• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule proposing to approve West Virginia's redesignation request, maintenance plan, 2005 base year emissions inventory, and transportation conformity insignificance determination for the Wheeling Area for the 1997 annual $PM_{2.5}$ NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, $PM_{2.5}$, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 21, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–29866 Filed 12–10–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket No. 10–90; WT Docket No. 10–208; DA 12–1853]

Further Inquiry Into Issues Related to Mobility Fund Phase II

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Wireless Telecommunications Bureau and Wireline Competition Bureau (collectively, the Bureaus) seek further comment on specific issues relating to the implementation of Phase II of the Mobility Fund. The Bureaus also seek to develop a more comprehensive record on certain issues relating to the award of ongoing support for advanced mobile services.

DATES: Comments are due on or before December 21, 2012, and reply comments are due on or before January 7, 2013.

ADDRESSES: All filings in response to this public notice must refer to Docket Numbers 10–90 and 10–208. The Bureaus strongly encourage interested parties to file comments electronically. Comments may be submitted by any of the following methods:

▪ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

▪ *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

▪ *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. 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, Attn: WTB/ASAD, 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 Street SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: Sue McNeil, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Commission's Further Inquiry Into Issues Related to Mobility Fund Phase II* (*Mobility Fund Phase II Public Notice*) released on November 27, 2012. The complete text of the *Mobility Fund Phase II Public Notice,* as well as related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Mobility Fund Phase II Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 12–1853.

I. Introduction

1. The Bureaus seek further comment on a limited number of specific issues relating to the implementation of Phase II of the Mobility Fund. As established in the *USF/ICC Transformation Order and FNPRM,* 76 FC 78383, December 16, 2011, in Mobility Fund Phase II the Commission will award $500 million annually to ensure the availability of mobile broadband and high quality voice services in certain areas. Building on the comments previously filed in response to the *USF/ICC Transformation Order and FNPRM* and the Bureaus' experience in implementing a reverse auction to award one-time Phase I support, the Bureaus seek to develop a more comprehensive record on certain issues related to the award of ongoing support for advanced mobile services. In considering the issues related to Mobility Fund Phase II, the Bureaus ask commenters keep in mind that Phase II support is not one-time support, but is ongoing support aimed at expanding and sustaining mobile services.

II. Background

2. In the *USF/ICC Transformation Order and FNPRM,* the Commission comprehensively reformed and modernized the universal service high-cost program. Among other things, for the first time, the Commission explicitly recognized the important benefits of and demand for mobile services through the creation of a two-phase Mobility Fund within the high-cost program.

3. For Phase I, the Commission allocated $300 million in one-time

support to expand the availability of advanced mobile services, plus an additional $50 million dedicated to Tribal lands. For Phase II of the Mobility Fund, the Commission dedicated $500 million annually (including up to $100 million dedicated to Tribal lands) and proposed to make awards through a reverse auction to support providers of voice and mobile broadband service in areas where such services cannot be sustained or extended without ongoing support. The Commission further proposed to award support on the same terms and conditions as it adopted for Phase I, but sought comment on whether any modifications were needed to reflect the ongoing nature of support in Phase II.

4. Under the Commission's proposal, a Mobility Fund Phase II reverse auction would assign support to maximize coverage of unserved road miles (or other units) within the budget. To implement an auction, the Commission proposed a basic framework of auction rules that would give the Bureaus flexibility under delegated authority to establish specific procedures for a Mobility Fund Phase II auction.

III. Overall Design

A. Identifying Areas Eligible for Support

5. In the *USF/ICC Transformation Order and FNPRM,* the Commission sought comment on various issues associated with identifying the geographic areas that would be eligible for Phase II support. In light of experience with Mobility Fund Phase I and Auction 901, the Bureaus seek further comment on certain of these issues.

6. *Identifying Areas Eligible for Support.* To target Phase II support to only those areas where it is needed, the Commission proposed to use Mosaik Solutions (Mosaik) data to exclude all census blocks where an unsubsidized carrier is providing 3G or better service. For purposes of determining areas with unsubsidized service, the Commission proposed in the *USF/ICC Transformation Order and FNPRM* that areas receiving one-time Mobility Fund Phase I support would still be eligible to receive Mobility Fund Phase II support.

7. Some commenters express concern about the accuracy of the Mosaik database. The Bureaus now seek further comment based on the use of Mosaik data as a factor in determining eligible areas for Phase I support. To the extent that parties assert that Mosaik data inaccurately reflects the availability of service, the Bureaus seek comment on whether there are any other data sources that the Commission could use to better identify eligible areas. The Bureaus request that commenters provide specific information on what makes these alternate sources superior and how they could be used instead of, or in combination with, the Mosaik database. The Bureaus also seek comment on whether there are other factors the Commission should consider in addition to the availability of unsubsidized service. For instance, how should providers' planned expansion of unsubsidized service affect the identification of areas eligible for support? For example, in Mobility Fund Phase I, the Commission excluded areas from auction where a provider has made a regulatory commitment to provide 3G or better wireless service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better service. In addition, the Commission required applicants for Mobility Fund Phase I support to certify that they were not seeking support for any areas in which they had made a public commitment to deploy 3G or better wireless service by December 31, 2012.

8. *Use of the Centroid Method.* In the *USF/ICC Transformation Order and FNPRM,* the Commission proposed to determine the eligibility of a particular census block for Phase II support based on the absence of unsubsidized 3G or better service at the centroid, which refers to the internal point latitude/longitude of a census block polygon. Some commenters expressed concern that the centroid method is an ineffective measure to determine whether large areas are unserved. The Bureaus ask commenters for feedback on the centroid method in light of their experience in Phase I. Should the Commission consider alternatives, such as the proportional method? For instance, should it consider unserved any census block if the data indicates more than 50 percent of the area is unserved?

B. Prioritizing Areas Eligible for Support

9. In the *USF/ICC Transformation Order and FNPRM,* the Commission sought comment on whether to target Phase II support to particular areas, such as those that lack *any* mobile service or ones that lack current generation (3G) service. Some commenters suggest prioritizing support to rural carriers or carriers with 2G or less capacity; another opposed prioritization of funding to areas with no service at all. Others suggested that the Commission should take into account additional factors, such as poverty level or whether an area is served by the National Highway System, instead of, or in addition to, coverage level. Despite this discussion in the record, the Commission received little input on implementation and specific measures for prioritizing eligible areas.

10. The Bureaus seek additional comment on whether and how the Commission might implement priorities for support among eligible areas. The Bureaus ask commenters to address whether the Commission should prioritize ongoing support to areas that lack coverage, a designated level of coverage, or whether there are other measurable factors that should be taken into account. The Bureaus observe that, in the *USF/ICC Transformation Order and FNPRM,* the Commission suggested that targeted areas could be prioritized by making a bidding credit available. The Bureaus seek additional specific comment on how the Commission might set an appropriate level(s) of bidding credit(s) to prioritize areas based on the existing level of coverage in a particular area. The Bureaus seek comment on whether and how the Commission might assure that support goes to areas that would lose service absent the receipt of ongoing support. In this regard, commenters are invited to discuss how, if at all, the availability of Remote Areas Fund support for the highest cost areas should affect the areas targeted for Mobility Fund Phase II.

C. Establishing Bidding and Coverage Units

11. In the *USF/ICC Transformation Order and FNPRM,* under its auction proposal, the Commission proposed to establish bidding units in each eligible census block for purposes of comparing bids and assessing performance, and to base the number of bidding units on the number of road miles in each eligible area. Road miles directly reflect the Mobility Fund's goals of supporting mobile services, and indirectly reflect many other important factors, such as business locations, recreation areas and work sites, since roads are used to access those areas. Several commenters recommend that the Commission consider other alternatives, including population, terrain, workplaces, annual revenues, and straight-line miles or traditional river miles, instead of, or in combination with, road miles. Some commenters also suggest that the Commission revisit the issue of bidding and coverage units after the Phase I auction before deciding on whether to use road miles as the sole bidding unit.

12. Given the results of the Mobility Fund Phase I auction, the Bureaus seek further comment on the use of road

miles to determine bidding units and corresponding coverage requirements. The Bureaus note that the Commission concluded that, for Phase I of the Tribal Mobility Funds, it would base bidding units on population rather than road miles. The Bureaus also invite additional comment on how specifically the Commission might measure or factor various suggested alternatives, such as terrain or topography, into its determination of bidding units and ask for input on the benefits or drawbacks of any particular approach.

D. Public Interest Obligations

13. In the *USF/ICC Transformation Order and FNPRM,* the Commission proposed that recipients of Mobility Fund Phase II support would be required to provide mobile voice and data services that meet or exceed a minimum bandwidth or data rate of 768 kbps downstream and 200 kbps upstream, consistent with the capabilities offered by representative 4G technologies. The Commission proposed that these data rates should be achievable in both fixed and mobile conditions throughout the cell area, including at the cell edge, at a high probability, and with substantial sector loading. The Commission further noted that the proposed measurement conditions may enable users to receive much better service when accessing the network from a fixed location or close to a base station. The Commission sought comment on whether, and in what ways, these metrics should be modified during the proposed 10-year term of support to reflect anticipated advances in technology. The Commission also proposed that the performance characteristics expected of Mobility Fund Phase II recipients be required to evolve over time, to keep pace with mobile broadband service in urban areas. Commenters generally recommend periodic review and modification of these requirements through a rulemaking proceeding. The Bureaus now seek to further develop the record on how often, and through what process, the Commission should modify the performance metrics applicable to Phase II support recipients. Commenters should address the threshold question of whether an evolving standard is appropriate given the proposed term of support and anticipated advances in technology. For example, should the Commission require that broadband networks built with support be capable of meeting increasing consumer demand for capacity and over a specified time period? If so, should the Commission mandate any specific network attributes?

E. Term of Support

14. In the *USF/ICC Transformation Order and FNPRM,* the Commission proposed a fixed term of support of 10 years and sought comment on a shorter term. In seeking comment on an optimal term for ongoing support, the Commission noted that it sought to balance the need to provide certainty to carriers to attract private investment and deploy services, while taking into account changing circumstances. Commenters generally agreed that a 10-year term was appropriate, noting that the term reflects the economic realities of network building, and need for financial assurance to upgrade or extend networks. The Bureaus seek additional comment on establishing an appropriate term of support, in light of the timeframes for deployment and private investment and the pace of new technology and marketplace developments. Further, the Bureaus request comment on the tradeoffs between using a 10-year term versus one or more shorter terms and which approach would provide the best structure for dealing with dynamic changes in the industry.

IV. Provider Eligibility

15. In the *USF/ICC Transformation Order and FNPRM,* the Commission proposed to require that parties seeking Mobility Fund Phase II support satisfy the same eligibility requirements that were adopted with respect to Phase I. Commenters generally support the Commission's proposal, though some advocate size-based and other restrictions. The Bureaus seek further comment on certain of these issues.

16. *Interplay with other universal service mechanisms.* The Bureaus seek comment on the inter-relationship between eligibility for Mobility Fund Phase II support and other universal service support mechanisms. The Commission noted that a party may be eligible to participate in both Connect America Phase II and Mobility Fund Phase II, but noted that carriers would not be allowed to receive redundant support for the same service in the same areas. The Bureaus seek additional comment on how to implement this principle so as to provide advance information to potential participants in a Mobility Fund Phase II auction. In particular, the Bureaus ask commenters to provide input on how the deployment of mobile service under Mobility Fund Phase II could be supplemented or modified for purposes of meeting the public interest obligations of Connect America Phase II. The Bureaus also seek comment on any interrelationship between eligibility for Mobility Fund Phase II support and the Remote Areas Fund that is to provide support in the highest cost areas.

17. *Small business participation.* In the *USF/ICC Transformation Order and FNPRM,* the Commission sought comment on whether small businesses should be eligible for a bidding preference in a Mobility Fund Phase II auction. The Commission noted that in a spectrum auction context, the Commission typically awards small business bidding credits ranging from 15 to 35 percent, depending on varying small business size standards. Commenters were asked to address the effectiveness of a preference to help smaller carriers compete at auction and whether the Commission should adopt a preference even if the bidding credit would result in less coverage than would occur without the bidding credit. The Commission also sought comment on how to define small businesses and what size bidding credit may be appropriate. Specifically, the Commission sought comment on whether a small business should be defined as an entity with average gross revenues not exceeding $40 million for the preceding three years, or whether it should use a larger size definition, such as average gross revenues not exceeding $125 million for the preceding three years. Several commenters supported the use of bidding credits to increase the competitiveness of small and rural carriers. The Bureaus now seek to develop the record in light of commenters' experience in Phase I, where bidding preferences were not available, except for Tribally-owned or controlled providers. Would the entities that were successful bidders in Auction 901 qualify as small businesses under the definitions the Commission asked about? To what extent do commenters continue to believe that a bidding credit is important to smaller carriers' ability to effectively compete at auction for support and how does that weigh against other Commission objectives?

V. Accountability and Oversight

18. In the *USF/ICC Transformation Order and FNPRM,* the Commission proposed to generally apply to Mobility Fund Phase II the same rules for accountability and oversight that will apply to all recipients of Connect America Fund (CAF) support. Among other things, the CAF accountability and oversight proposals are intended to create a process for the reasonable and prudent disbursement of universal service support. In Mobility Fund Phase I, the Commission authorized disbursement of funds in three equal

installments, linked to completion of certain milestones. The Bureaus seek comment on how to structure ongoing support payments over the term of support in a way that achieves the Commission's goals of providing sufficient and predictable support throughout the term of the Mobility Fund Phase II, while ensuring compliance with the Anti-Deficiency Act. Should support be tied to completion of certain milestones, disbursed on a regular recurring basis, or some combination of both?

VI. Tribal Priority Units

19. In the *USF/ICC Transformation Order and FNPRM,* the Commission proposed and sought comment on a number of provisions targeted at the specific connectivity challenges on Tribal lands. Among other things, the Commission sought comment on a possible mechanism that would allocate a specified number of ''priority units'' to Tribal governments to afford Tribes an opportunity to identify their own priorities. As discussed in the *USF/ICC Transformation Order and FNPRM,* priority units for each Tribe could be based upon a percentage, in the range of 20 to 30 percent, of the total population in unserved blocks located within Tribal boundaries. Tribal governments would have the flexibility to allocate these units in whatever manner they choose. Tribal governments could elect to allocate all of their priority units to one geographic area that is particularly important to them, or to divide the total number of priority units among multiple geographic units according to their relative priority. The Commission requested comment on whether this approach should apply to both the general and Tribal Mobility Fund Phase II, and how such priority units should be awarded in Alaska and Hawaii given the unique conditions in those states. The Commission also sought comment on how this mechanism, if adopted, would interact with the proposed 25 percent Tribal bidding credit.

20. Few parties offered comments addressing the priority units mechanism for Tribal governments, and those that did generally focused on issues unique to Alaska. In light of the relatively light record the Commission received on this issue and the results of Mobility Fund Phase I, the Bureaus seek additional comment on the Tribal priority units proposal. In particular, the Bureaus seek further comment on whether this approach should apply to Tribal governments participating in both the general and Tribal Mobility Fund Phase II, and, if so, how such priority units should be awarded in Alaska and Hawaii. Would the 25 percent Tribal bidding credit and the Tribal engagement obligation proposed in the *USF/ICC Transformation Order and FNPRM* be sufficient to ensure that Tribal priorities are met with respect to ongoing support under Phase II?

VII. Regulatory Flexibility Analysis

21. The *USF/ICC Transformation Order and FNPRM* included an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603, exploring the potential impact on small entities of the Commission's proposal. The Bureaus invite parties to file comments on the IRFA in light of this additional notice.

VIII. Procedural Matters

22. This matter shall be treated as a permit-but-disclose proceeding in accordance with the *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2012–29879 Filed 12–10–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 234, 235, and 236

[Docket No. FRA–2011–0061, Notice No. 1]

RIN 2130–AC32

Positive Train Control Systems (RRR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: FRA proposes amendments to regulations implementing a requirement of the Rail Safety Improvement Act of 2008 that certain passenger and freight railroads install positive train control (PTC) systems. The proposal would revise the regulatory provisions related to the *de minimis* exception to the installation of PTC systems generally, and more specifically, its application to yard-related movements. The proposal would also revise the existing regulations related to en route failures of a PTC system and discontinuances of signal systems once a PTC system is installed and make additional technical amendments to regulations governing grade crossing warning systems and signal systems, including PTC systems.

DATES: *Comments:* Written comments must be received by February 11, 2013. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

Hearing: FRA anticipates being able to resolve this rulemaking without a public hearing. However, if prior to January 10, 2013, FRA receives a specific request for a public hearing, a hearing will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of such hearing.

ADDRESSES: Comments: Comments related to Docket No. FRA–2011–0061, may be submitted by any of the following methods:

- *Web Site:* Comments should be filed at the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Thomas McFarlin, Office of Safety