from the greater Corpus Christi, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 2014–18619 Filed 8–5–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58; FCC 14–98]

Connect America Fund, ETC Annual Reports and Certifications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) finalizes decisions to use on a limited scale Connect America funding for rural broadband experiments in price cap areas that will deploy new, robust broadband to consumers. The Commission will use these rural broadband experiments to explore how to structure the Phase II competitive bidding process in price cap areas and to gather valuable information about interest in deploying next generation networks in high-cost areas.

DATES: Effective September 5, 2014, except for the application process and reporting requirements that contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing OMB approval.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket Nos. 10–90, 14–58; FCC 14–98, adopted on July 11, 2014 and released on July 14, 2014. The full text of this document, including all appendices, is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0714/FCC-14-98A1.pdf.* The Further Notice of Proposed Rulemaking (FNPRM) that was adopted concurrently with the Report and Order will be published elsewhere in the **Federal Register**.

I. Introduction

1. Today the Commission takes further steps to implement the Connect America Fund to advance the deployment of voice and broadband-capable networks in rural, high-cost areas, including extremely high-cost areas, while ensuring that rural Americans benefit from the historic technology transitions that are transforming our nation's communications services. The Commission finalizes decisions to use on a limited scale Connect America funding for rural broadband experiments in price cap areas that will deploy new, robust broadband to consumers. The Report and Order (Order) establishes a budget for these experiments and an objective, clear cut methodology for selecting winning applications, building on the record from the *Tech Transitions FNPRM,* 79 FR 11366, February 28, 2014. The Commission describes the application process and announces that formal applications must be submitted by 90 days from release of the Order. The Commission will use these rural broadband experiments to explore how to structure the Phase II competitive bidding process in price cap areas and to gather valuable information about interest in deploying next generation networks in high-cost areas.

II. Discussion

2. The Commission explained in the *Tech Transitions Order,* 79 FR 11327, February 28, 2014, that it must ''ensure that all Americans benefit from the technology transitions, and that it gains data on the impact of technology transitions in rural areas, including Tribal lands, where residential consumers, small businesses and anchor institutions, including schools, libraries and health care providers, may not have access to advanced broadband services.'' In the Order, the Commission adopts certain parameters and requirements for the rural broadband experiments that will assist us with accomplishing these goals. The Commission expects these experiments to provide critical information regarding which and what types of parties are willing to build networks that will deliver services that exceed our current performance standards for an amount of money equal to or less than the support amounts calculated by the adopted Phase II Connect America Cost Model. In addition to gathering information relevant to broader questions implicated by technology transitions, the Commission expects these experiments also will inform key decisions that the Commission will be making in the coming months regarding the Connect America Fund. The experiments will not delay implementation of Connect America Phase II or further reforms for rate-of-return carriers. The Commission still expects to implement the offer of model-based support to price cap carriers in the coming months, and it will resolve how the Connect America Fund will address the challenges of providing service to the most remote, difficult to serve areas of the country. In addition, in the coming months, the Commission expects to be considering near-term reforms for rate-of-return carriers, based on the record it will shortly receive in response to the recent *Connect America Fund FNPRM,* 79 FR 39196, July 9, 2014, while it continues to develop a Connect America Fund for those carriers.

3. The Commission adopts a budget of $100 million for funding experiments in price cap areas focused on bringing robust, scalable broadband networks to residential and small business locations in rural communities that are not served by an unsubsidized competitor that offers voice and Internet access delivering at least 3 Mbps downstream/768 kbps upstream. As explained in detail below, the funding will be available to serve locations in both high-cost and extremely high-cost areas, thereby advancing our implementation of both Phase II and the Remote Areas Fund. The Commission also determines the objective methodology for selecting projects among the applications it receives for the experiments. Given the manner in which the Commission has structured the budget and the selection criteria, it believes that it will be able to fund a range of diverse projects throughout the country. Finally, the Commission outlines the conditions that entities participating in the experiments must meet in order to continue to receive such support, including specific eligibility, build-out and accountability requirements, and establish the measures to ensure compliance with these conditions.

4. In the *Technology Transitions Order,* the Commission noted our desire to work cooperatively with other governmental entities to advance our shared objectives of ensuring access to broadband services. The Commission noted that it was ''particularly interested in how States, localities, Tribal governments, and other non-federal governmental bodies can provide assistance, through matching

funds, in-kind contributions or other regulatory approvals and permits, to improve the business case for deployment of next generation networks.'' The Commission will be monitoring the progress of the selected projects and hope that they may serve as case studies for best practices in how coordinated governmental action can improve the business case for the delivery of broadband services in rural, high-cost areas. The Commission also seeks comment in the concurrently adopted FNPRM regarding measures the Commission could take in the Phase II competitive bidding process to create incentives for state and other governmental entities to contribute funding to support the extension of broadband-capable networks.

A. Budget

5. In the *Tech Transitions FNPRM,* the Commission sought comment on the amount of support it should make available for the rural broadband experiments. Here, the Commission adopts a budget of $100 million for funding experiments. The Commission previously authorized two rounds of $300 million Connect America Phase I funding to quickly bring broadband to unserved communities in price cap territories. The Commission now concludes it is appropriate to provide another round of funding in price cap territories that will advance our swift implementation of Phase II.

6. The Commission concludes that adopting a budget of $100 million for these rural broadband experiments will best balance our priorities and policy goals. Specifically, this budget should solicit meaningful interest among a range of entities that will enable us to examine, on a limited scale, key policy questions the Commission identified in the *Tech Transitions Order.* The Commission intends to test on a limited scale the use of a competitive bidding process to award support to provide robust broadband to serve fixed locations using both wireline and wireless technologies. Although many parties claim that the Commission should maximize the number of experiments that get funding and advocate adoption of a budget that exceeds the $100 million the Commission adopts today, it notes that the Commission's goal is not to fund as many experiments as possible, but rather to advance implementation of the Connect America Fund. The Commission is mindful of our commitment not to delay the implementation of Phase II. It could be administratively burdensome to oversee the necessary steps to authorize a large number of experiments, which likely would divert Commission resources from resolving broader policy issues regarding implementation of the Connect America Fund in both price cap and rate-of-return areas. Instead, the Commission's goal is to quickly gather data from submitted formal proposals about various technologies in different geographic areas to inform our judgment as it addresses important policy issues regarding how to maintain universal access in rural areas during technology transitions. The Commission's expect that what it learns from the formal applications and selection process will inform our decisions in the coming months as to how to implement a Phase II competitive bidding mechanism that will maximize the participation of a variety of entities and use targeted funding to expand efficiently the availability of voice and broadband-capable infrastructure.

7. *Source of Funds.* As the Commission proposed in the *Tech Transitions FNPRM,* the funding for the rural broadband experiments will be drawn from the Connect America reserve account, which is projected to have approximately $220 million in funding as of the third quarter of 2014 that has not already been allocated to a specific program. The Commission finds that using the reserve account to fund the experiments will help achieve the goals the Commission set for the Connect America Fund. Not only are the experiments themselves designed to encourage the deployment of robust networks capable of offering voice and broadband services to consumers in high-cost areas, the experiments will also help the Commission design the Phase II competitive bidding process and the Remote Areas Fund to efficiently achieve this goal throughout the country. Using unallocated support from the reserve account will also ensure that the Commission will not increase the size of the Universal Service Fund or Connect America budget, that it will not increase the contribution burden on consumers, and that it will not divert resources from other universal service programs. The Commission will consider appropriate treatment of any unallocated funds in the future.

B. Support Term

8. The Commission concludes that it will focus the experiments on projects seeking 10 years of recurring support, rather than proposals for projects seeking one-time support. In the *Tech Transitions Order,* the Commission set a general framework for rural broadband experiments. The Commission adopted a support term of ''up to ten years'' and indicated that it would accept proposals for one-time or recurring support. Subsequently, in April, the Commission adopted a support term of 10 years for the competitive bidding process in the *Connect America Fund Order,* 79 FR 39164, July 9, 2014. One of the Commission's primary objectives for these experiments is to learn how to structure a competitive bidding process for recurring support. The Commission therefore concludes that soliciting proposals for projects with the same 10-year term as will be available to bidders in Phase II will best inform us regarding the level of interest among potential providers in the Phase II competitive bidding process. Moreover, permitting entities to define the length of their support terms would add to the complexity of administering the experiments.

C. Eligibility

1. Eligible Areas

9. In the *USF/ICC Transformation FNPRM,* 76 FR 78384, December 16, 2011, the Commission proposed that census blocks should be the minimum geographic areas for which support will be provided through the Phase II competitive bidding process, and sought comment on whether using census tracts, bidder-defined groups, or another approach would best meet the needs of bidders in the competitive bidding process. A number of commenters expressed a preference for using the same census blocks that are subject to the offer of model-based support for the Phase II competitive bidding process. In the *Tech Transitions Order,* the Commission concluded that proposals for rural broadband experiments in price cap territories would be entertained at the census tract level, with funding provided only for locations in eligible census blocks as determined by the Connect America Cost Model. The Commission did so because it was concerned that making larger geographic areas, such as counties, the minimum geographic area for an experimental proposal potentially could deter participation in this experiment from smaller providers. Census blocks where the model calculated an average cost that exceeded the likely extremely high-cost threshold were not excluded from eligibility, allowing applicants to submit proposals to serve locations in these areas if they determined it was economically feasible to do so with the assurance of support.

10. The rural broadband experiments, in addition to providing robust last-mile broadband service to consumers in rural

communities, will be used to test a potential competitive bidding process for Phase II, providing us the opportunity to make any adjustments that may be necessary before full-scale implementation in Phase II. Based on our review of the expressions of interest, the Commission now concludes that these objectives will best be realized by accepting rural broadband experiment proposals in price cap areas at both the census tract level and the census block level. The Commission recognizes that some parties may be able to submit cost-effective proposals that would encompass all of the eligible census blocks within a tract, and it continues to encourage these parties to file such proposals. For entities whose current operations do not allow them to design projects on this scale that make business sense, the Commission waives the requirement to file proposals at the census tract level. By accepting proposals at the census block level, the Commission hopes to provide greater flexibility to parties and encourage a greater number of entities to participate in the rural broadband experiments. For example, smaller entities may not be able to serve areas as large as census tracts, but would be interested in submitting proposals for smaller neighborhoods that they may already be well positioned to serve. Permitting applicants to aggregate census blocks themselves, rather than having to work within the pre-defined framework of census tracts, will encourage greater participation among these entities. Moreover, this approach provides an opportunity for entities to engage in an incremental expansion into neighboring areas, allowing parties to leverage economies of scale to provide broadband in an efficient manner that benefits consumers. Finally, allowing rural broadband experiment proposals on the census block level will help us determine whether the census block approach that the Commission proposed to use for the Phase II competitive bidding process is administratively feasible and straightforward for both Commission staff and applicants.

11. Proposals must be for census blocks eligible for funding in the rural broadband experiments with a cost per location exceeding the Connect America Phase II funding threshold ($52.50), but below the extremely high-cost threshold ($207.81), and not served by an unsubsidized competitor offering voice service and Internet access providing 3 Mbps downstream/768 kbps upstream as identified by the National Broadband Map. The Commission requires applicants to commit to serving the total number of price cap locations in a given census block. For instance, if a census block has 100 total locations, with 50 of those locations eligible for funding, an entity must commit to serve 100 locations, with the understanding that the support amount determined by the cost model covers only those 50 eligible locations. Entities also may choose to include additional locations in adjacent census blocks where the average cost per location exceeds the extremely high-cost threshold if they determine that it is economically feasible to do so with the support they are requesting for the eligible census block.

12. In the *Tech Transitions FNPRM,* the Commission sought comment on whether to allow applicants to propose to serve partially-served census blocks, which are not eligible for the offer of model-based support to price cap carriers because they are also served by an unsubsidized competitor. After reviewing the record, the Commission concludes that the complexity of implementing such an approach would likely delay implementation of the experiments. As NCTA notes, allowing entities to bid on partially-served census blocks would likely substantially increase the challenges of administering the experiments, given the lack of a reliable source of data on broadband availability below the census block level. Further, CenturyLink observes that allowing partially-served blocks would require the Commission to adjust model-based support amounts and conduct a challenge process. Because doing so would add complexity and time, as well as divert Commission attention and resources, the Commission declines to allow applicants to propose to serve partially-served census blocks. Our focus for the experiments at this point is to advance the deployment of next generation networks to areas unserved by an unsubsidized competitor as quickly and efficiently as possible and to understand how the Phase II competitive bidding process should be best fashioned. Allowing applicants to bid on partially-served census blocks would pose a number of administrative burdens on Commission staff, and the potential obstacles to conducting sub-census block challenges for these experiments outweigh the marginal benefits.

13. The Commission also decides that it will accept rural broadband experiment proposals only from entities that seek to provide service in price cap territories. Over the coming months, the Commission will be focused on reviewing the record it will shortly receive regarding near term and longer term reforms to develop a Connect America Fund for rate-of-return carriers. The Commission believes it is prudent to focus our efforts on these issues, rather than confronting the many difficult issues associated with the potential implementation of rural broadband experiments in rate-of-return areas.

14. The Commission sought comment in the *Tech Transitions FNPRM* on whether to adjust the offer of support for a Phase II state-level commitment if rural broadband experiment funding is awarded prior to the offer of model-based support to price cap carriers. A number of commenters supported this proposal. The Commission adopts this approach, concluding that it furthers our policy of not providing duplicative support in a given area. Specifically, once winning bidders are identified, the Wireline Competition Bureau (the Bureau) will remove the relevant census blocks from the list of eligible census blocks and make additional census blocks available by raising the extremely high-cost threshold so as to maintain the overall the Phase II budget. The Commission also determines that it will exclude any area funded through the rural broadband experiments from the Phase II competitive bidding process.

15. The Commission concludes that areas served by competitive eligible telecommunications carriers (ETCs) will be eligible for support in the rural broadband experiments. The Commission notes that it received a number of expressions of interest from competitive affiliates of rate-of-return carriers operating out of region in price cap territories, and it recognizes that these carriers may be interested in submitting rural broadband experiment proposals, alone or in partnership with other entities. The Commission is interested in learning the extent of interest among competitive ETCs to provide fixed voice and broadband services to the home with recurring support, using both wireline and wireless technologies.

16. The Commission has concluded that competitive ETCs awarded support through the Phase II competitive bidding process will cease to receive legacy phase-down support for those specific areas upon receiving their Phase II support. This rule will apply to participants in the rural broadband experiments, given the rural broadband experiments represent the first step of implementing a competitive bidding process for Phase II support in price cap territories. The Commission believes it is important to implement the measures that the Commission has already adopted for the Phase II competitive

bidding process to the extent possible in these experiments.

2. Applicant Eligibility

17. The Commission concluded in the *Tech Transitions Order* that it would encourage participation in the rural broadband experiments from a wide range of entities—including competitive local exchange carriers, electric utilities, fixed and mobile wireless providers, WISPs, State and regional authorities, Tribal governments, and partnerships among interested entities. The Commission was encouraged to see the diversity in the expressions of interest submitted by interested parties. Of the more than 1,000 expressions of interest filed, almost half were from entities that are not currently ETCs, including electric utilities, WISPS, and agencies of state, county or local governments.

18. The Commission reminds entities that they need not be ETCs at the time they initially submit their formal proposals for funding through the rural broadband experiments, but that they must obtain ETC designation after being identified as winning bidders for the funding award. As stated in the *Tech Transitions Order,* the Commission expects entities to confirm their ETC status within 90 days of the public notice announcing the winning bidders selected to receive funding. Any winning bidder that fails to notify the Bureau that it has obtained ETC designation within the 90 day timeframe will be considered in default and will not be eligible to receive funding for its proposed rural broadband experiment. Any funding that is forfeited in such a manner will not be redistributed to other applicants. The Commission concludes this is necessary so that it can move forward with the experiments in a timely manner. However, a waiver of this deadline may be appropriate if a winning bidder is able to demonstrate that it has engaged in good faith to obtain ETC designation, but has not received approval within the 90-day timeframe.

19. The Commission sought comment in the *Tech Transitions FNPRM* on whether to adopt a presumption that if a state fails to act on an ETC application from a selected participant within a specified period of time, the state lacks jurisdiction over the applicant, and the Commission will address the ETC application. Multiple commenters supported this proposal. The Commission now concludes that, for purposes of this experiment, if after 90 days a state has failed to act on a pending ETC application, an entity may request that the Commission designate it as an ETC, pursuant to section 214(e)(6). Although the Commission is confident that states share our desire to work cooperatively to advance broadband, and it expects states to expeditiously designate qualified entities that have expressed an interest in providing voice and broadband to consumers in price cap areas within their states, the Commission also recognizes the need to adopt measures that will provide a pathway to obtaining ETC designation in situations where there is a lack of action by the state.

3. Three Types of Experiments

20. The $100 million budget for the rural broadband experiments in price cap territories will be divided into three separate categories: $75 million for projects meeting very high performance standards; $15 million for projects meeting specified minimum performance standards that exceed the Commission's current standards; and $10 million for projects dedicated to serving extremely high-cost locations. Below, the Commission outlines the performance standards that entities interested in participating in the rural broadband experiments must meet or exceed in order to be considered for funding in each category.

21. The Commission stated in the *Tech Transitions Order* that its focus for the rural broadband experiments was to deploy robust, scalable networks in rural areas not served by an unsubsidized competitor offering voice service and Internet access that delivers 3 Mbps downstream/768 kbps upstream. To test whether providers are willing and able to deliver services with performance characteristics in excess of the current minimum standards that price cap carriers accepting model-based support are required to offer to all funded locations, the Commission will require all recipients of funding in the rural broadband experiments to offer, at a minimum, at least one standalone broadband service plan more robust that the Commission's current standard of 4 Mbps downstream/1 Mbps upstream to all locations within the selected census blocks, with a specific amount of usage at a price no higher than the reasonable comparability benchmarks for voice service and broadband service, and that meets defined quality standards. The extent to which parties file formal proposals committing to meet these standards in the rural broadband experiments might provide information relevant for the decisions the Commission expects to make in the coming months regarding proposals set forth in the *Connect America Fund FNPRM.*

22. Given the number of providers that submitted expressions of interest for projects of significant size to deploy fiber to the premises, and to ensure that our budget permits the selection of several such projects to ensure diversity, the Commission makes the largest amount of funding—$75 million—available for projects seeking to meet very high performance standards. These projects must propose to deploy a network capable of delivering 100 Mbps downstream/25 Mbps upstream, while offering at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all locations within the selected census blocks. Recipients must provide usage and pricing that is reasonably comparable to usage and pricing available for comparable wireline offerings (i.e., those with similar speeds) in urban areas, and latency no greater than 100 milliseconds (ms).

23. The Commission will make $15 million available for projects where the provider would offer at least one service plan that provides 10 Mbps downstream/1 Mbps upstream to all locations within the selected census blocks. This service plan also must offer at least a 100 GB usage allowance, no more than 100 ms of latency, and meet the reasonable comparability benchmarks for the pricing of voice and broadband.

24. The Commission also is interested in learning more about the extent of provider interest in serving extremely high-cost census blocks, as defined by the Connect America Cost Model. The Commission will make $10 million available for projects exclusively in such areas that propose to offer services delivering 10 Mbps downstream/1 Mbps upstream, with 100 GB of usage and a price that meets our reasonable comparability benchmarks. Projects seeking funding in this category must propose to serve all the locations within the extremely high-cost block or blocks on which the applicant bids. These projects also must propose to serve only extremely high-cost census blocks; a project will not become eligible for this category if it proposes to serve one extremely high-cost census block as part of a larger project to serve other eligible census blocks. The Commission expects to receive a number of creative proposals that will inform us as to the types of technologies that entities can most efficiently deploy to serve extremely high-cost areas, while still meeting the proposed minimum performance standards. For example, the Commission hopes to learn more about interest in the deployment of various fixed wireless solutions,

including broadband services using TV white space and/or hybrid solutions that combine fiber and fixed wireless technologies to offer broadband services in extremely high-cost areas.

25. Satellite providers that are interested in serving extremely high-cost locations may submit proposals for participation in the rural broadband experiments. The Commission recognizes, however, that these providers may not be able to satisfy the 100 ms latency standard that it establishes for the other two groups. Therefore, the Commission will use other metrics for voice quality in the context of these experiments. Specifically, any winning satellite provider may satisfy our requirements for quality of voice service by demonstrating it can provide voice service that meets a Mean Opinion Score (MOS) of four or greater.

D. Selection Methodology and Bidding Process

1. Selection Criteria

26. In the *Tech Transitions FNPRM,* the Commission sought comment on four types of selection criterion for the rural broadband experiments and proposed that cost-effectiveness should be the primary criteria in evaluating which applications to select. The Commission noted that one potential measure of cost-effectiveness is whether the applicant proposes to serve an area for an amount less than model-based support.

27. Based on further consideration and our review of the record, the Commission concludes that it should select winning bidders based on objective measures of cost-effectiveness, rather than using a more complicated scheme of weighting or scoring applications on multiple dimensions. Because the Commission has structured our selection process to choose experiments from three separate categories, it expects to select a diversity of projects in terms of geography and technologies. Recognizing unique challenges in serving Tribal lands, the Commission provides a bidding credit for entities that propose projects that will serve only Tribal census blocks, which will have the effect of making such projects more cost-effective relative to proposals from other entities. Rather than using subjective criteria to evaluate the financial and technical qualifications of each applicant before selection, the Commission requires selected applicants to submit additional information demonstrating that they have the technical and financial qualifications to successfully complete their proposed projects within the required timeframes.

28. The Commission concludes that it should use cost-effectiveness to select applications, and it will calculate this measure in two ways for different categories of applications. As detailed below, for those applications proposing to serve census blocks identified by the Connect America Cost Model as eligible for Phase II support, the Commission will compare requested amounts to model-based support amounts. For applications proposing to serve only census blocks the model identifies as ''extremely high-cost,'' for which there is no model-determined level of support, the Commission will select applications based on the lowest-cost per location. The Commission finds that using these objective, straightforward, and easily measurable criteria will best meet our goals to efficiently distribute support in these experiments and to test on a limited scale a competitive bidding process that can be implemented quickly to inform our decisions regarding how to design the Phase II competitive bidding mechanism. The Commission sought comment in the *Tech Transitions FNPRM* on ways to leverage non-Federal governmental sources of funding, but the record was insufficient for us to determine how best to implement measures that would create incentives for non-Federal governmental entities to assist in advancing universal service. The Commission seeks more focused comment in the concurrently adopted FNPRM on the use of bidding credits in the Phase II competitive bidding process that will occur after the offer of model-based support to price cap carriers.

29. Many commenters agree that cost-effectiveness should be the primary, or even only, criterion in evaluating which applications to select, although some commenters advocate for an approach that would select winning bidders based on the lowest cost per location without comparison to model-based support. The Commission concludes that it should use cost-effectiveness—defined as requested dollars per location divided by model-based support per location—to select applications in categories one and two. The Commission recognizes that it could potentially extend the availability of broadband-capable networks to more locations if it were to use only lowest-cost per location to select projects in all three groups. In addition to using our limited budget for these rural broadband experiments efficiently, however, the Commission also hopes to select projects in a variety of geographic areas. Using lowest-cost alone would likely result in selecting proposals for experiments with similar cost characteristics—specifically, those areas that just barely meet the threshold for being ''high-cost.'' By selecting winning bidders based on the ratio of requested support to support calculated by the cost model, the Commission expects to award funding to projects in areas with varying cost profiles, with greater geographic diversity, which will be informative to our consideration of the impact of technology transitions in different parts of the country. Moreover, comparing the amounts bid to the model-determined support will enable us to test the use of the cost model for purposes of setting reserve prices for future implementation of the Phase II competitive bidding process.

30. Some commenters suggest that the Commission should measure cost-effectiveness in relation to broadband speeds. The Commission concludes that the approach it adopts today, however—setting aside the largest portion of our budget for those projects proposing to meet very high performance standards—is a more straightforward method of encouraging the deployment of robust, scalable networks in areas that would be eligible for Phase II support and testing the extent of interest in deploying such networks in these areas. Directly including robustness as a selection criterion would increase the complexity of the competitive bidding process by requiring the Commission to determine how much of a bidding credit should be provided for proposals offering service at different speeds.

31. For purposes of evaluating cost-effectiveness in comparison to the model, among applicants in each of the first two experiment categories, the Commission will calculate the ratio of requested support per location to model-based support per location in the census blocks the applicant proposes to serve. First, the Commission will divide the total amount of support requested for each proposal by ten so it can compare proposals to annual model-based support amounts. Then the Commission will calculate each proposal's requested support per location and divide that number by the model-based support per location. Using these ratios, the Commission will rank the proposals from the lowest to highest in each category—where the lowest ratio indicates the greatest cost-effectiveness—and select those projects with the lowest ratio within the $75 million budget for the first category of projects, and within the $15 million budget for the second category of projects.

32. As discussed above, support recipients are required to offer the requisite service to the total number of locations in the census blocks that they propose to serve, but may choose to add some locations in adjacent census blocks with costs above the extremely high-cost threshold. The Commission anticipates that there may be areas in which a provider can cost-effectively provide service in extremely high-cost census blocks that are adjacent to funded census blocks. To encourage entities to do so, the Commission will permit applicants that commit to serve locations in extremely high-cost census blocks (which receive no model-based support) to add these locations to the calculation of their requested support per location for the project. The effect of including these extremely high-cost locations would be to lower the support per location of the project and improve the overall cost-effectiveness.

33. For purposes of evaluating proposals in category three, the Commission will calculate the cost per location, and rank these applications on a dollar requested per location basis, from lowest to highest. The Commission will select projects based on the lowest cost per location, until the budget is exhausted. Parties that submit proposals for both category one or two along with a proposal for category three may identify their category three proposal as contingent on their being a winning bidder for a category one or two proposal. In that case, a party that would otherwise be selected in category three based on its cost-effectiveness score, but that fails to win for a category one or two proposal, would not win; instead, the next most cost-effective proposal in category three would be selected.

34. No census block will receive support from more than one proposal. Accordingly, once a proposal has been selected, any other proposals that would cover any of the census blocks in the selected proposals will no longer be eligible. The Commission does not anticipate that our evaluation criteria will result in ties among winners, but if two or more applications result in identical rankings of cost-effectiveness, the Commission will select the project that proposes to serve the most locations if the budget would not permit funding all the tied proposals. If more than one tied proposal includes the same census block, the Commission would select the project that proposes to serve the most locations. In the unlikely event that tied and overlapping proposals serve the identical number of locations, the Commission will select the supported project randomly.

2. Measures To Ensure Diversity of Projects

35. Given our interest in testing how a variety of entities use Connect America funds in various geographic locations, and deploy different types of technologies, the Commission finds that it will be advantageous to award support to a diverse group of projects within the $100 million budget. Below, the Commission adopts certain measures that aim to ensure that the projects funded through the rural broadband experiments bring robust broadband networks to the widest range of price cap areas possible.

36. *Funding Limits.* There has been a wide variety in the funding amounts requested by interested entities. To preclude one entity or one project from exhausting the entire budget, the Commission places limits on the amount of funding that each project and each entity can receive. With these limits, the Commission balances our interest in permitting multiple projects and entities to receive funding, with our interest in learning from projects that request varying levels of support. By adopting these per project and per entity limits and deciding to award support based on cost-effectiveness compared to the model determined support, the Commission expects that the projects that ultimately win support will be geographically diverse.

37. First, the Commission adopts project limits for each experiment category it adopts above to ensure that it awards support to multiple projects within each category. The Commission places a limit of $20 million per project for those projects submitted to the very high performance standards category, a limit of $7.5 million per project for those projects submitted to the minimum performance standards category, and a limit of $5 million per project for those projects submitted to the extremely high-cost areas category. The Commission chooses these numbers to ensure that it is able to select at least two projects in each category, to provide greater diversity.

38. Second, the Commission adopts an overall limit of $20 million per entity, including its affiliates. Each entity and its affiliates will be precluded from being awarded more than $20 million in support across all three experiment categories. This limit also applies in situations where an entity is in more than one consortium.

39. *Service to Tribal Lands.* In the *Tech Transitions FNPRM,* the Commission sought comment on including as a selection criterion whether applicants propose to offer high-capacity connectivity to Tribal lands. Rather than a separate selection criterion that the Commission would have to measure against cost-effectiveness, it now concludes that using a bidding credit is more consistent with the type of objective selection criteria it is adopting for the experiments and the Commission's precedent. This is consistent with our *Connect America Fund FNPRM,* which sought comment on using bidding credits for service to Tribal lands.

40. For the purposes of the rural broadband experiments, the Commission adopts a 25-percent credit for those seeking support for proposed experiments that serve only Tribal census blocks. The credit will effectively reduce the bid amount of qualifying experiments by 25 percent for purpose of comparing it to other bids, thus increasing the likelihood that experiments serving Tribal blocks will receive funding. This credit will be available with respect to eligible census blocks located within the geographic area defined by the boundaries of the Tribal land. As noted above, the Commission directs the Bureau to release the list of census blocks that will be eligible for this credit in the rural broadband experiments within 15 days of releasing this Order. Because the Commission is focused on swiftly implementing these experiments, it will not entertain any proposals to modify this list.

3. Mechanics of the Bidding Process

41. To participate in the rural broadband experiments, entities must submit a formal application to the Commission. The formal application must be submitted no later than 90 days from the release of the Order. As part of this formal application, entities will be required to submit confidential bids requesting a certain amount of support to serve specified census blocks. Additionally, entities will be required to provide information regarding any agreements or joint bidding arrangements with other parties, disclose any ownership interests in or by Commission-regulated companies, declare whether their project will serve only Tribal census blocks, submit a proposal containing basic information that would be informative to the general public and will be released publicly only if they win support, and certify that they meet certain threshold requirements, including being in compliance with all the statutory and regulatory requirements and being financially and technically capable of meeting the required public interest

obligations in each area they seek support.

42. The Commission requires all entities submitting proposals to utilize a FCC Registration Number (FRN) to ensure that each application has a unique identifier. Any entity that currently does not have a FRN must first register with the Commission's ''Commission Registration System'' (CORES), upon which it will be assigned a FRN. In the case of multiple entities forming a partnership to submit a single bid, the Commission requires only one entity in the partnership to be registered with a FRN.

43. Entities must specify the type of project for which they are submitting a proposal (i.e., very high performance, minimum performance, or extremely high-cost). Entities may choose to submit multiple proposals in the same category, as well as different proposals in multiple categories. However, in determining who is the winning bidder for funding in each category, proposals will only be compared to proposals in the same category, i.e., a proposal to serve census blocks with very high performance service will only be compared against other proposals in that category if the applicant chose not to submit the proposal in another category. Proposals that do not meet the criteria for selection in one category will not be automatically considered in another group. For example, if an entity proposes to serve certain census blocks with very high performance service, but is not a winning bidder for funding in that category, that project will not be considered for funding in the minimum performance category, even if it might be a winning bidder for that category.

44. Entities must provide the census block IDs for each census block they propose to serve, the number of eligible locations determined by the model in each of those blocks, and the total amount of support they request. The Commission notes that, even if an entity is proposing to serve the entire census tract, it must list the IDs of all the census blocks within that tract. As noted above, the Bureau will release the list of eligible census blocks, the associated number of locations eligible for funding in each block, and the associated amount of support by block. The amount of funding made available for any experiment will not exceed the amount of model-calculated support for the given geographic area. Applications with a total request for funding that exceeds the model-based support calculation will not be considered. Therefore, the Commission expects entities to consult the list released by the Bureau to ensure that bids on any group of census blocks do not exceed the amount of support calculated by the model to serve those census blocks.

45. The formal proposal should include background information on the applicant and its qualifications to provide voice and broadband service; a description of the proposed project, service area, planned voice and broadband service offerings, and technology to be used; and the number of locations, including community anchor institutions, within the project area. As the Commission noted in the *Tech Transitions Order,* rural areas are home to a higher proportion of low-income Americans. The Commission seeks to learn how providers intend to serve low-income consumers if they receive rural broadband experiment support. Thus, the formal proposal should include a description of what Lifeline services the applicant intends to offer if awarded support, whether it will have a broadband offering for low-income consumers, and whether it will permit qualifying consumers to apply the Lifeline discount to bundled voice and data services.

46. The information in the formal proposal will not be used to select winning bidders; as discussed above, winning bidders will be selected solely on their numerical score. All bids for the rural broadband experiments will be considered confidential, and bidders should not disclose their bids to other bidders. However, once the Bureau has issued a public notice listing the winning bidders, the winning bidders' proposals will be released to the public. The Commission concludes that making the winning bidders' proposals public will provide an increased level of transparency and enable parties outside the process to hold winning bidders publicly accountable for not fulfilling the requirements of the experiments. However, all other proposals will remain confidential, pending the completion of the Phase II competitive bidding process, in order to prevent these proposals from affecting a potential bidder's behavior in the Phase II competitive bidding process.

4. Post-Selection Review

47. The Bureau will issue a public notice identifying the winning bidders, as specified above, that may be authorized to receive support and the list of census blocks included in their proposed projects, which are presumptively unserved by an unsubsidized competitor. As the Commission determined in the *Tech Transitions Order,* the Bureau then will conduct a challenge process similar to the process it used for determining eligible areas for model-based support. To the extent that a challenge is granted in whole or in part, funding for those locations will be adjusted proportionately.

48. *Technical and Financial Review.* The Bureau will determine whether each selected applicant has demonstrated that it has the technical and financial qualifications to successfully complete the proposed project within the required timeframes and is in compliance with all statutory and regulatory requirements for the universal service support that the applicant seeks. Commission staff will perform a review to ensure that the selected applicants meet our expectations for technical and financial capability to conduct an experiment before any support is provided.

49. The Commission has recognized network security as an imperative in technology transitions. For broadband networks across the nation to be considered advanced, robust, and scalable, they must also be secure and resilient in the face of rapidly evolving cybersecurity threats. Here, the Commission seeks to promote the sustainability of rural broadband through early planning to incorporate effective cybersecurity risk management measures. The Commission commits to support entities selected for these rural broadband experiments with training resources and guidance to that end. Incorporating adequate security early in the design and throughout the deployment of broadband networks is more effective than addressing security problems retrospectively, and ultimately lowers costs by hardening networks against preventable outages and catastrophic failures that could threaten the viability of smaller and/or new market entrants in rural broadband. Small providers in diverse service areas play a key role because any point of weakness in today's interconnected broadband ecosystem may introduce risk into the entire network of interconnected service providers. Security improvements reduce risk to all interconnected service providers, their customers and the nation as a whole. The support that the Commission commits in this Order to provide to selected applicants is limited to sharing information and resources regarding cybersecurity risk management measures that the selected applicants may find beneficial as they plan their deployments. No applicant will be required to make changes to its network design or infrastructure based on such measures, nor will any applicant be rejected for not addressing cyber risk management best practices in

its proposal. The Commission's engagement with selected entities should help inform CSRIC's ongoing efforts to remove cybersecurity barriers for small companies competing in the broadband services market, but the Commission will not share any applicant's proprietary or sensitive information related to cybersecurity, or any cybersecurity information that would identify the applicant, with CSRIC or other companies or government agencies.

50. Within 10 business days of public notice of winning bidders, the Commission requires all winning bidders to provide the most recent three consecutive years of audited financial statements, including balance sheets, net income, and cash flow, and to submit a description of the technology and system design used to deliver voice and broadband service, including a network diagram, which must be certified by a professional engineer. Winning bidders proposing to use wireless technologies also must provide a description of spectrum access in the areas for which the applicant seeks support. Within 60 days of public notice of winning bidders, the Commission requires all winning bidders to submit a letter from an acceptable bank committing to issue an irrevocable stand-by original letter of credit (LOC) to that entity. Finally, each selected applicant is required to provide within 90 days of public notice of winning bidders appropriate documentation of its ETC designation in all the areas for which it will receive support and certify that the information submitted is accurate. Once the Bureau has determined that the entity is financially and technically qualified to receive experiment support and that the LOC commitment letter is sufficient, it will release a public notice stating that the entity is ready to be authorized for support. Within 10 business days of this public notice, the Commission requires that the winning bidder submit an irrevocable stand-by original LOC that has been issued and signed by the issuing bank along with the opinion letter from legal counsel that it describes below. Once the Universal Service Administrative Company (USAC) has verified the sufficiency of the LOC and the opinion letter, the Bureau will issue a public notice authorizing the entity to receive its first disbursement.

51. *Requirements for Letters of Credit.* The Commission requires a winning bidder to secure an irrevocable stand-by original LOC for its winning project before support will be disbursed. The Commission's decision to require entities to obtain a LOC is consistent with the requirements it has adopted for other competitive bidding processes the Commission has conducted to distribute Connect America funds, where both existing providers and new entrants were required to obtain LOCs. The LOC must be issued in substantially the same form as set forth in the model LOC provided in Appendix A of this Order, by a bank that is acceptable to the Commission. As explained below, if an entity fails to meet the terms and conditions of the rural broadband experiments after it begins receiving support, including the build-out milestones and performance obligations the Commission adopts in this Order, and fails to cure within the requisite time period, the Bureau will issue a letter evidencing the failure and declaring a default, which letter, when attached by USAC to a LOC draw certificate, shall be sufficient for a draw on the LOC to recover all support that has been disbursed to the entity. Once the recipient's support term has ended, the LOC must remain open and renewed to secure the amount of support disbursed for 120 days to allow time to validate that the rural broadband experiment recipients have met the experiment's public service obligations and build-out milestones.

52. As the Commission found when it established Mobility Fund Phase I, LOCs are an effective means of securing our financial commitment to provide Connect America support. LOCs permit the Commission to protect the integrity of universal service funds that have been disbursed and immediately reclaim support that has been provided in the event that the recipient is not using those funds in accordance with the Commission's rules and requirements to further the objectives of universal service. Moreover, LOCs have the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish our goals. These concerns are relevant to both new entrants and established providers.

53. While our existing accountability measures help ensure that Connect America funds are being used to deploy or sustain broadband and voice-capable networks, the Commission concludes that additional measures are necessary to protect the ability of the Commission to recover support from parties that fail to perform. The Commission required winners of the Mobility Fund Phase I and Tribal Mobility Phase I auctions to obtain LOCs, and it sees no reason to depart from this practice for the rural broadband experiments. The Commission continues to view them as beneficial and our experience has shown that winning bidders are able to obtain LOCs.

54. *LOC Opinion Letter.* Consistent with our requirements for Mobility Fund Phase I and Tribal Mobility Fund Phase I, winning bidders must also submit with their LOCs an opinion letter from legal counsel. That opinion letter must clearly state, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of the account party's bankruptcy estate, or the bankruptcy estate of any other rural broadband experiment recipient-related entity requesting issuance of the LOC under section 541 of the Bankruptcy Code.

55. *Issuing Bank Eligibility.* The LOCs for winning bidders must be obtained from a domestic or foreign bank meeting the requirements adopted here for purposes of the rural broadband experiments. The criteria the Commission adopts are largely the same as the requirements the Commission adopted for Mobility Fund Phase I and Tribal Mobility Fund Phase I, although it adopts several modifications to enlarge the potential pool of eligible banks for purposes of these experiments. First, the Commission requires that for U.S. banks, the bank must be among the 100 largest banks in the U.S. (determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the LOC) and must be insured by the Federal Deposit Insurance Corporation (FDIC) and for non-U.S. banks, the bank must be among the 100 largest non-U.S. banks in the world (determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the LOC, determined on a U.S. dollar equivalent basis as of such date). The Commission expands the pool of eligible banks from the top 50 to the top 100 banks for purposes of these rural broadband experiments because it expects the projects to be small in scale, and thus drawing on the LOC is unlikely to exhaust the assets of any bank in the top 100. The Commission has also seen through our experience with Mobility Fund Phase I and Tribal Mobility Fund Phase I that entities have used a number of banks. Because the Commission expects that a number of smaller entities will be winning bidders and may not have established relationships with some of the largest banks, for purposes of these experiments it finds that it is beneficial

to increase the number of options from which they can choose. The Commission also requires that the selected U.S. bank have a credit rating issued by Standard & Poor's of BBB- or better (or the equivalent from a nationally recognized credit rating agency). For non-U.S. banks, the Commission requires that the bank has a branch in the District of Columbia or other agreed-upon location in the United States, has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to an BBB- or better rating by Standard & Poor's, and that it issues the LOC payable in United States dollars. By allowing banks to have a BBB- rating instead of an A- rating, the Commission will enlarge the pool of eligible issuing banks, without significantly increasing risk to the universal service fund.

56. To provide more flexibility, the Commission also concludes that winning bidders for the rural broadband experiments may obtain a LOC from agricultural credit banks in the United States that serve rural utilities and are members of the United States Farm Credit System (which is modeled after the FDIC). The Commission finds that Farm Credit System Insurance Corporation (FCSIC) insurance provides protection that is equivalent to those indicated by holding FDIC-insured deposits. Thus, the agricultural credit bank must have its obligations insured by the FCSIC. The agricultural credit bank must also meet the other requirements that the Commission has adopted for U.S. banks, including that they have a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency), and that their total assets are equal to or exceed the total assets of any of the 100 largest United States banks. This will permit rural broadband experiment recipients to obtain LOCs from, for example, CoBank, a bank with which many small rural carriers have a relationship.

57. If a recipient has been issued a LOC from a bank that is no longer able to honor the letter of credit at any point during its support term, that recipient will have 60 days to secure a LOC from another issuing bank that meets our eligibility requirements. The Commission also reserves the right to temporarily cease disbursements of monthly support until the recipient submits to us a new LOC that meets our requirements.

58. *Value of LOC.* When a winning bidder first obtains a LOC, it must be equal to the amount of the first disbursement. Before the winning bidder can receive additional disbursements, it must modify or renew its LOC to ensure that it is valued at the total amount of money that has already been disbursed plus the amount of money that is going to be provided for the next disbursement. To reduce administrative costs, a recipient may choose to renew its LOC on an annual rather than monthly basis so that it is valued at the amount of money to be disbursed in the coming year plus the total disbursements it has received so far.

59. *Procedure for Drawing on LOC.* As described below, the Bureau will notify an entity that it has failed to comply with the terms and conditions of the rural broadband experiments, including public interest obligations and build-out milestones, and will provide an opportunity for cure before issuing a finding of default. Once the Bureau has determined that the entity has defaulted, the Bureau Chief will send a letter to the entity to notify it of the default. USAC will then issue the form letter attached as Appendix A of this Order to the issuing bank with the Bureau Chief's letter attached, initiating the draw on the LOC.

60. *Costs of Obtaining LOCs.* Now that the Commission has experience with LOCs in the Mobility Fund Phase I and Tribal Mobility Fund Phase I auction, it is confident that winning bidders will be able to secure LOCs. The Commission notes that no winning bidders defaulted in Mobility Fund Phase I and Tribal Mobility Fund Phase I auctions because they were unable to secure a LOC. The Commission recognizes that banks charge fees for obtaining LOCs and also may charge renewal fees. But the Commission finds that the advantages of LOCs in ensuring that Connect America support can quickly be reclaimed to protect the Universal Service Fund, and that the support is protected from being included in a bankruptcy estate, outweigh the potential costs of LOCs for the winning bidders. And as the Commission noted in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, LOCs are regularly used in the course of business, and companies that use existing lenders are able to use multiple forms of financing. Moreover, requiring that winning bidders obtain LOCs that only secure the sum of money that has been (and soon will be) disbursed will help alleviate the cost of the LOCs. The Commission also notes that applicants can factor in the costs of LOCs when submitting their bids.

61. *Applicability to All Winning Bidders.* The Commission's paramount objective is to establish strong safeguards to protect against misuse of the Connect America Fund. The Commission concludes that requiring all entities to obtain a LOC is a necessary measure to ensure that it can recover support from any recipient that cannot meet the build-out obligations and public service obligations of the rural broadband experiments. The Commission also agrees with those commenters that argue that requiring all recipients to obtain a LOC will ensure that all recipients are subject to the same default process if they do not comply with the experiments' terms and conditions.

62. The Commission is not persuaded by arguments that it should only require certain entities to obtain LOCs, particularly recipients that have not met the Commission's rules in the past or cannot meet a specified financial threshold. Compliance with existing universal service rules has no bearing on whether an entity necessarily is financially qualified to undertake the obligations of the rural broadband experiments. Moreover, it is possible that some of the winning bidders for the rural broadband experiments may not have participated in Commission programs before. The Commission finds that a LOC provides the safeguard of allowing the Commission to immediately take back support if it turns out that the recipient fails to meet the requirements. The requirement will also impress upon all entities participating in the experiments the significant undertaking to which they are committing.

63. *Tribal Nations and Tribally-Owned Applicants.* Based on the Commission's experience in implementing LOCs for Mobility Fund Phase I and Tribal Mobility Fund Phase I, it recognizes there may be a need for greater flexibility regarding LOCs for Tribally-owned or -controlled winning bidders. In many situations, requiring a LOC from Tribally-owned entities may be impractical because Tribal Nations are subject to various somewhat unique economic challenges, including the inability to levy income taxes on their citizenry and to collateralize their lands. When title to Tribal lands is vested in the United States or such lands are subject to trust restrictions against encumbrances, Tribal Nations are not in a position to provide them as collateral for such a letter of credit. The Commission finds that such situations with respect to Tribal Nations are best handled on a case-by-case basis through the waiver process.

64. If any Tribal Nation or Tribally-owned or -controlled applicant for the rural broadband experiments is unable to obtain a LOC, it may file a petition for a waiver of the LOC requirement. Waiver applicants must show that the Tribal Nation is unable to obtain a LOC because of limitations on the ability to collateralize its real estate, that rural broadband experiment support will be used for its intended purposes, and that the funding will be used in the best interests of the Tribal Nation and will not be wasted. Tribal applicants could establish this showing by providing, for example, a clean audit, a business plan including financials, provision of financial and accounting data for review (under protective order, if requested), or other means to assure the Commission that the rural broadband experiment is a viable project. Given the number of expressions of interest filed by Tribally-owned or -controlled entities to serve areas within price cap territories, the Commission concludes that it will be manageable to address this situation on a waiver basis if such entities become winning bidders.

65. *Due Process Concerns.* By virtue of entering into a LOC, the recipient has notice that the Bureau may choose to draw on the LOC if it finds that the recipient has defaulted on its rural broadband experiment obligations or it fails to timely replace an expiring LOC. Because the experiments are purely voluntary, participants that find that these terms and conditions are too burdensome can choose not to participate. By filing an application to be authorized for support with the Commission, an applicant knowingly accepts that the Bureau can exercise its right to recover distributed support by drawing on the LOC in the event of non-compliance. The Commission also adopts a process whereby recipients will have the opportunity for cure if they later come into compliance with the terms and conditions of the rural broadband experiments.

66. Instead of having to bring a legal action against the recipient if the rural broadband experiment obligations are not met after the time for cure has passed, the LOC allows the Bureau immediately to reclaim the support. A LOC merely shifts the risk associated with non-compliance from the Commission to the recipient. To the extent that recipients believe that the Bureau has unnecessarily drawn on their LOC, they will have the opportunity to take recourse through the regular Commission review process.

67. Moreover, the Commission is not persuaded that LOCs raise due process concerns. For a LOC, USAC must present the proper draw documentation to the issuing bank demonstrating, *inter alia,* that the terms and conditions of the rural broadband experiments have not been met. The issuing bank will then provide USAC with a sum of money equal to the value of the LOC. As the Commission discusses above, the Bureau will release a letter finding default before USAC draws on the LOC. Providing for a lengthy process that would permit recipients to dispute the Bureau's findings of default prior to seeking recovery would unnecessarily hold up the process of recovering support disbursed for these rural broadband experiments.

E. Conditions for Rural Broadband Experiment Support

68. In the *Tech Transitions Order* the Commission stated that funding for the rural broadband experiments will be ''subject to the applicable requirements of sections 214 and 254 of the Act and will be conditioned on complying with all relevant universal service rules that the Commission has adopted or may adopt in the future in relevant rulemaking proceedings. . .'' The Commission also sought comment on whether it should adopt any rules or requirements specific to the rural broadband experiments. Here, the Commission adopts several conditions that winning bidders must meet to receive rural broadband experiment support. The conditions the Commission adopts for the purposes of these limited experiments are tailored for ensuring that experiment funds are used for their intended purpose of deploying robust networks to high-cost areas; detecting waste, fraud, and abuse; and permitting us to quickly gather data and other information about the experiments that the Commission can leverage when making key policy decisions regarding both universal service and technology transitions.

1. Build-Out Requirements

69. The Commission requires winning bidders to meet certain build-out requirements during their support term. Consistent with the build-out requirements the Commission has already adopted for the Connect America Fund, it finds that establishing clearly defined build-out requirements will ensure that recipients remain on track to meet their public service obligations and that Connect America funds are being used to deploy robust networks consistent with their intended purpose.

70. *Build-Out Requirements for all Recipients.* As the Commission discusses above, all recipients of rural broadband support will receive support in 120 equal monthly disbursements over a 10-year support term, consistent with the support term it has adopted for the Phase II competitive bidding process. The support term will begin with the first disbursement of support after the entities have been notified that they are the winning bidders and that they have met the requirements outlined above. During this support term, the recipients will be required to meet interim build-out requirements consistent with the build-out requirements the Commission has adopted generally for recipients of Connect America Phase II funding. By the end of the third year, the recipients must offer service meeting the public service obligations the Commission adopted for the relevant experiment category to at least 85 percent of the number of required locations and submit the required certifications and evidence. By the end of the fifth year, the recipients must offer service meeting the public service obligations the Commission adopted for the relevant experiment category to 100 percent of the number of required locations and submit the required certifications and evidence. Recipients must comply with the terms and conditions of rural broadband experiment support for the full 10-year support term.

71. *Accelerated Disbursement Option.* Although the Commission adopts the above build-out requirements for recipients of the rural broadband experiments to conform to our existing requirements for Phase II, based on our review of the expressions of interest, it appears that some entities may be in a position to complete deployment in the 18 to 24 month timeframe. To provide an additional incentive for parties to build out their projects quickly so that the Commission can learn from these deployments and leverage that knowledge when making policy decisions regarding technology transitions, it also provides the option of accelerating disbursement of support for winning bidders in the experiments for those entities that commit to deploying to at least 25 percent of the requisite number of locations within the first 15 months. Entities will be required to indicate whether they are electing this option when they submit their application. If parties elect this option, the Commission will advance 30 percent of their support upfront, at the time they are first authorized to receive funding; the remaining 70 percent will be provided in 120 equal monthly installments over the 10-year term. Parties that elect this option will be

required to obtain a LOC for the 30 percent advance payment before funding is authorized. To ensure that these funds are being used in accordance with the objectives of the rural broadband experiments, the Commission requires that recipients choosing this option deploy to 25 percent of the number of required locations and submit the required certifications and evidence within 15 months of their first disbursement of support. These recipients then must meet the same build-out obligations that are required of all recipients of rural broadband experiment support (i.e., 85 percent of locations within three years and 100 percent of locations within five years).

2. Accountability Requirements

72. In the *Tech Transitions Order,* the Commission noted that rural broadband experiment support will be conditioned on complying with all relevant universal service fund rules including reporting requirements and audits. Here, the Commission provides more details regarding the framework for accountability that it adopts for recipients of the rural broadband experiments. The reports, certifications, and other accountability measures the Commission adopts serve a dual purpose. First, a framework for accountability ''is critical to ensure appropriate use of high-cost support'' and allows the Commission to detect and deter waste, fraud, and abuse. Second, the framework the Commission adopts below will permit us to quickly gather data about how the experiment funds are being put to use, which will inform policy decisions it ultimately makes for Phase II and our other universal service programs.

73. *Annual Reports.* All recipients of Connect America support are required to file an annual report pursuant to § 54.313 of the Commission's rules by July 1st of each year. This requirement also applies to recipients of support in the rural broadband experiments. The Commission finds there is good cause, however, to waive on our own motion § 54.313(a)(1) of the Commission's rules for recipients of rural broadband experiment support. Because the Commission adopts other requirements for the rural broadband experiments recipients that will ensure that it will be kept apprised of their build-out progress, the Commission finds that it is unnecessary to require these entities to file a five-year service quality plan.

74. As the Commission requires of price cap carriers accepting model-based support, it also requires participants in the rural broadband experiments to demonstrate that the services they offer in their project areas meet the Commission's latency standard. The participants must submit a certification with each annual report certifying that 95 percent or more of all peak period measurements (also referred to as observations) of network round trip latency are at or below 100 ms. Recipients may use the approach adopted in the Bureau's *Phase II Service Obligations Order,* 78 FR 70881, November 27, 2013, to measure latency.

75. In addition, because these rural broadband experiments represent the first implementation of Phase II of the Connect America Fund, the Commission requires participants in the experiments to comply with the existing requirement for Phase II recipients of providing in their annual reports the number, names, and addresses of community anchor institutions to which the recipients newly began providing access to broadband service in the preceding year. The Commission concludes this requirement will be a valuable way to monitor how the experiment recipients are engaging with community anchor institutions, and learn how the networks supported by the experiments will impact anchor institutions and the communities they serve.

76. The Commission will also require recipients to file build-out information with their reports. This requirement will enable us to gather data faster on how the geographic and demographic characteristics of certain rural areas affect how experiment recipients build their networks. This requirement will also help us monitor recipients' progress toward meeting their build-out requirements and that experiment funds are being used for their intended purpose. Specifically, the Commission requires all recipients of the rural broadband experiments to file with their annual reports evidence demonstrating to which locations they have deployed facilities. This information must be current as of the June 1st immediately preceding the July 1st deadline. Recipients must also submit evidence with the report that demonstrates they are meeting the relevant public service obligations. For instance, recipients may submit marketing materials with their reports that show the voice and broadband packages that are available to each location that meet the relevant public service obligations. The materials must at least detail the pricing, offered broadband speed, and data usage allowances available in the relevant geographic area.

77. To ensure that rural broadband experiment funds are being used for their intended purposes, the Commission also finds that it would be helpful to monitor the recipients' progress in deploying their networks prior to the deadline for the first annual report, which it anticipates will be July 2016. Thus, the Commission will require all recipients to file an interim report on the November 1st after they receive their first disbursement. This report will only be filed this one time and must describe the status of their project (*i.e.,* whether vendors have been hired, permits have been obtained, construction has begun) and include evidence demonstrating which locations (if any) that the recipients have built out to in their project areas where the recipient is offering at least one voice service and one broadband service that meets the public service obligations adopted above for the relevant experiment category. To the extent locations are newly served by the time of this interim report, recipients must also submit evidence with the report as described above that demonstrates they are meeting the relevant public service obligations, including a certification that demonstrates the service they offer complies with the Commission's latency requirements. This information should be current as of the September 30th immediately preceding the November 1st deadline. Because this is information that recipients will already need to collect to certify compliance with their build-out requirements, the value to the Commission in being able to gather this data on a more frequent basis outweighs the burden that one additional report will impose on experiment recipients.

78. *Certifications.* Like all recipients of Connect America support, all rural broadband experiment recipients that have been designated as ETCs by the Commission are required to file an annual certification pursuant to § 54.314 of the Commission's rules stating that ''all federal high-cost support provided to such carrier 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.'' If an entity selected for a rural broadband experiment is designated an ETC by a state, that state must file this certification on behalf of the entity.

79. The Commission also requires experiment recipients to certify when they have met the build-out requirements defined above. All recipients must submit a certification to the Commission by the end of their third year of support that they offer service to at least 85 percent of their required number of locations with the required level of service and will need

to submit a certification by the end of their fifth year of support that they offer service to 100 percent of their required number of locations with the required level of service. Additionally, recipients that opt to receive 30 percent of their support upfront must submit a certification to the Commission stating that they have met their 25 percent build-out requirement within 15 months of the first disbursement. With these certifications, all recipients must present the same build-out information that must be included in their annual reports that the Commission describes above: evidence demonstrating that they have deployed facilities to the required number of locations and evidence that demonstrates compliance with the relevant public service obligations, including a certification demonstrating compliance with the Commission's latency requirement. The Commission expects to use a variety of methods to verify that recipients of support are in fact meeting the terms and conditions of the rural broadband experiments, including verification of the build-out evidence that they will submit with their annual reports and certifications.

80. *Compliance Reviews.* The Commission reiterates that all recipients of rural broadband experiment support are subject to compliance reviews and other investigations so that it can detect and deter waste, fraud, and abuse, and ensure that rural broadband experiment support is being used for its intended purpose.

81. *Record Retention.* The Commission also reiterates that rural broadband experiment recipients are subject to the 10 year record retention requirement adopted in the *USF/ICC Transformation Order.* This requirement will ensure that documents related to the experiments are available to facilitate USAC audits and other oversight measures.

3. Data Gathering

82. When adopting the service-based experiments, the Commission noted that ''[t]he need for quality data regarding the effect on customers of adopting next generation technologies is perhaps greater now than ever before,'' and held that it intended that the service-based experiments would be ''open data'' experiments. In the *Tech Transitions Order,* the Commission sought comment on whether issues discussed in the context of the service-based experiments should also be addressed in the rural broadband experiments. The Commission finds that collecting data from the rural broadband experiments would similarly help them answer some of the key policy questions they identified in the *Tech Transitions Order*. The Commission therefore requires that as a condition of receiving funding in the rural broadband experiments, recipients cooperate with the Commission in any efforts to gather data that may help inform future decisions regarding the impact of technology transitions on achievement of our universal access objectives.

83. As the Bureau reported at the Commission's open meeting on June 13, 2014, a competitive procurement process is underway to select a third party data evaluator to assist the Commission in collecting and analyzing data in connection with service-based experiments and other technology transitions contexts. This third party will be working with the Bureau to develop a research methodology using, among other things, surveying techniques. The Commission believes surveys could be useful in the context of the rural broadband experiments. For example, the issues to be surveyed might include consumer purchasing decisions, speed of adoption of new broadband services, service usage, and customer satisfaction with fixed wireless compared to alternatives, both landline and satellite. To minimize the burden on rural broadband experiment recipients, the Commission expects that they would need only to provide information that will permit the third party data evaluator to identify the locations to survey or certain metrics related to their services, including customer purchase options and service usage. This information might include customer contact information, when the recipient expects such locations might be offered service, and other specifics about the locations served. The Commission notes that when recipients submit data to the Commission or its designated third party data evaluator, they should ensure that their submission protects customer privacy consistent with applicable privacy laws and regulations.

F. Measures To Ensure Compliance

84. In the *Tech Transitions Order,* the Commission stated that support for the rural broadband experiments would be conditioned on ''complying with all relevant universal service rules that the Commission has adopted or may adopt in the future in relevant rulemaking proceedings, including . . . enforcement mechanisms for non-compliance with rules.'' Here, the Commission adopts specific measures to ensure participants meet the terms and conditions of the rural broadband experiments.

85. The Commission has previously held that funds that are disbursed from the high-cost program in violation of a Commission rule that ''implements the statute or a substantive program goal'' should be recovered from the recipient. Thus, here the Commission adopts a process to recover support from recipients that do not comply with the terms and conditions of the rural broadband experiments after they begin receiving support. The Commission also notes that it intends to enforce the terms and conditions vigorously. Such measures uphold the integrity of the Fund by ensuring that recipients of high-cost support are using those funds for the purposes for which they are provided.

86. *Trigger for Performance Default.* A performance default will occur if the winning bidder begins receiving support and then fails to meet the terms and conditions of the rural broadband experiments. For example, if the winning bidder has failed to meet the build-out obligations adopted above, or the winning bidder failed to keep open and renew its LOC as required above, it will be a performance default. A performance default will also occur if the winning bidder does not offer service to the required number of locations that meet the public interest obligations the Commission has adopted for the experiments, including speed, latency, data usage, and reasonably comparable pricing. The Commission expects to verify that recipients of support are in fact meeting the terms and conditions of the rural broadband experiments by verifying the build-out evidence that they will submit with their annual reports and certifications.

87. For purposes of the rural broadband experiments, a Connect America recipient can demonstrate compliance with the speed, latency, data usage, and pricing requirements if it has met the build-out milestones by deploying robust networks that are capable of meeting the required public interest obligations, and its annual reports, certifications, and marketing materials demonstrate that the recipient is offering at least one package to the eligible locations at the required speeds, with a data usage allowance that meets the requirements for these experiments at reasonably comparable prices.

88. *Support Reductions and Recovery of Support.* If a recipient begins receiving support, and the Bureau subsequently determines that it fails to meet the terms and conditions of its experiment, the Bureau will issue a letter evidencing the default, and USAC will begin withholding support. For the first six months that the entity is not in

compliance, USAC will withhold five percent of the entity's total monthly support. For the next six months that the entity is not in compliance, USAC will withhold 25 percent of the entity's total monthly support. If at any point during the year that the support is being withheld the winning bidder comes into compliance, the Bureau will issue a letter to that effect; the entity then will be entitled to have its full support restored and will be able to recover all the support that USAC withheld.

89. If at the end of this year period, the entity is still not in compliance, the Bureau will issue a letter to that effect, and USAC will draw on the entity's LOC for the recovery of all support that has been authorized. If after USAC recovers the support under the LOC, the winning bidder is able to demonstrate that it has come into compliance with the experiment's terms and conditions at any time before the support period ends, it will be entitled to have its past support restored and will be eligible for any remaining disbursements of authorized support. But if the winning bidder is unable to demonstrate compliance at any point during the support term after its support has been recovered by the Bureau, the entity will not be eligible to have any of its recovered support restored or to receive any remaining disbursements. An entity may only exercise this cure opportunity once. The recovered support, along with the remaining authorized support that has not yet been disbursed, will not be authorized for another experiment.

90. *Forfeiture.* To further impress upon recipients the importance of complying with the rural broadband experiments' terms and conditions, the Commission notes that it will enforce these requirements vigorously. The Enforcement Bureau may initiate an enforcement proceeding in the event of a default or after the Bureau issues a letter evidencing the recipient's default. In proposing any forfeiture, consistent with the Commission's rules, the Enforcement Bureau shall take into account the nature, circumstances, extent, and gravity of the violations.

91. *Waiver.* In the event a recipient is unable to meet the terms and conditions of the rural broadband experiments due to circumstances beyond its control (e.g., a severe weather event), that entity may petition for a waiver of the relevant terms and conditions prior to the relevant build-out milestone pursuant to § 1.3 of the Commission's rules. The petitioning entity will then have the cure period described above to meet the terms and conditions of the experiment. The Commission encourages entities that submit petitions for waiver to continue to work diligently towards meeting the terms and conditions of their experiments while their petitions are pending. If the petitioning entity is unable to meet the terms and conditions during the relevant cure period, and no decision has been issued on the waiver petition, the Bureau will issue a letter finding default, USAC will draw on the LOC, and the Enforcement Bureau may initiate forfeiture proceedings. If the waiver subsequently is granted, the petitioning entity will have all of the funds that have been recovered restored and will be entitled to receive its subsequent disbursements. The Commission notes that a winning bidder's inability to secure the proper permits and other permissions to build its network would not constitute grounds for waiver and will be considered a default if the winning bidder is unable to meet its build-out and public interest obligations due to its inability to secure such permits. The Commission expects that entities choosing to participate in the rural broadband experiments will do their due diligence and determine which permits and other permissions will be required and what steps they will need to take to obtain such permissions before submitting their applications.

92. *Other Consequences for Non-Compliance.* Recipients of funding in the rural broadband experiments will be subject to the Commission's rules related to reductions in support in the event that they fail to meet reporting and certification deadlines. Recipients may also be subject other sanctions for non-compliance with the terms and conditions of the rural broadband experiments or the Commission's rules, including, but not limited to, potential revocation of ETC designation and disqualification from future competitive bidding for universal service support.

III. Procedural Matters

A. Paperwork Reduction Analysis

93. The Report and Order contains new and modified 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 or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. The Commission describes impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B, *infra.*

B. Final Regulatory Flexibility Analysis

94. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, an Initial Regulatory Flexibility Analyses (IRFA) was incorporated in the *Further Notice of Proposed Rulemaking (USF/ICC Transformation FNPRM).* The Commission sought written public comment on the proposals in the *USF/ICC Transformation FNPRM,* including comment on the IRFA. The Commission also invited parties to file comments on this IRFA in the *Tech Transitions FNPRM.* The Commission did not receive any relevant comments on the *USF/ICC Transformation FNPRM* IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of the Report and Order

95. The Commission explained in the *Tech Transitions Order* that the Commission must ''ensure that all Americans benefit from the technology transitions, and that it gains data on the impact of technology transitions in rural areas, including Tribal lands, where residential consumers, small businesses and anchor institutions, including schools, libraries and health care providers, may not have access to advanced broadband services.'' In this Order, the Commission adopts certain parameters and requirements for the rural broadband experiments that will assist us with accomplishing these goals. The Commission expects these experiments to provide critical information regarding which and what types of parties are willing to build networks that will deliver services that exceed our current performance standards for an amount of money equal to or less than the support amounts calculated by the adopted Phase II Connect America Cost Model. In addition to gathering information relevant to broader questions implicated by technology transitions, the Commission expects these experiments also will inform key decisions that the Commission will be making in the coming months regarding the Connect America Fund.

96. The Commission adopts a budget of $100 million for funding experiments in price cap areas focused on bringing

robust, scalable broadband networks to residential and small business locations in rural communities that are not served by an unsubsidized competitor that offers voice and Internet access delivering at least 3 Mbps downstream/768 kbps upstream. The funding will be available to serve locations in both high-cost and extremely high-cost areas, thereby advancing our implementation of both Phase II and the Remote Areas Fund. Applications will be due 90 days from the release of this Order. The Commission also determines the objective methodology for selecting projects among the applications it receives for the experiments. Given the manner in which the Commission has structured the budget and the selection criteria, it believes that it will be able to fund a range of diverse projects throughout the country. Finally, the Commission outlines the conditions that entities participating in the experiments must meet in order to continue to receive such support, including specific eligibility, build-out and accountability requirements, and establish the measures to ensure compliance with these conditions.

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

97. There were no relevant comments filed that specifically addressed the rules and policies proposed in the *USF/ICC Transformation FNPRM* IRFA.

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

98. 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 rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. 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 SBA.

99. *Small Businesses.* Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.

100. *Wired Telecommunications Carriers.* 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. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

101. *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 size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, 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 Order.

102. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Order.

103. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

104. *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 size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 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. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 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. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. 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 Order.

105. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the Order.

106. *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 size

standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. 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 Order.

107. *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. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the Order.

108. *Toll 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. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the Order.

109. *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 size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. 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 Order.

110. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. The Commission does not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, the Commission estimates that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

111. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to 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) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

112. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

113. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services

(''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (AWS–1). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

114. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35843, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

115. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* 64 FR 33762, June 24, 1999, the Commission developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

116. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the Order.

117. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 15978, April 3, 1997, the Commission adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

118. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz

bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

119. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

120. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, the Commission does not know how many of these firms have 1,500 or fewer employees. The Commission assumes, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

121. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, the Commission estimates that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, the Commission finds that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

122. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, the Commission estimates that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution 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.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

123. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of

the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

124. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order,* 72 FR 48814, August 24, 2007. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

125. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

126. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* 65 FR 17594, April 4, 2000, the Commission adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

127. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

128. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, the Commission uses the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. The Commission notes that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

129. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. The Commission notes that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

130. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). In the present context, the Commission will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

131. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the Order.

132. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size

standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the Order.

133. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

134. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

135. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the Order.

136. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

137. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* 64 FR 59656, November 3, 1999, the Commission established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

138. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business''

for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

139. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

140. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (i.e., 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, the Commission estimates that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

141. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services the Commission must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

142. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

143. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and the Commission will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

144. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, the Commission estimates that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Order.

145. The second category of Other Telecommunications ''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.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of Other Telecommunications firms are small entities that might be affected by our action.

146. *Cable and Other Program Distribution.* 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.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this

size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Order.

147. *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. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order.

148. *Cable System Operators.* The Act 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.'' The Commission has determined that an operator serving fewer than 677,000 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. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. The Commission notes that it neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore it is unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

149. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Order. In addition, the Commission notes that it has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

150. *Internet Service Providers.* 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.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

151. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in 1) publishing and/or broadcasting content on the Internet exclusively or 2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

152. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily . . . provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Order.

153. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had

annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, the Commission estimates that the majority of these firms are small entities that may be affected by our action.

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

154. In the Order, the Commission establishes three experiment types for which it will accept applications. The Commission allocates $75 million to projects that must propose to deploy a network capable of delivering 100 Mbps downstream/5 Mbps upstream while offering at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all locations within the selected census blocks, with no more than 100 milliseconds (ms) of latency. Recipients must provide usage and pricing that is reasonably comparable to usage and pricing available for comparable wireline offerings (i.e., those with similar speeds in urban areas). The Commission also makes $15 million available for projects that would offer at least one service plan that provides 10 Mbps downstream/1 Mbps upstream to all locations within the selected census blocks. This service plan must offer at least 100 GB of usage, no more than 100 ms of latency, and meet the reasonable comparability benchmarks for the pricing of voice and broadband. Finally, the Commission makes $10 million available for projects in extremely high-cost census blocks that propose to offer at least one service plan that provides 10 Mbps downstream/1 Mbps upstream, and 100 GB of usage at a rate that meets the reasonably comparable pricing benchmarks, with latency of 100 ms, or, in the case of satellite providers, a Mean Opinion Score of four or better. If an entity wins support for one of these categories, it will be required to meet these public service obligations, or will be found in default and subject to certain compliance measures as described in the Order.

155. To participate in the rural broadband experiments, entities must submit a formal application to the Commission by no later than 90 days from the release of the Order. Entities will be required to submit confidential bids requesting a certain amount of support to serve specified census blocks (including the census block ID for each census block they propose to serve, the number of eligible locations determined by the model in each of those blocks, and the total amount of support they request). They will also be required to provide information regarding any agreements or joint bidding arrangements with other parties, disclose any ownership interests in Commission-regulated companies, declare whether their project will serve only Tribal census blocks, submit a proposal containing basic information that will be made public if they win (e.g., background information on the applicant and its qualifications to provide voice and broadband service, a description of the proposed project, service area, planned service offerings including offerings to low-income consumers, and technology to be used; and the number of locations, including community anchor institutions, within the project area), and certify that they meet certain threshold requirements, including being in compliance with all the statutory and regulatory requirements to receive support and being financially and technically capable of meeting the required public interest obligations in each area they seek support. All entities submitting proposals must also utilize a FCC Registration Number and identify the type of project for which they are submitting a proposal.

156. Winning bidders will be required to demonstrate that they have the technical and financial qualifications to successfully complete their proposed projects within the required timeframes and that they are in compliance with all the statutory and regulatory requirements for the universal service support they seek. The Commission staff will perform a review to ensure that the applications meet our expectations for technical and financial capability. Within 10 business days of public notice of winning bidders, the winning bidders will be required to submit three consecutive years of audited financial statements (including balance sheets, net income, and cash flow), a description of the technology and system design used to deliver voice and broadband service, including a network diagram certified by a professional engineer, and a description of spectrum access in the areas for which applicants seek support for wireless technologies. Within 60 days of public notice of winning bidders, the winning bidders must submit a letter from an acceptable bank committing to issue an irrevocable stand-by original LOC. That LOC must remain open and renewed until 120 days after the end of the tenth year of the support term. Within 90 days of public notice of winning bidders, the winning bidders must provide appropriate documentation of their eligible telecommunications carrier (ETC) designation in all areas for which they will receive support and certify that the information submitted is accurate.

157. Once a winning bidder has been found to have met the Commission's technical and financial requirements and has secured the required ETC designation and LOC commitment letter, the Bureau will release a public notice stating that the entity is ready to be authorized to receive support. Within 10 business days of this public notice, the entity must submit an irrevocable stand-by original LOC that has been issued and signed by the issuing bank along with an opinion letter from legal counsel. Once USAC has verified the sufficiency of the LOC, the Bureau will issue a public notice authorizing the entity to begin receiving support.

158. The winning bidders must meet several conditions to receive rural broadband experiment support. First, like all recipients of Connect America support, they must meet certain build-out requirements. Recipients must deploy to 85 percent of the required number of their locations within three years of their first disbursement and 100 percent of the required number of their locations within five years of their first disbursement with service meeting the service obligations required by the relevant experiment category. Entities that choose to receive 30 percent of their support upfront must meet an additional build-out requirement of 25 percent of the required number of their locations within 15 months of the first disbursement, and then must meet the same build-out requirements as recipients not requesting upfront support (85 percent of locations within three years and 100 percent within five years). All recipients must submit a certification that they have met these milestones, accompanied by evidence. The evidence may include the evidence that they submit with their November 1st build-out report, as described below.

159. Second, the Commission requires that recipients comply with several accountability measures. Like all recipients of Connect America support, they must file annual reports by July 1st of each year pursuant to § 54.313(a) of the Commission's rules, starting the first July after the year in which they begin receiving support. These reports must also include a certification regarding their compliance with the Commission's latency standard, or Mean Opinion Score, as applicable; the number, names, and addresses of the community anchor institutions to which they newly began providing access to broadband service in the preceding year; and build-out information including evidence

demonstrating which locations they have built out to in their project areas where the recipient is offering services that meet the public service obligations adopted for the relevant experiment category along with evidence that demonstrates they are meeting the public service obligations (e.g., marketing materials that detail the pricing, offered broadband speed, and data usage allowances available in the relevant geographic area).

160. To ensure that the Commission is able to monitor how experiment recipients are using their funds for their intended purposes, it also requires them to file a one-time report on November 1st of the year they begin receiving support. This report must describe the status of their project (such as whether vendors have been hired, permits have been obtained, and construction begun) and include evidence demonstrating which locations (if any) to which they have built out to in their project areas where they are offering services that meet the public service obligations for the relevant experiment category, along with evidence that the public service obligations are being met (e.g., marketing materials and a latency certification).

161. Like all recipients of Connect America support, all rural broadband experiment recipients that have been designated as ETCs by the Commission are required to file an annual certification pursuant to § 54.314 of the Commission's rules. If an entity selected for a rural broadband experiment is designated an ETC by a state, that state must file this certification on behalf of the entity selected for the rural broadband experiment. The Commission also requires recipients to certify when they have met the build-out requirements defined above. With these certifications, they must submit the same build-out information that must be included in their annual reports: Evidence demonstrating that they have built facilities to serve the required number of locations and evidence that demonstrates compliance with the relevant public service obligations, including a certification demonstrating compliance with the Commission's latency or alternative service quality requirement. All recipients are also subject to random compliance reviews, and will be subject to verification of their build-out compliance. Moreover, recipients are subject to a 10-year record retention requirement.

162. Finally, rural broadband recipients are required to cooperate with the Commission in any efforts to gather data that may help inform future decisions regarding the impact of technology transitions on achievement of our universal access objectives.

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

163. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (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.

164. The Commission adopts a streamlined application process to encourage a wide variety of entities, including small entities, to participate so that it can learn from the applications that are submitted. The Commission struck a balance between requiring enough information to prompt bidders to take appropriate steps to determine that their projects are financially viable before submitting bids, but also minimizing the resources that entities need to spend upfront in case they do not win support. The Commission does not require that entities undergo a full scale technical and financial review and obtain a LOC and ETC designation until they have been announced as winning bidders. Even after they have been announced winning bidders, the information the Commission requires to conduct such a review is information it expects winning bidders will already have on hand (e.g., audited financial statements) or will have developed as a result of planning their project (e.g., a network diagram certified by an engineer and a description of spectrum access).

165. The Commission recognizes that some entities, including small entities, may not be able to submit proposals at the census tract level, but would be interested in submitting proposals for smaller neighborhoods that they may already be well positioned to serve. The Commission waives this requirement for those entities, and permit them to submit proposals on the census block level. Recipients also have the choice of receiving 30 percent of their support upfront. This option provides the flexibility to all participating entities, including small entities, to receive more support upfront, or to receive their support spread out over a longer period time if they are unable to meet the 15-month interim build-out deadline.

166. The Commission also adopts a bidding credit for entities, many of which may be small entities, who propose projects that will serve only Tribal census blocks. This 25 percent bidding credit will increase the likelihood that these entities will receive funding. And recognizing the unique challenges that Tribally-owned or -controlled entities may face in obtaining LOCs, the Commission also provides a waiver process for those entities that are unable to obtain a LOC.

167. The accountability measures the Commission adopts are also tailored to ensuring that rural broadband experiment support is used for its intended purpose and so that it can quickly gather data to inform our policy decisions. The measures the Commission adopts are largely the same measures that are required of all recipients of Connect America support, including annual reports and certifications. And the Commission finds that ensuring that all recipients are accountable in their use of rural broadband experiment support, including small entities, outweighs the burden of filing an extra build-out report on November 1st of their first funding year and of submitting evidence such as marketing materials to demonstrate compliance with public interest obligations with their annual reports, their November 1st build-out report, and with build-out certifications. Recipients are likely to have such information available to them as a regular course of business.

F. Report to Congress

168. 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. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order (or a summary thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

169. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i), 4(j), 214, 218–220, 251, 254 and 303(r) 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), 154(j), 214, 218–220, 251, 254, 303(r), 1302 the Report

and Order in WC Docket No. 10–90 and WC Docket No. 14–58 *is adopted,* effective September 5, 2014, except for the application process and reporting requirements that contain new or modified information collection requirements that will not be effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing OMB approval.

170. *It is further ordered,* that pursuant to § 1.3 of the Commission's rules, 47 CFR 1.3, the Commission waives on its own motion § 54.313(a)(1) of the Commission's rules, 47 CFR 54.313(a)(1) for all recipients of the rural broadband experiments.

171. *It is further ordered,* that the Commission *shall send* a copy of the Report and Order in WC Docket No. 10–90 and WC Docket No. 14–58 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

172. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the Report and Order in WC Docket No. 10–90 and WC Docket No. 14–58, including the Further Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

[FR Doc. 2014–18328 Filed 8–5–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 140304190–4612–02]

RIN 0648–BE03

Subsistence Taking of Northern Fur Seals on the Pribilof Islands; Final Annual Harvest Estimates for 2014–2016

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; estimates of annual fur seal subsistence needs.

SUMMARY: Pursuant to the regulations governing the subsistence taking of northern fur seals, NMFS is publishing the annual fur seal subsistence harvests on St. George and St. Paul Islands, Alaska (the Pribilof Islands) for 2011–2013 and the annual estimates of fur seal subsistence harvests for 2014–2016. NMFS estimates the annual subsistence needs for 2014–2016 are 1,645–2,000 fur seals on St. Paul and 300–500 fur seals on St. George.

DATES: Effective September 5, 2014.

ADDRESSES: More information about northern fur seal subsistence harvest management can be found on the Internet at *https://alaskafisheries.noaa.gov/protectedresources/seals/fur.htm.*

FOR FURTHER INFORMATION CONTACT: Michael Williams, NMFS Alaska Region, 907–271–5117, *Michael.Williams@noaa.gov;* or Shannon Bettridge, NMFS Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The subsistence harvest from the depleted stock of northern fur seals (*Callorhinus ursinus*), on the Pribilof Islands, AK, is governed by regulations found in 50 CFR part 216, subpart F. Pursuant to the regulations governing the taking of fur seals for subsistence purposes, NMFS must publish a summary of the fur seal harvest for the previous 3-year period and an estimate of the number of seals expected to be taken in the subsequent 3-year period to meet the subsistence needs of the Aleut residents of the Pribilof Islands. After a 30-day comment period, NMFS must publish a final notification of the expected annual harvest levels for the next 3 years.

On May 14, 2014 (79 FR 27550), NMFS published the summary of the 2011–2013 fur seal harvests and provided a 30-day comment period on the estimates of subsistence needs for 2014–2016. In that notice, NMFS estimated the annual subsistence needs for 2014–2016 would be 1,645–2,000 fur seals on St. Paul Island and 300–500 fur seals on St. George Island and provided background information related to these estimates.

Summary of Changes From Proposed Annual Harvest Estimates

NMFS did not make any changes in this final notice of annual harvest estimates. The subsistence need remains the same and therefore the annual harvest estimate remains 1,645–2,000 fur seals on St. Paul Island and 300–500 fur seals on St. George Island.

Comments and Response

NMFS received one comment letter on the notice of the 2014–2016 proposed annual harvest estimates (79 FR 27550; May 14, 2014). A summary of the comment received and NMFS's response follows.

Comment: Stop the northern fur seal harvest. The reported killings are over 2,500 animals thus the illegal kills must be about 4,500 seals.

Response: The Fur Seal Act and Marine Mammal Protection Act both provide exemptions for the subsistence harvest of northern fur seals to meet the dietary and cultural needs of the Pribilof Island Alaska Native residents (Pribilovians). The reported annual subsistence harvest of fur seals for both islands combined did not exceed 500 sub-adult fur seals during the 2011–2013 period and was well below the published subsistence need estimate of 2,500 sub-adult seals. NMFS works in partnership with the Pribilovians under co-management agreements pursuant to the Marine Mammal Protection Act to discourage and minimize illegal harvests, and NMFS's Office of Law Enforcement has a periodic presence on the Pribilof Islands to discourage, detect, and investigate any illegal harvests.

Classification

National Environmental Policy Act

NMFS prepared an Environmental Impact Statement evaluating the impacts on the human environment of the subsistence harvest of northern fur seals, which is available on the NMFS Web site (see Electronic Access).

Executive Order 12866 and Regulatory Flexibility Act

This final action is exempt from the procedures of E.O. 12866 because the action contains no implementing regulations.

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities. The harvest of northern fur seals on the Pribilof Islands, Alaska, is for subsistence purposes only, and the estimate of subsistence need would not have an adverse economic impact on any small entities. Background information related to the certification was included in the proposed estimates published in the **Federal Register** on May 14, 2014 (79 FR 27550). We received no comments on this certification; therefore a regulatory flexibility analysis is not