eligible telecommunications carrier shall receive universal service support for the relevant study area pursuant to this section or §54.307.

(h) *Support for unserved remote areas of Alaska.* Beginning January 1, 2017, support that, but for paragraph (g) of this section, would be allocated to carriers subject to paragraph (g) of this section shall be allocated for a reverse auction, with performance obligations established at the time of such auction, for deployment of mobile service to remote areas of Alaska, as defined in §54.307(e)(3)(i), that are without commercial mobile radio service as of December 31, 2014.

7. Amend §54.320 to revise paragraphs (d) to read as follows:

§54.320 Compliance and recordkeeping for the high-cost program.

(d) ***

(1) Interim build-out milestones. Upon notification that an eligible telecommunications carrier has defaulted on an interim build-out milestone after it has begun receiving high-cost support, the Wireline Competition Bureau—or Wireless Telecommunications Bureau in the case of mobile carrier participants—will issue a letter evidencing the default. For purposes of determining whether a default has occurred, a carrier must be offering service meeting the requisite performance obligations. The issuance of this letter shall initiate reporting obligations and withholding of a percentage of the eligible telecommunication carrier's total monthly high-cost support, if applicable, starting the month following the issuance of the letter:

(i) Tier 1. If an eligible telecommunications carrier has a compliance gap of at least five percent but less than 15 percent of the number of locations that the eligible telecommunications carrier is required to have built out to or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone, the Wireline Competition Bureau or Wireless Telecommunications Bureau, will issue a letter to that effect. Starting three months after the issuance of this letter, the eligible telecommunications carrier will be required to file a report every three months identifying the geocoded locations to which the eligible telecommunications carrier has newly deployed facilities capable of delivering broadband meeting the requisite requirements with Connect America support in the previous quarter, or, in the case of Alaska Plan mobile-carrier participants, the populations to which the competitive eligible telecommunications carrier has extended or upgraded service meeting their approved performance plan and obligations. Eligible telecommunications carriers that do not file these quarterly reports on time will be subject to support reductions as specified in §54.313(j). The eligible telecommunications carrier must continue to file quarterly reports until the eligible

telecommunications carrier reports that it has reduced the compliance gap to less than five percent of the required number of locations (or population, if applicable) for that interim milestone and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect.

(ii) Tier 2. If an eligible telecommunications carrier has a compliance gap of at least 15 percent but less than 25 percent of the number of locations that the eligible telecommunications carrier is required to have built out to or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone, USAC will withhold 15 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 15 percent of the required number of locations (or population, if applicable) for that interim milestone for that state, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, USAC will stop withholding support, and the eligible telecommunications carrier will receive all of the support that had been withheld. The eligible telecommunications carrier will then move to Tier 1 status.

(iii) Tier 3. If an eligible telecommunications carrier has a compliance gap of at least 25 percent but less than 50 percent of the number of locations that the eligible telecommunications carrier is required to have built out to by the interim milestone, or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, USAC will withhold 25 percent of the eligible telecommunications carrier's monthly support for that state and the eligible telecommunications carrier will be required to file quarterly reports. Once the eligible telecommunications carrier has reported that it has reduced the compliance gap to less than 25 percent of the required number of locations (or population, if applicable) for that interim milestone for that state, the Wireline Competition Bureau or Wireless Telecommunications Bureau will issue a letter to that effect, the eligible telecommunications carrier will move to Tier 2 status.

(iv) Tier 4. If an eligible telecommunications carrier has a compliance gap of 50 percent or more of the number of locations that the eligible telecommunications carrier is required to have built out to or, in the case of Alaska Plan mobile-carrier participants, population covered by the specified technology, middle mile, and speed of service in the carrier's approved performance plan, by the interim milestone:

(A) USAC will withhold 50 percent of the eligible telecommunications carrier's monthly support for that state, and the eligible telecommunications carrier will be required to file quarterly reports. As with the other tiers, as the eligible telecommunications carrier reports that it has lessened the extent of its non-compliance, and the Wireline Competition Bureau or Wireless Telecommunications Bureau issues a letter to that effect, it will move down the tiers until it reaches Tier 1 (or no longer is out of compliance with the relevant interim milestone).

(B) If after having 50 percent of its support withheld for six months the eligible telecommunications carrier has not reported that it is eligible for Tier 3 status (or one of the other lower tiers), USAC will withhold 100 percent of the eligible telecommunications carrier's monthly support and will commence a recovery action for a percentage of support that is equal to the eligible telecommunications carrier's compliance gap plus 10 percent of the ETC's support that has been disbursed to that date.

(v) If at any point during the support term, the eligible telecommunications carrier reports that it is eligible for Tier 1 status, it will have its support fully restored, USAC will repay any funds that were recovered or withheld, and it will move to Tier 1 status.

(2) Final milestone. Upon notification that the eligible telecommunications carrier has not met a final milestone, the eligible telecommunications carrier will have twelve months from the date of the final milestone deadline to come into full compliance with this milestone. If the eligible telecommunications carrier does not report that it has come into full compliance with this milestone within twelve months, the Wireline Competition Bureau—or Wireless Telecommunications Bureau in the case of mobile carrier participants—will issue a letter to this effect. In the case of Alaska Plan mobile carrier participants, USAC will then recover the percentage of support that is equal to 1.89 times the average amount of support per location received by that carrier over the 10-year term for the relevant percentage of population. For other recipients of high-cost support, USAC will then recover the percentage of support that is equal to 1.89 times the average amount of support per location received in the state for that carrier over the term of support for the relevant number of locations plus 10 percent of the eligible telecommunications carrier's total relevant high-cost support over the support term for that state.

(3) Compliance reviews. If subsequent to the eligible telecommunications carrier's support term, USAC determines in the course of a compliance review that the eligible telecommunications carrier does not have sufficient evidence to demonstrate that it is offering service to all of the locations required by the final milestone or, in the case of Alaska Plan participants, did not provide service consistent with the carrier's approved performance plan, USAC shall recover a percentage of support from the eligible telecommunications carrier as specified in paragraph (d)(2) of this section.

8. Add §54.321 to read as follows:

§54.321 Reporting and certification requirements for Alaska Plan participants.

Any competitive eligible telecommunications carrier authorized to receive Alaska Plan support pursuant to §54.317 shall provide:

(a) No later than 60 days after the end of each participating carrier's first five-year term of support, a certification that it has met the obligations contained in the performance plan approved by the Wireless Telecommunications Bureau, including any obligations pursuant to a revised approved performance plan and that it has met the requisite public interest obligations contained in the Alaska Plan Order. For Alaska Plan participants receiving more than \$5 million annually in support, this certification shall be accompanied by data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plan.

(b) No later than 60 days after the end of each participating carrier's second five-year term of support, a certification that it has met the obligations contained in the performance plan approved by the Wireless Telecommunications Bureau, including any obligations pursuant to a revised approved performance plan, and that it has met the requisite public interest obligations contained in the Alaska Plan Order. For Alaska Plan participants receiving more than \$5 million annually in support, this certification shall be accompanied by data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plan.

PART 69—ACCESS CHARGES

1. The authority citation for part 69 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

2. Amend §69.104 by revising paragraph (s) to read as follows:

§69.104 End user common line for non-price cap incumbent local exchange carriers.

* * * * *

(s) End User Common Line Charges for incumbent local exchange carriers not subject to price cap regulation that elect model-based support pursuant to §54.311 or Alaska Plan support pursuant to §54.306 of this chapter are limited as follows:

(1) The maximum charge a non-price cap local exchange carrier that elects model-based support pursuant to §54.311 or Alaska Plan support pursuant to §54.306 of this chapter may assess for each residential or single-line business local exchange service subscriber line is the rate in effect on the last day of the month preceding the month for which model-based support or Alaska Plan support, as applicable, is first provided.

(2) The maximum charge a non-price cap local exchange carrier that elects model-based support pursuant to §54.311 or Alaska Plan support pursuant to §54.306 of this chapter may assess for each multi-line business local exchange service subscriber line is the rate in effect on the last day of the month preceding the month for which model-based support or Alaska Plan support, as applicable, is first provided.

3. Amend §69.115 by revising paragraph (f) to read as follows:

§69.115 Special access surcharges.

* * * * *

(f) The maximum special access surcharge a non-price cap local exchange carrier that elects model-based support pursuant to §54.311 or Alaska Plan support pursuant to §54.306 of this chapter may assess is the rate in effect on the last day of the month preceding the month for which model-based support or Alaska Plan support, as applicable, is first provided.

4. Amend §69.130 by revising paragraph (b) to read as follows:

§69.130 Line port costs in excess of basic analog service.

* * * * *

(b) The maximum charge a non-price cap local exchange carrier that elects model-based support pursuant to §54.311 or Alaska Plan support pursuant to §54.306 of this chapter may assess is the rate in effect on the last day of the month preceding the month for which model-based support or Alaska Plan support, as applicable, is first provided.

5. Amend §69.132 by revising paragraphs (c) and (d) to read as follows:

§69.132 End user Consumer Broadband-Only Loop charge for non-price cap incumbent local exchange carriers.

* * * * *

(c) For carriers not electing model-based support pursuant to §54.311 or Alaska Plan support pursuant to §54.306 of this chapter, the single-line rate or charge 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.

(d) The maximum monthly per line charge for each Consumer Broadband-Only Loop provided by a non-price cap local exchange carrier that elects model-based support pursuant to §54.311 or Alaska Plan support pursuant to §54.306 of this chapter shall be \$42.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980 (RFA),¹ as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking* adopted in November 2011 (*USF/ICC Transformation FNPRM*) and the *Further Notice of Proposed Rulemaking* adopted in April 2014 (*April 2014 Connect America FNPRM*).² The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM* and *April 2014 Connect America FNPRM*, including comment on the IRFAs. The Commission did not receive any relevant comments in response to these IRFAs. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objective of, the Order

2. In the Report and Order, we adopt the Alaska Plan for rate-of-return carriers and competitive eligible telecommunications carriers serving Alaska to support the deployment of voice and broadband-capable wireline and mobile networks in Alaska.

3. We provide Alaskan rate-of-return carriers with the option to obtain a fixed level of funding for a defined term in exchange for committing to deployment obligations that are tailored to each Alaska rate-of-return carrier's unique circumstances. Specifically, we will provide a one-time opportunity for Alaskan rate-of-return carriers to elect to receive support in an amount equal to adjusted 2011 levels for a 10-year term. We direct the Wireline Competition Bureau to review proposed performance commitments. Alaskan rate-of-return carriers can elect to participate in the Alaska Plan, or can choose to receive support from the Alternative Connect America Cost Model (A-CAM) or remain on the reformed legacy mechanisms. Like all other Connect America programs, we will monitor Alaska Plan participants' progress in meeting their deployment obligations throughout the 10-year term.

4. We additionally provide competitive ETCs serving remote areas of Alaska the option to obtain a fixed level of funding for a defined term in exchange for committing to performance obligations that are tailored to each competitive ETC's unique circumstances. Specifically, we will provide a one-time opportunity for competitive ETCs serving remote areas of Alaska to elect to receive support frozen, for a majority of the carriers, at the levels the carriers received as of December 2014, and for one carrier at its March 2015 level.⁴ We require mobile carriers that wish to elect to participate in the Alaska Plan to submit performance plans indicating the population in their service area to which they will offer mobile service, the type of technology for last mile and middle mile, and minimum upload and download speeds meeting the public interest obligations we adopt in this Order at five-year and ten-year service milestones. We delegate to the Wireless Telecommunications Bureau authority to approve such plans if the Wireless Telecommunications Bureau determines they are consistent with the public interest and comply with the requirements adopted in this Order. Competitive ETCs serving remote areas of Alaska that are not

¹ 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

² *USF/ICC Transformation Order*, 26 FCC Rcd at 18364-95, paras. 1-97; *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7216-44, paras. 1-91.

³ See 5 U.S.C. § 604.

⁴ The level of support for Windy City Cellular is calculated based on the waiver decision in Docket No. 10-208. See *Adak Eagle Enterprises, LLC, and Windy City Cellular, LLC, Petitions for Waiver of Certain High-Cost Universal Service Rules*, Order, 29 FCC Rcd 10083 (WTB & WCB, Aug. 21, 2014); see also *Adak Eagle Enterprises, LLC, and Windy City Cellular, LLC, Petitions for Waiver of Certain High-Cost Universal Service Rules*, Order on Reconsideration and Memorandum Opinion and Order, 30 FCC Rcd 5080 (2015).

signatories to Alaska Plan and competitive ETCs that serve non-remote areas of Alaska will have their support phased down over a three-year period. Competitive ETC support insofar as it applies to carriers that are not signatories to the Alaska Plan will be subject to a 12 month period from the release date of the Report and Order before the commencement of the three-year phase down. Alaskan providers will not be eligible for any additional support for mobile services under our proposed Mobility Fund Phase II and Tribal Mobility Fund Phase II programs. Like all other high-cost programs, we will monitor Alaska Plan participants' progress in meeting their deployment obligations throughout the 10-year term.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments raised that specifically addressed the proposed rules and policies presented in the *USF/ICC Transformation FNPRM* IRFA or *April 2014 Connect America FNPRM* IRFA.⁵ Nonetheless, the Commission considered the potential impact of the rules proposed in the IRFA on small entities and reduced the compliance burden for all small entities in order to reduce the economic impact of the rules enacted herein on such entities.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. Pursuant to the Small Business Jobs Act of 2010,⁶ which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

7. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

8. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁷ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁸ In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.⁹ 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).¹⁰

9. **Total Small Entities.** Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.¹¹ First, nationwide, there are a total of

⁵ See *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18333-34, paras. 38-39.

⁶ 5 U.S.C. § 604(a)(3).

⁷ See *id.* § 603(b)(3).

⁸ See *id.* § 601(6).

⁹ See *id.* § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 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."

¹⁰ See *id.* § 632.

¹¹ See *id.* §§ 601(3)-(6).

approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States.¹² In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹³ Nationwide, as of 2007, there were approximately 1,621,215 small organizations.¹⁴ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁵ Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.¹⁶ We estimate that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.”¹⁷ Thus, we estimate that most governmental jurisdictions are small.

10. **Broadband Internet Access Service Providers.** The rules adopted in the Order apply to broadband Internet access service providers. The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications facilities (e.g., cable and DSL ISPs), or over client-supplied telecommunications connections (e.g., dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,¹⁸ which has an SBA small business size standard of 1,500 or fewer employees.¹⁹ These are also labeled “broadband.” The latter are within the category of All Other Telecommunications,²⁰ which has a size standard of annual receipts of \$32.5 million or less.²¹

¹² See SBA, Office of Advocacy, *Frequently Asked Questions*, http://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf.

¹³ 5 U.S.C. § 601(4).

¹⁴ Indep. Sector, *The New Nonprofit Almanac and Desk Reference* (2010).

¹⁵ 5 U.S.C. § 601(5).

¹⁶ See SBA, Office of Advocacy - Frequently Asked Questions, https://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf (last visited Aug. 31, 2016). U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Section 8, page 267, tbl. 429, <https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf> (data cited therein are from 2007).

¹⁷ The 2011 Census data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local organizations were small, in 2011 we note that there were a total of 729 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. See U.S. Census Bureau, American Fact Finder, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Mar. 4, 2016). If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 89,327 are small. 2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. See U.S. Census Bureau, *City and Town Totals Vintage: 2011*, <http://www.census.gov/popest/data/cities/totals/2011/index.html> (last visited Aug. 31, 2016). If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Section 8, page 267, tbl. 429, <https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf> (data cited therein are from 2007).

¹⁸ U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Carriers,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2012%20NAICS%20Search>.

¹⁹ 13 CFR § 121.201, NAICS code 517110.

²⁰ U.S. Census Bureau, 2012 NAICS Definitions, “517919 All Other Telecommunications,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2012%20NAICS%20Search>.

²¹ 13 CFR § 121.201, NAICS code 517919.

These are labeled non-broadband. According to Census Bureau data for 2007, there were 3,188 firms in the first category, total, that operated for the entire year.²² Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more.²³ For the second category, the data show that 2,383 firms operated for the entire year.²⁴ Of those, 2,346 had annual receipts below \$32.5 million per year. Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities.

11. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this FRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Final Regulatory Flexibility Analysis.

12. **Wired Telecommunications Carriers.** The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”²⁵ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.²⁶ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.²⁷ Thus, under this size standard, the majority of firms in this industry can be considered small.

13. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.²⁸ According to Commission data, census data for 2007 shows that there were 3,188 establishments that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.²⁹ The Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the *Notice*.

²² U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517110” (issued Nov. 2010).

²³ *See id.*

²⁴ U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 5179191 (rel. Nov. 19, 2010) (receipts size).

²⁵ *See* <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>

²⁶ *See* 13 CFR § 120.201, NAICS Code 517110.

²⁷ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

²⁸ 13 CFR § 121.201, NAICS code 517110.

²⁹ *See id.*

14. **Incumbent LECs.** Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁰ According to Commission data, 3,188 firms operated in that year. 1,307 carriers reported that they were incumbent local exchange service providers.³¹ Of this total, 3,144 operated with fewer than 1,000 employees.³² Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies proposed in the *Notice*. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.³³ Of this total, an estimated 1,006 have 1,500 or fewer employees.³⁴

15. **Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁵ U.S. Census data for 2007 indicate that 3,188 firms operated during that year. Of that number, 3,144 operated with fewer than 1,000 employees.³⁶ Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.³⁷ Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.³⁸ In addition, 72 carriers have reported that they are Other Local Service Providers.³⁹ Of this total, 70 have 1,500 or fewer employees.⁴⁰ Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the proposals in this *Notice*.

16. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 6 of this IRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁴¹ According to Commission data, 359

³⁰ 13 CFR § 121.201, NAICS code 517110.

³¹ See FCC, Trends in Telephone Service at tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*).

³² See *id.*

³³ See *id.*

³⁴ *Id.*

³⁵ 13 CFR § 121.201, NAICS code 517110.

³⁶ U.S. Census Bureau, Information: Subject Series – Establishment and Firm Size: Employment Size of Firms for the United States: 2007, http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSZ5&prodType=%20table (last visited Aug. 31, 2016).

³⁷ See *Trends in Telephone Service*, at tbl. 5.3.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ 13 CFR § 121.201, NAICS code 517110.

companies reported that their primary telecommunications service activity was the provision of interexchange services.⁴² Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.⁴³ Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the *Notice*.

17. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate NAICS Code category for prepaid calling card providers is Telecommunications Resellers. This industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Mobile virtual networks operators (MVNOs) are included in this industry.⁴⁴ Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.⁴⁵ U.S. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.⁴⁶ Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.⁴⁷ All 193 carriers have 1,500 or fewer employees.⁴⁸ Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the *Notice*.

18. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁴⁹ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.⁵⁰ Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.⁵¹ Of this total, an estimated 211 have 1,500 or fewer employees.⁵² Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the proposals in this *Notice*.

19. **Toll Resellers.** The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers, and the SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵³ Census data for 2007 show that 1,523 firms

⁴² See *Trends in Telephone Service*, at tbl. 5.3.

⁴³ *Id.*

⁴⁴ <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

⁴⁵ 13 CFR § 121.201, NAICS code 517911.

⁴⁶ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ5&prodType=table.

⁴⁷ See *Trends in Telephone Service*, at tbl. 5.3.

⁴⁸ *Id.*

⁴⁹ 13 CFR § 121.201, NAICS code 517911.

⁵⁰ *Id.*

⁵¹ See *Trends in Telephone Service*, at tbl. 5.3.

⁵² *Id.*

⁵³ 13 CFR § 121.201, NAICS code 517911.

provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.⁵⁴ Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.⁵⁵ Of this total, an estimated 857 have 1,500 or fewer employees.⁵⁶ Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our proposals in the *Notice*.

20. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 6 of this IRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.⁵⁷ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 operated with fewer than 1,000 employees.⁵⁸ Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.⁵⁹ Of these, an estimated 279 have 1,500 or fewer employees.⁶⁰ Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the *Notice*.

21. **Wireless Telecommunications Carriers (except Satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.⁶¹ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census Data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.⁶² Of this total, an estimated 261 have 1,500 or fewer employees.⁶³ Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

⁵⁴ *Id.*

⁵⁵ *Trends in Telephone Service*, at tbl. 5.3.

⁵⁶ *Id.*

⁵⁷ 13 CFR § 121.201, NAICS code 517110.

⁵⁸ *Id.*

⁵⁹ *Trends in Telephone Service*, at tbl. 5.3.

⁶⁰ *Id.*

⁶¹ NAICS Code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

⁶² *Trends in Telephone Service*, at tbl. 5.3.

⁶³ *Id.*

22. **Cable Television and other Subscription Programming.**⁶⁴ Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers. That category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”⁶⁵ The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.⁶⁶ Census data for 2007 shows that there were 3,188 firms that operated that year. Of this total, 3,144 had fewer than 1,000 employees.⁶⁷ Thus under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the *Notice*.

23. **Cable Companies and Systems.** The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide.⁶⁸ Industry data indicate that there are currently 4,600 active cable systems in the United States.⁶⁹ Of this total, all but ten cable operators nationwide are small under the 400,000-subscriber size standard.⁷⁰ In addition, under the Commission's rate regulation rules, a “small system” is a cable system serving 15,000 or fewer subscribers.⁷¹ Current

⁶⁴ In 2014, “Cable and Other Subscription Programming,” NAICS Code 515210, replaced a prior category, now obsolete, which was called “Cable and Other Program Distribution.” Cable and Other Program Distribution, prior to 2014, were placed under NAICS Code 517110, Wired Telecommunications Carriers. Wired Telecommunications Carriers is still a current and valid NAICS Code Category. Because of the similarity between “Cable and Other Subscription Programming” and “Cable and other Program Distribution,” we will, in this proceeding, continue to use Wired Telecommunications Carrier data based on the U.S. Census. The alternative of using data gathered under Cable and Other Subscription Programming (NAICS Code 515210) is unavailable to us for two reasons. First, the size standard established by the SBA for Cable and Other Subscription Programming is annual receipts of \$38.5 million or less. Thus to use the annual receipts size standard would require the Commission either to switch from existing employee based size standard of 1,500 employees or less for Wired Telecommunications Carriers, or else would require the use of two size standards. No official approval of either option has been granted by the Commission as of the time of the release of the *FY 2015 NPRM*. Second, the data available under the size standard of \$38.5 million dollars or less is not applicable at this time, because the only currently available U.S. Census data for annual receipts of all businesses operating in the NAICS Code category of 515210 (Cable and other Subscription Programming) consists only of total receipts for all businesses operating in this category in 2007 and of total annual receipts for all businesses operatin6 in this category in 2012. Hence the data do not provide any basis for determining, for either year, how many businesses were small because they had annual receipts of \$38.5 million or less. *See*

http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51I2&prodType=table.

⁶⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), (Full definition stated in paragraph 6 of this IRFA) available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁶⁶ 13 CFR § 121.201, NAICS code 517110.

⁶⁷ http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_51SSZ5&prodType=Table.

⁶⁸ 47 CFR 76.901(e)

⁶⁹ August 15, 2015 Report from the Media Bureau based on data contained in the Commission’s Cable Operations And Licensing System (COALS). See [www/fcc.gov/coals](http://www.fcc.gov/coals).

⁷⁰ *See* SNL KAGAN at www.snl.com/interactiveX/top_cableMSOs.aspx?period2015Q1&sortcol=subscribersbasic&sortorder=desc.

⁷¹ 47 C.F.R 76.901(c)

Commission records show 4,600 cable systems nationwide.⁷² Of this total, 3,900 cable systems have less than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.⁷³ Thus, under this standard as well, we estimate that most cable systems are small entities.

24. **Cable System Operators (Telecom Act Standard).** The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000 are approximately 52,403,705 cable video subscribers in the United States today.⁷⁴ Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.⁷⁵ Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.⁷⁶ We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.⁷⁷ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

25. **All Other Telecommunications.** “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁷⁸ The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.⁷⁹ For this category, census data for 2007 show that there were 2,383 firms that operated for the entire year. Of these firms, a total of 2,346 had gross annual receipts of less than \$25 million.⁸⁰ Thus, a majority of “All Other Telecommunications” firms potentially affected by the proposals in the *Further Notice* can be considered small.

⁷² See COALS, www.fcc.gov/coals.

⁷³ August 5, 2015 report from the Media Bureau based on its research in COALS. See www.fcc.gov/coals

⁷⁴ See SNL KAGAN at www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx.

⁷⁵ 47.901(f) and notes ff. 1, 2, and 3.

⁷⁶ See SNL KAGAN at www.snl.com/Interactivex/TopCableMSOs.aspx.

⁷⁷ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 CFR § 76.901(f).

⁷⁸ <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

⁷⁹ 13 C.F.R 121.201; NAICs Code 517919.

⁸⁰ http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid+ECN_2007_US_51SSSZ4&prodType=table.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

26. In the Report and Order, for rate-of-return carriers, we direct the Wireline Competition Bureau to review proposed performance plans from Alaskan rate-of-return carriers interested in participating in the Alaska Plan that specify the number of locations they commit to serve and the minimum speeds. The Wireline Competition Bureau will release a public notice approving the plan.

27. Alaska Plan rate-of-return participants will be given a 10-year term of support and will be required to offer voice and broadband service meeting certain latency, data usage, and reasonably comparable rate obligations. In their performance plans, Alaska Plan rate-of-return recipients will commit to offer such service to a certain number of locations in their service areas at specified minimum speeds by the end of the fifth year of their support term and by the end of the 10th year of their support term, or in the alternative maintain existing voice and broadband service meeting the relevant public interest obligations to a specified number of locations. Alaska Plan rate-of-return recipients that fail to meet their service milestones will be subject to certain non-compliance measures, including support reductions and reporting. No later than the end of the fourth year of support, Alaska Plan rate-of-return recipients must update their end-of-term commitments, which will be reviewed by the Wireline Competition Bureau, taking into account such factors as improved access to middle mile infrastructure and updated competitive coverage. The Wireline Competition Bureau will reassess the approved performance plans of carriers that commit to maintain existing service more frequently.

28. Carriers electing to participate will be required to submit a letter from an officer of the company certifying that they will comply with the required public interest obligations and performance obligations set forth in their approved performance plan. To monitor Alaska Plan rate-of-return recipients' use of support to ensure it is used for its intended purpose, the Commission has imposed several reporting requirements. Alaska Plan rate-of-return recipients must file annual FCC Form 481s and must also certify and report certain data regarding the availability of backhaul and certify compliance with the relevant public interest obligations and their adopted performance plan. They must also submit fiber network maps and microwave network maps.

29. Alaska Plan rate-of-return recipients are also required to submit certain geocoded location data for the locations where they deploy new service. We expect such information will be submitted on a rolling basis, but must be submitted by no later than March 1, 2018 and then March 1 following each support year. Alaska Plan rate-of-return recipients must also certify that they have met their five-year and 10-year service milestones. Finally, Alaska Plan recipients are required to comply with all other existing high-cost reporting and oversight mechanisms, unless otherwise modified by the Order.

30. Alaska Plan rate-of-return recipients will only be able to count toward new deployment obligations locations in areas that are unserved by qualifying unsubsidized competitors. The Commission will rely on Form 477 data to preliminarily identify areas that are served by competitors. A challenge process will be held where competitors, which carry the burden of persuasion, must certify that they offer qualifying voice and broadband services to 85 percent of the locations in the relevant census blocks, accompanied by evidence. The incumbent and other interested parties will then be able to contest the showing made by the competitor. The Wireline Competition Bureau will make a final determination of which census blocks are competitively served, weighing all of the evidence in the record.

31. Each competitive ETC that participates in the Alaska Plan must identify in its performance plan: 1) the types of middle mile used on that carrier's network; 2) the level of technology (2G, 3G, 4G LTE, etc.) that carrier provides service at for each type of middle mile used; 3) the delineated eligible populations served at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term; and 4) the minimum download and upload speeds at each technology level by each type of middle mile as they stand currently and at years five and 10 of the support term. Accordingly, each performance plan must specify the level of data service by each type of middle mile on a per person basis that will be offered by the five-year and 10-year milestones we adopt

below. The proposed performance plans must reflect any improvements to service, through improved middle mile, improved technology, or both. Alaska Plan participants must offer service meeting the milestones they commit to in their adopted service plans. The Wireless Telecommunications Bureau may require additional information, including during the Bureau's review of the proposed performance plans, from individual participants that it deems necessary to establish clear standards for determining whether or not they meet their five- and 10-year commitments, which may include geographic location of delineated-eligible populations, as well as specific requirements for demonstrating that competitive ETCs have met their commitments regarding broadband speeds. Competitive ETC participants are also required to update their end-of-term commitments no later than the end of year four, and the Wireless Telecommunications Bureau will review these updates in light of any new developments, including newly available infrastructure, and require revised commitments if it serves the public interest.

32. Carriers electing to participate will be required to submit a letter from an officer of the company certifying that they will comply with the required public interest obligations and performance obligations set forth in their approved performance plan. Competitive ETCs participating in the Alaska Plan will be given a 10-year term of support and will be required to offer mobile service consistent with the public interest obligations set forth in this Order. Alaska Plan participants that fail to meet their service milestones will be subject to certain non-compliance measures, including support reductions and reporting. To monitor Alaska Plan recipients' use of support to ensure it is used for its intended purpose, the Commission has imposed several reporting requirements. Alaska Plan recipients must file annual FCC Form 481s and must also certify and report certain data regarding the availability of backhaul and certify compliance with the relevant public interest obligations and their adopted performance plans. Alaska Plan recipients must also submit fiber network maps and microwave network maps. Alaska Plan recipients must certify that they have met their five-year and ten-year service milestones, including any obligations pursuant to revised approved performance plans, and that they have met the requisite public interest obligations contained in this Order. Additionally, for mobile carriers receiving more than \$5 million annually in support, these certifications must be accompanied by data received or used from drive tests analyzing network coverage for mobile service covering the population for which support was received and showing mobile transmissions to and from the carrier's network meeting or exceeding the minimum expected download and upload speeds delineated in the approved performance plans. We expect such information will be submitted no later than March 1, 2022, and March 1, 2027.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁸¹ We have considered all of these factors subsequent to receiving substantive comments from the public and potentially affected entities. The Commission has considered the economic impact on small entities, as identified in comments filed in response to the *USF/ICC Transformation NPRM and FNRPM* and their IRFAs, in reaching its final conclusions and taking action in this proceeding.

34. We are providing small Alaskan rate-of-return carriers with the certainty they need to invest in voice and broadband-capable networks by offering 10 years of adjusted 2011 frozen support. Recognizing the unique conditions and challenges they face, we are giving them the flexibility to submit performance plans where they set the number of locations that will be upgraded in their service area and the minimum speeds they commit to serve. If the Wireline Competition Bureau approves the plan, they

⁸¹ 5 U.S.C. § 603(c).

have the opportunity to elect to receive Alaska Plan support or instead they can elect model-based support or choose to remain on the reformed legacy support mechanisms. We also adopted two service milestones—one halfway through the support term and the other at the end of the support term—to give more flexibility to Alaska Plan recipients to account for the fact that they have a shortened construction season and face other challenges in building infrastructure that are unique to Alaska.

35. The Commission also takes steps to prohibit Alaska Plan rate-of-return recipients from using Alaska Plan support to upgrade or deploy new broadband in areas that are served by a qualifying unsubsidized competitor. However, the Commission removes from eligibility only those census blocks where an unsubsidized competitor offers service to at least 85 percent of their locations.

36. We note that the reporting requirements we adopt for Alaskan rate-of-return carriers are tailored to ensuring that Alaska Plan support is used for its intended purpose and so that we can monitor the progress of recipients in meeting their service milestones. We find that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on Alaska Plan recipients, particularly because much of the information that we require they report is information we expect they will already be collecting to ensure they comply with the terms and conditions of Alaska Plan support and they will be able to submit their location data on a rolling basis to help minimize the burden of uploading a large number of locations at once.

37. We are additionally providing small competitive ETCs serving remote Alaska with the certainty they need to invest in mobile service to remote areas by offering 10 years of adjusted December 2014 frozen support. Recognizing the unique conditions and challenges they face, we are giving them the flexibility to submit performance plans where they set the number of the population that will be upgraded in their service area, the middle mile technology they commit to use, and minimum speeds at which they commit to offer service. If the Wireless Telecommunications Bureau approves the plan, they have the opportunity to elect to receive Alaska Plan support or have their support phase down over a three year term. We also adopted two service milestones—one halfway through the support term and the other at the end of the support term—to give more flexibility to Alaska Plan recipients to account for the fact that they have a shortened construction season and face other challenges in building infrastructure that are unique to Alaska.

38. The Commission removes from eligibility for support those census blocks where there is 4G LTE service being provided that is either unsubsidized or subject to a phase down of support.

39. We note that the reporting requirements we adopt for competitive ETCs serving remote Alaska are tailored to ensuring that Alaska Plan support is used for its intended purpose and so that we can monitor the progress of recipients in meeting their service milestones. We find that the importance of monitoring the use of the public's funds outweighs the burden of filing the required information on Alaska Plan recipients, particularly because much of the information that we require they report is information we expect they will already be collecting to ensure they comply with the terms and conditions of Alaska Plan support.

G. Report to Congress

40. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.⁸² In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁸³

⁸² 5 U.S.C. § 801(a)(1)(A).

⁸³ *See id.* § 604(b).

APPENDIX C

Initial Regulatory Flexibility Act Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (FNPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. The FNPRM is needed to ensure fiscal responsibility and maximize limited support for the support going to ensure universal service in remote areas of Alaska. The FNPRM seeks comment about duplicative support under the Alaska Plan and how such support should be addressed. The FNPRM proposes that duplicative areas be defined as those areas where there is subsidized 4G LTE service provided by more than one carrier in a service area and proposes that this would be determined by using March 2021 Form 477 data. The FNPRM seeks comment on options for addressing this issue during the course of the 10-year support period under the Alaska Plan and seeks comment on eliminating duplicative support in years six through ten of the Alaska Plan, as adopted (e.g., from January 1, 2022 through December 31, 2026).

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 2, 4(i), 5, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 405 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), 155, 201-206, 214, 218-220, 251, 252, 254, 256, 303(r), 332, 403, and 1302.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.⁶ A small-business

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ See 5 U.S.C. § 603(b)(3).

⁵ See 5 U.S.C. § 601(6).

⁶ See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 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.”

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 SBA.⁷

5. **Total Small Entities.** Our proposed action, if implemented, may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards.⁸ First, nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA, which represents 99.7% of all businesses in the United States.⁹ In addition, a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁰ Nationwide, as of 2007, there were approximately 1,621,215 small organizations.¹¹ Finally, the term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹² Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States.¹³ We estimate that, of this total, as many as 89,327 entities may qualify as “small governmental jurisdictions.”¹⁴ Thus, we estimate that most governmental jurisdictions are small.

6. **Wireless Telecommunications Carriers (except Satellite).** This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.¹⁵ The appropriate size standard under SBA rules is that such a business is small

⁷ See 15 U.S.C. § 632.

⁸ See *id.* §§ 601(3)-(6).

⁹ See SBA, Office of Advocacy, *Frequently Asked Questions*, http://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf.

¹⁰ 5 U.S.C. § 601(4).

¹¹ *Indep. Sector, The New Nonprofit Almanac and Desk Reference* (2010).

¹² 5 U.S.C. § 601(5).

¹³ See SBA, Office of Advocacy - Frequently Asked Questions, https://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf (last visited Aug. 31, 2016). U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Section 8, page 267, tbl. 429, <https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf> (data cited therein are from 2007).

¹⁴ The 2011 Census data for small governmental organizations are not presented based on the size of the population in each organization. As stated above, there were 90,056 local governmental organizations in 2011. As a basis for estimating how many of these 90,056 local organizations were small, in 2011 we note that there were a total of 729 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. See U.S. Census Bureau, *American Fact Finder*, <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (last visited Aug. 31, 2016). If we subtract the 729 cities and towns that exceed the 50,000 population threshold, we conclude that approximately 89,327 are small.

2007 U.S. Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. See U.S. Census Bureau, *City and Town Totals Vintage: 2011*, <http://www.census.gov/popest/data/cities/totals/2011/index.html> (last visited Aug. 31, 2016). If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. Census Bureau, *Statistical Abstract of the United States: 2012*, Section 8, page 267, tbl. 429, <https://www.census.gov/compendia/statab/2012/tables/12s0429.pdf> (data cited therein are from 2007).

¹⁵ NAICS Code 517210. See <http://www.census.gov/cgi-bin/ssd/naics/naicsrch>.

if it has 1,500 or fewer employees. For this industry, Census Data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had fewer than 1,000 employees. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) services.¹⁶ Of this total, an estimated 261 have 1,500 or fewer employees.¹⁷ Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

7. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.¹⁸ Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1,000 employees.¹⁹ Under this category and the associated small business size standard, the majority of these local resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.²⁰ Of this total, an estimated 211 have 1,500 or fewer employees.²¹ Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the proposals in this *Notice*.

8. **All Other Telecommunications.** “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.²² The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.²³ For this category, census data for 2007 show that there were 2,383 firms that operated for the entire year. Of these firms, a total of 2,346 had gross annual receipts of less than \$25 million.²⁴ Thus, a majority of “All Other Telecommunications” firms potentially affected by the proposals in the *Further Notice* can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

9. In this FNPRM, the Commission seeks public comment on additional steps for the Alaska Plan and would require minimal additional compliance. The FNPRM proposes that the carrier that has

¹⁶ *Trends in Telephone Service*, at tbl. 5.3.

¹⁷ *Id.*

¹⁸ 13 CFR § 121.201, NAICS code 517911.

¹⁹ *Id.*

²⁰ *See Trends in Telephone Service*, at tbl. 5.3.

²¹ *Id.*

²² Census, NAICS, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

²³ 13 C.F.R 121.201; NAICS Code 517919.

²⁴ Census, American FactFinder, http://factfinder.census.gov/faces/tableservices.jasf/pages/productview.xhtml?pid=ECN_2007_US_51SSSZ4&prodType=table.

lost support in a particular area due to a finding of overlap should not be either required or permitted to include that population in its performance commitments any deployment to that population in an overlap area. This is unlikely to require any additional professional skills than what is required for these carriers submit performance plans to originally receive support under the Alaska Plan. As there are only eight mobile service providers that are eligible for the Alaska Plan, the primary effect of this FNPRM could not affect any more than that number of carriers.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

10. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach. The FNPRM seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may affect small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the FNPRM.

11. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the FNPRM, in reaching its final conclusions and taking action in this proceeding. The requirements in the FNPRM could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of section 254 and 332 of the Act are met without waste, fraud, or abuse.

12. The Commission has made an effort to anticipate the challenges faced by small entities in complying with its rules. For example, the order provides support for five years before the Commission actions resulting from the FNPRM would begin. The FNPRM also asks questions about the duplicate funding redistribution framework that should be established, which allows for comment on impact on small entities.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

13. None.

**DISSENTING STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN**

Re: *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *Connect America Fund—Alaska Plan*, WC Docket No. 16-271.

Photographer Sam Abell spent 33 years on assignment with National Geographic. In discussing his favorite places to photograph, he said that “for sheer majestic geography and sublime scale, nothing beats Alaska.” But the same characteristics that make Alaska beautiful to photograph also make it a harsh landscape to deploy communications services.

Bringing broadband to “The Last Frontier” has unique challenges. Frozen tundra, short build seasons, long nights—not to mention “goo.”¹ That is why the Commission has made modifications in its universal service reforms to address Alaska’s unique position, and has exempted it from the FCC’s *Rate-of-Return Reform Order* adopted just this year. Many of the state’s providers came forward with a plan for how to bring more broadband to the state, but the Alaska Plan, which this Order adopts in substantial part, has serious deficiencies. Because of that, I must dissent.

First, the Plan continues to support multiple overlapping mobile providers, which goes against a key principle underpinning the Commission’s ongoing work on universal service reform: **We do not** subsidize competition. **We do not** provide duplicative high-cost support to carriers in the same area and **we do not** subsidize carriers where other unsubsidized carriers are providing service. That underlying principle should be applied here as well. With Alaska’s “sublime scale,” we should instead be directing support to areas that are unserved, not subsidizing competition in areas that already receive mobile service. And just what is the cost to the American consumer of continuing to support overlap in these areas? About \$35 million a year! It pains me to say that the Alaska Plan was an opportunity for Alaska providers to come together and solve this problem. Alas, an opportunity forfeited.

Second, the Alaska Plan does little to address the very real middle-mile problem in Alaska. It is clear that Alaska’s “majestic geography” makes deployment difficult, but without affordable middle-mile connectivity, high-cost program support spent on the last mile does little to improve communications service to Alaskans. The Brattle Group study submitted in the record estimates that 84% of the costs associated with providing 4G LTE in the relevant Remote Alaska census blocks are middle-mile costs. Indeed, some carriers likely cannot even deploy basic broadband service to their current voice customers without better middle-mile support. More fiber or microwave middle-mile capacity will reduce costs and save consumers money in the long run. Reporting on backhaul buildout—which is what this Order accomplishes on middle-mile—will not seriously move the needle. To be sure, providers are working to deploy additional middle-mile capacity, and for this I applaud them. However, the Alaska Plan was an opportunity for the state’s providers to come together and once and for all solve this problem. But alas, a missed opportunity.

Particularly heartbreaking is the combination of these issues. What do I mean? Commissioner Pai and I supported an approach that would have taken the \$35 million a year in duplicative universal service money and use it to support a middle-mile mechanism that would enable many Alaskans in the Bush to receive broadband for the very first time. While I recognize that such a mechanism does not fit cleanly into our universal service high-cost precedent, unique challenges call for innovative solutions. The status quo is simply not good enough, and the cost of doing nothing is far too high. I was sincerely hopeful that providers would come together and provide a meaningful solution for these persistent challenges. Alas, another opportunity missed.

¹ Some marshland areas of Alaska require providers to dig through up to 15 feet of “goo” before hitting the bedrock that provides sufficient physical support for infrastructure deployment.

I want to thank the staff of the Wireline Competition Bureau and the Wireless Telecommunications Bureau for the tremendous amount of work that went in to attempting to solve these difficult problems that face the Commission and the citizens of Alaska. While I cannot support today's Order, the efforts of the staff are notable and appreciated.

**DISSENTING STATEMENT OF
COMMISSIONER AJIT PAI**

Re: *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *Connect America Fund—Alaska Plan*, WC Docket No. 16-271.

I have seen firsthand what broadband means for Alaska. I have toured the Arctic Regional Supercomputing Center in Fairbanks. I have touched the fiber optic cables that have brought high-speed Internet access and economic growth to the Mat-Su Valley. I have spoken with the board of the Alaska Native Tribal Health Consortium about how telehealth allows the Southcentral Foundation in Anchorage to connect native Alaskans statewide. I have heard what broadband means to the Gwitchyaa Zhee Gwich'in Tribal Government and have seen what it's meant for Tatitlek, a traditional Alutiiq coastal village. And I have met patrons of the Tuzzy Library and students at the Ilisagvik Tribal College in Barrow, 320 miles north of the Arctic Circle, about how the Internet has helped keep tribal communities informed and intact.

But when it comes to broadband, Alaska has a problem that most of the United States doesn't: High-capacity, terrestrial middle-mile connections between communities are few and far between. That's because the distances in Alaska are vast—the state is larger than Texas, California, Florida, and New York *combined*—and most remote villages are not accessible by road. As such, those living in the Alaskan Bush often connect to the Internet through performance-limiting satellite links at speeds of less than 1 Mbps. Those are the speeds at which most Americans accessed the Internet more than a decade ago.

The Alaska Plan (and this *Order* largely adopting it) presents a chance to fix these problems. Alaska currently receives about \$150 million a year in universal service funding. The Alaska Plan locks that money in for the next ten years, committing over \$1.5 billion to preserve and advance universal service in Alaska. That's money the state needs.

But the Alaska Plan won't help everyone. It dedicates no funding to solve the middle-mile problem. So even if every carrier does what it's promised to do over the next ten years, 21,871 rural Alaskans won't have access to 4G LTE mobile broadband (and of those, 10,202 won't even have 3G service).¹ 46,650 rural Alaskans won't have access to the 25 Mbps fixed broadband that is the Commission's benchmark (of those 5,971 won't even have 4 Mbps fixed broadband—the standard from 6 years ago).² In other words, tens of thousands of Alaskans will have to wait at least a decade before being connected with the broadband speeds that most Americans take for granted. That's a shame.

The problem isn't a lack of money; it's the waste of taxpayer dollars. In three separate ways, the *Order* violates basic tenets of universal service reform that we have employed since the *Universal Service Transformation Order* to maximize the value of the Universal Service Fund for consumers.³

¹ See Letter from Christine O'Connor, Executive Director, Alaska Telephone Association, to Marlene Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. at 19 (May 9, 2016) (*ATA Ex Parte* Letter). Unfortunately, even those receiving 4G LTE service may not get access to the speeds urban Americans are accustomed to. *Compare id.* at 24, 25 (identifying 13,000 LTE users promised only 1 Mbps connections and another 42,443 LTE users promised only 2 Mbps connections in areas without fiber backhaul), with *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All America in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191, 2016 Broadband Progress Report, 31 FCC Rcd 699, 735 Table 4 (2016) (showing that 55% of urban Americans already have access to LTE service at 10 Mbps).

² See *ATA Ex Parte* Letter Attach. at 1.

³ *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011).

First, the *Order* condones duplicative build out.⁴ Our staff analysis shows that the Alaska Plan spends about \$12 million extra each year to subsidize two or more wireless carriers for 32,541 consumers in the Alaska Bush.⁵ In contrast with the Alaska Plan, the *Order* maintains this support for five years and promises to consider eliminating it during the second half of the Plan's ten-year term.⁶

This is a serious mistake. Faced with the expenditure of \$120 million in taxpayer funds, the *Order* guarantees that at least \$60 million will be wasted.⁷ And the other \$60 million will likely be wasted as well. After all, the *Order* promises to evaluate overlap at the four-year mark and only eliminate duplicative support in areas where at least two wireless carriers have built out 4G service.⁸ Since the first performance benchmark for wireless carriers doesn't come until the five-year mark and the majority of 4G buildout doesn't come until the ten-year mark,⁹ there's a substantial likelihood that the overlap eliminated after five years will be precisely zero.

Even if some overlap does emerge, the *Order* makes clear that no one has thought through what happens next. How will we identify the support associated with the overlap? We don't know. How will we decide which wireless carrier will continue to receive support? We don't know. How will we change the performance obligations of the carrier that loses support? We don't know. How will the carrier that loses support maintain the 4G network it just constructed? We don't know. How can we justify maintaining support for even one carrier when "our general policy [is] not providing funding where there is an unsubsidized provider"?¹⁰ We don't know.

Second, the *Order* rewards wireless carriers for serving remote areas already served by qualified competitors. Our staff analysis shows that the Fund is spending \$27 million each year on Alaskan wireless carriers that serve customers already served by unsubsidized competitors offering 4G LTE service. In line with the Alaska Plan, the *Order* eliminates \$4 million of that funding—but allows wireless carriers to retain the other \$23 million each and every year for a decade.¹¹

What a waste of \$230 million.¹² The FCC's policy has been to identify where "universal service provides more support than necessary to achieve our goals"¹³ and eliminate any excess support so that it can be either deployed more efficiently elsewhere or returned to the taxpayer. Earlier this year, for

⁴ The Commission has repeatedly declined to provide duplicative support, i.e., support to two or more carriers to build out the same area. The FCC eliminated the identical support rule in 2011. We offered model-based support to just one carrier per area in both phases of the Connect America Fund as well as in rate-of-return areas. And our reverse auctions are designed to select just one winning bidder to support in each area. The reason is obvious: Paying two carriers to construct duplicative facilities is just a waste of taxpayer funding.

⁵ The overlapping wireless carriers are Arctic Slope Telephone Association Cooperative, Copper Valley Wireless, Cordova Wireless, General Communications Corporation, OTZ Wireless, TelAlaska Cellular, and Windy City Cellular.

⁶ *Order* at para. 94.

⁷ That is \$12 million per year for ten years and five years, respectively.

⁸ *Order* at para. 94 ("[W]e will assess 4G LTE deployment and any overlap in subsidized areas based on deployment at the end of year four (i.e., as of December 31, 2020), as reflected in the March 2021 Form 477 filing. Thereafter, . . . the Commission will implement a process, at the beginning of the sixth year, to eliminate duplicative support to areas where there is more than one provider offering subsidized 4G LTE service.").

⁹ ATA *Ex Parte* Letter Attach. at 19 (showing that 41.1% of 4G build out will occur by year five and 58.9% by year ten).

¹⁰ *Order* at paras. 109, 111.

¹¹ See *Order* at note 184. The \$4 million eliminated comes entirely from Matanuska Wireless.

¹² That is \$23 million a year for ten years.

¹³ *Universal Service Transformation Order*, 26 FCC Rcd at 17766–67, para. 280.

example, the Commission adopted a “phased reduction in disaggregated support for competitive areas” so that rate-of-return carriers would not receive support to build out areas already served by unsubsidized competitors.¹⁴ And yet the *Order* declines to follow that path here, allowing wireless carriers to keep nearly a quarter-billion-dollar windfall without any indication of what we—or more importantly Alaskan consumers—are getting for this money. It’s one thing to let carriers keep their funding where *necessary* to preserve and advanced universal service. It’s another thing entirely to reward those that arbitrage the system.

Third, the *Order* carves out a special funding stream for one carrier with no discernible public policy purpose. Specifically, the Alaska Plan proposed that Alaskan wireless carriers not participating in the plan face a three-year phase down of support. The *Order* adopts that plan for most carriers¹⁵ but delays that phase down for a “12 month period from the release date of the Report and Order” for AT&T and only for AT&T.¹⁶ That delay will cost taxpayers an extra \$15.8 million. The *Order* claims this a “reasonable” accommodation but cannot explain why the nation’s second largest wireless carrier needs “additional transition time to reduce any disruptions.”¹⁷

All together these wasted payments total \$365 million, or about one quarter of the total Alaska Plan pot. That’s \$365 million that could be used to link off-road communities to urban Alaska as requested by the Alaska Federation of Natives, the Bering Straits Native Corporation, the Chugachmiut rural healthcare organization, and many others.¹⁸ That \$365 million is more than eight times the \$44 million grant from the Broadband Initiatives Program that launched the TERRA Southwest middle-mile network that connected 65 off-road communities in 2011.¹⁹ That money could provide real digital opportunities for tens of thousands of rural Americans with just a little more FCC oversight of the Alaska Plan.

That’s why I proposed to my colleagues in early July to correct these problems and set this money aside to fund middle-mile construction in remote Alaska. I am grateful that Commissioner Clyburn—herself an ardent supporter of fixing Alaska’s middle-mile problems—agreed to support my plan and spent the last month working with my office to persuade our colleagues to fix these flaws. Unfortunately, we fell just one vote short.

To put it another way: We had a once-in-a-generation opportunity to solve Alaska’s middle-mile problem. But rather than address the real flaws in the Alaska Plan, the FCC has told tens of thousands of

¹⁴ *Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime*, 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, 3131, para. 116 (2016).

¹⁵ *Order* at para. 98.

¹⁶ *Order* at para. 99.

¹⁷ *Id.*

¹⁸ See Letter from Julie Kitka, President, Alaska Federation of Natives, to the Honorable Lisa Murkowski, the Honorable Daniel Sullivan, and the Honorable Don Young, WC Docket No. 10-90, at 1 (June 15, 2016); Letter from Gail R. Schubert, President & CEO, Bering Straits Native Corporation, to the Honorable Senator Murkowski, the Honorable Senator Sullivan, and the Honorable Congressman Young, WC Docket No. 10-90, at 1 (June 9, 2016); Letter from Angela J. Vanderpool, Executive Director, Chugachmiut, to the Honorable Senator Murkowski, the Honorable Senator Sullivan, and the Honorable Congressman Young, WC Docket No. 10-90, at 2 (June 2, 2016); see also, e.g., Letter from Susan Edwards, Finance Officer, Lake and Peninsula Borough, to the Honorable Senator Murkowski, the Honorable Senator Sullivan, and the Honorable Congressman Young, WC Docket No. 10-90, at 1 (May 27, 2016); Letter from Glen R. Alsworth, Sr., President, Lake Clark Air, Inc. & The Farm Lodge, Inc., to the Honorable Senator Murkowski, WC Docket No. 10-90, at 1 (May 18, 2016); Letter from Cameron Poindexter, Manager, Bristol Bay Development Fund, to the Honorable Senator Murkowski, the Honorable Senator Sullivan, and the Honorable Congressman Young, WC Docket No. 10-90, at 1 (May 17, 2016).

¹⁹ GCI TERRA, <http://terra.gci.com/project> (Aug. 22, 2016).

rural Alaskans to wait another ten years for another shot at digital opportunities. I cannot support that decision.

For all these reasons, I respectfully dissent.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Connect America Fund*, WC Docket No. 10-90, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *Connect America Fund—Alaska Plan*, WC Docket No. 16-271.

Today the Commission fulfills its commitment to advance universal service for a large segment of consumers in Alaska by adopting a plan to expand broadband deployment by rural carriers and wireless providers in the state.

Having traveled throughout much of Alaska in both my current and former capacities, I know firsthand that Alaska is unique compared to the “lower 48” states. The sheer size and uncompromising terrain leave many communities and villages isolated, without roads to connect them. Supplies must be shipped in by airplanes, helicopters, boats, or barges, and these services may be available only by charter making deliveries both infrequent and expensive. And then there are the weather challenges, which result in substantially shortened construction and repair seasons. These factors, combined with a population distribution heavily skewed towards Anchorage, make serving the sparsely populated rural and isolated areas very complicated and expensive. In fact, the costs to deploy broadband under these circumstances are substantial, and have been well-documented in the record.

In short, much of Alaska is a remote area unto itself. Indeed, it is enough of an outlier that high-cost programs adopted or proposed for the lower 48 states, such as Mobility Fund Phase II, simply will not work for most, if not all, of the carriers in Alaska, and would leave far too many consumers unserved. Moreover, the mere inclusion of Alaska in other USF programs can skew the data and outcomes so much as to undermine the entire functionality of the programs. Therefore, the order adopts an alternative Alaska-only solution that still comports with our universal service principles and policies.

Operating within an overall budget, providers have the option to obtain a fixed level of funding for a defined term in exchange for committing to deployment obligations that are tailored to each Alaska provider’s circumstances. Over the past year, and as evidenced through many ex partes, staff has sought to ensure that the companies provide the maximum possible deployment for the dollars provided. This means more broadband buildout to more Alaskans.

Further, to ensure accountability and oversight for the funding received, providers will be required to report on the locations served. They will also report how much they are spending on middle mile in order to meet their last mile build out obligations, and they will show where middle mile is being deployed. While the Commission does not operate or directly fund middle mile infrastructure builds, the plan before us will complement private efforts in the state to improve middle mile availability. In all fairness, the solution to any middle mile issue is not just one of allocating funding as past efforts have had a devastating impact on competition in the marketplace, including in Alaska.

Moreover, funding will be focused on eligible areas of Alaska that need it most. Similar to prior decisions, funding will be shifted to support broadband infrastructure in areas lacking an unsubsidized provider. In addition, “non-remote” funding that had been provided, typically in more populated areas, will be retargeted, through an auction, to remote areas that lack service, helping ensure that unserved consumers in these particularly hard to reach areas are not left behind. In short, the package of reforms is similar to structures adopted for several other parts of the high-cost program, while making certain necessary adjustments to reflect the specific challenges of serving Alaska.

I am particularly appreciative that we were able to work with the carriers and their association on a way to implement our competitive overlap policy in Alaska, especially for the wireless component of the plan, in a manner that is tough but fair. Given the number of consumers that are completely unserved, it is critical not only to maintain and upgrade networks, but also to expand them to reach new consumers. At the same time, I recognize that 4G LTE deployment in Alaska lags significantly behind the lower 48 states. The Commission’s Eighteenth Mobile Wireless Competition Report shows that 99.6 percent of Americans have access to 4G LTE service and nearly that many—97.8 percent—are covered by two or

more providers. In contrast, there is no 4G LTE overlap by eligible carriers in Alaska. Even under these challenging circumstances, however, we understand that overlaps could develop in some places in the future, so we need to have a plan in place to address them.

The order resolves the issue by deciding that, in five years, the Commission will take another look at where the funding is being used. In doing so, the item reaffirms the important principle that funding multiple competitors in the same area will not be permitted. In this case, if overlaps were to develop, duplicative funding in such areas will be eliminated. To ensure this happens, the Commission is issuing an FNPRM now to determine the best way to eliminate any overlap funding to the extent it develops. This is an issue where there was no immediate consensus amongst the Commissioners or the carriers, so the FNPRM seeks comment on several ideas, including those put forward by me and my colleagues. It also seeks comment on ways to comply with the Commission's policy of not providing support where there is an unsubsidized provider.

While this solution was not my preferred one and represents a significant compromise on my part, I recognize that it will provide the stability and certainty needed to promote comprehensive investment in broadband infrastructure for consumers in one of the hardest to serve states. Moreover, given the interconnectedness of the plan, we had to address both the wireline and wireless parts at the same time, and such a plan will only work if the carriers themselves support it and make it work.

I thank the Chairman and staff for considering my views and addressing my concerns to the greatest extent possible. I hope to continue to work with the Chairman and my colleagues to wrap up the other pending commitment on Alaska: adopting performance obligations for the price cap carrier in the state. More importantly, I look forward to carriers in Alaska meeting their commitments to expand broadband to reach a greater portion of its population.