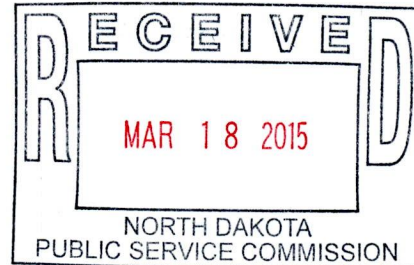


March 17, 2015

VIA U.S. MAIL

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue
Dept. 408
Bismarck, ND 58505-0480



Re: Daktel Communications, LLC
Eligible Telecommunications Carrier Application

Dear Mr. Nitschke:

Enclosed for filing is one unbound original of Daktel Communications, LLC's Application for Designation as an Eligible Telecommunications Carrier.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "MSR".

Michael S. Raum
Direct Dial: 701.237.8212
Email: mraum@fredlaw.com

MSRdlt
Enclosure

Attorneys & Advisors
main 701.237.8200
fax 701.237.8220
www.fredlaw.com

Fredrikson & Byron, P.A.
51 Broadway, Suite 400
Fargo, North Dakota
58102-4991

BEFORE THE NORTH DAKOTA
PUBLIC SERVICE COMMISSION

In the Matter of) Docket No.: _____
Application of Daktel Communications, LLC)
for Designation as an Eligible)
Telecommunications Carrier in Limited Service)
Areas State of North Dakota)

APPLICATION OF DAKTEL COMMUNICATIONS, LLC FOR
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN LIMITED
SERVICE AREAS WITHIN THE STATE OF NORTH DAKOTA

COMES NOW Daktel Communications, LLC (Daktel), by its attorneys, and, pursuant to 47 U.S.C. § 214(e) of the Communications Act of 1934, as amended, (the “Act”), Section 54.201 *et seq.* of the Rules of the United States Federal Communications Commission (“FCC”), Section 49-21-01.7(12) of the North Dakota Century Code, and the North Dakota Public Service Commission’s (the “Commission”) rules, submits this Application for designation as an Eligible Telecommunications Carrier (“ETC”) throughout the limited service area identified in Exhibit A (the “Designated Service Area”).¹ Daktel seeks this ETC designation for the purpose of complying with the requirements of the FCC and to allow it to accept funds provisionally awarded to Daktel through the FCC’s Rural Broadband Experiment (“RBE”).² Daktel is seeking ETC designation in the Designated Service Area as a Competitive Local Exchange Company³ (“CLEC”) for the purpose of receiving federal funding through the FCC RBE program for providing service to high-cost areas.

¹ N.D.A.C. § 69-09-05-12(2)(a).

² Entities provisionally accepted for RBEs were announced by the FCC in its Public Notice on March 14, 2015, (DA 14-1772) (Attached as Exhibit F).

³ N.D.C.C § 49-21-01(2).

With this application and supporting documents, Daktel seeks an order from the Commission to be designated as an ETC pursuant to §§ 69-09-05-12, 69-09-05-12.1 of the North Dakota Administrative Code, N.D.C.C. § 49-21.01.7(12), and § 214(e) of the Communications Act of 1934. Daktel does not request a waiver of any eligible telecommunications carrier requirement in this Application.⁴

INFORMATION REGARDING THE APPLICANT

1. Pursuant to Commission Rule N.D.A.C. § 69-02-02-04(1), Daktel states its name, address, telephone number, and designated contact person as follows:

Daktel Communications, LLC
630 5th Street N.
PO Box 299
Carrington, ND 58420
Contact: Keith Larson
Phone: (701) 652-6105

2. Daktel was incorporated under the laws of the State of North Dakota on April 11, 2000, and is headquartered in Carrington, North Dakota. A copy of Daktel's certified Articles of Incorporation and subsequent amendments are attached hereto as Exhibit B. A copy of Daktel's Certificate of Good Standing is attached hereto as Exhibit C.

3. The ownership and organizational structure of Daktel is depicted on Exhibit D.

4. Daktel provides voice, video, and data services through its operating area. Daktel operates exclusively in North Dakota and has not submitted any other applications for ETC status.

5. Daktel serves wireline telephone subscribers, data (internet access) subscribers, and video subscribers. Daktel began providing these services over a decade ago, utilizing "Fiber to the Home" technology ("FTTH").

⁴ N.D.A.C § 69-09-05-12(2)(c).

6. Correspondence or communications pertaining to this Application should be directed to Daktel's attorney of record:

Michael S. Raum
Fredrikson & Byron
51 Broadway
Suite 400
Fargo, ND 58102
Phone: (701) 237-8212
Fax: (701) 237-8220
Email: mraum@fredlaw.com

7. Questions regarding the ongoing operations of Daktel should be directed to:

Keith Larson
Daktel Communications, LLC
630 4th Street N.
Carrington, ND 58420
Phone: (701) 652-6105

BACKGROUND

8. In 2000, Dakota Central Telecommunications Cooperative, Inc ("DCT") formed a new subsidiary company named "Daktel Communications, LLC" to be a full-service telecommunication provider to the Jamestown, North Dakota urban area. Today, Daktel is a full-service provider of non-regulated telecommunication products and services to Jamestown. Since its inception, and in conjunction with DCT, Daktel's primary goal has been the development and construction of an all-fiber-optic network serving central North Dakota.

Daktel believes providing broadband accessibility to rural customers will foster the use of technology in education and medicine, encourage economic development, enhance public safety, and create a higher quality of life through the availability of the following affordable services:

- Voice, Video and Data for Residential and Business Consumers;
- Computer OSS Services;
- Internet Services;
- Business and Residential Communications Solutions;
- Networking Solutions;
- Long Distance Services; and

- Fiber Optic Facility and Capacity Leases.

9. The FCC released an Order on July 14, 2014 (the “Order”), establishing parameters and requirements for entities to participate in the Rural Broadband Experiments. *See Connect America Fund; ETC annual Reports and Certifications, WC Docket NOs. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-98 (rel. July 14, 2014) (Rural Broadband Experiments Order)*. The Order is attached hereto, without its appendices and concurring letters, as Exhibit E. Through the RBE, the FCC will award up to One Hundred Million Dollars for funding experiments in high-cost and extremely high-cost price cap areas focused on bringing robust, scalable voice and broadband-capable networks to residential and small business locations in rural communities. The FCC proposed further guidance and instructions for the application process, including a formal proposal and the bid form, in a Public Notice released on August 19, 2014.⁵ On November 6, 2014, Daktel submitted its formal proposal to the FCC to expand broadband in rural, unserved areas and to help the FCC test and develop methodologies for distributing support to entities that are technically and financially capable of delivering high-speed broadband to unserved locations.

10. The Order notes that the FCC desired and encouraged⁶ a broad applicant pool, including CLEC’s. The Order further states that applicants need not have obtained ETC status at the time of their application, but must obtain ETC status within ninety days of receipt of notice that their proposal was accepted.⁷

11. On March 4, 2015, the FCC released a Public Notice (Exhibit F) announcing the entities provisionally selected for RBEs. Daktel was provisionally selected to build a network

⁵ *See Wireline Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, Public Notice, DA 14-1203 (rel. Aug. 19, 2014) (*Application Public Notice*).

⁶ Paragraph 21 of the Order (Exhibit E).

⁷ Paragraph 22 of the Order (Exhibit E).

capable of delivering 25 Mbps downstream and 5 Mbps upstream to the locations identified in Exhibit A.

12. The areas to be served, as noted on Exhibit A, are unserved, rural, and sparsely populated areas in which there has not historically been a viable business case that makes financial and operational sense for investing in broadband infrastructure. The Rural Broadband Experiments provide a sufficient incentive for entities such as Daktel to expand its existing footprint to serve the unserved portions of the service areas covered by this Application (Exhibit A).

13. Under the RBE, Daktel will extend its existing FTTH network to provide new wireline telecommunication, broadband Internet access, and IPTV services to the unserved rural areas of Stutsman County identified on Exhibit A. The FTTH broadband service will provide up to 50 Mbps service to all customers and ultimately could provide up to 1 Gbps service with an upgrade to the central office equipment. This will provide sufficient bandwidth for Internet connectivity and other IP services Daktel provides.

14. The services offered to these subscribers will be the same as Daktel provides to other customers who have FTTH in Jamestown (voice, broadband data, and UP video services). Voice services will be VoIP (Session Initiated Protocol-SIP) to the ONT and then POTS at the premise. Voice services will include normal industry features and enhanced voicemail. Broadband service offerings will range from 25 Mbps service x 5 Mbps service to 50 Mbps x 10 Mbps service. Video service offerings will range from basic programming to HD digital programming. The customer will have a range of services to choose from depending on their needs and budgetary constraints.

**DAKTEL MEETS THE STATUTORY AND REGULATORY REQUIREMENTS FOR
ETC DESIGNATION**

15. The Commission has jurisdiction to designate Daktel as an ETC. Pursuant to 47 U.S.C.S. § 214(e)(2), a state commission may designate a common carrier that meets the requirements of 47 U.S.C.S. § 214(e)(1) as an ETC for a service area designated by the state commission. 47 U.S.C.S. § 214(e)(2) further states,

Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) Designation of eligible telecommunications carriers for unserved areas. If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254(c) [47 U.S.C.S. § 254(c)] to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services or an area served by a common carrier to which paragraph (6) applies, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

16. 47 U.S.C.S. § 214(e)(1) states that a common carrier may be designated as an ETC if it (1) offers the services supported by federal universal service as determined by the FCC, (2) offers such service using its own facilities or a combination of its own facilities and resale of another carrier's services, and (3) advertises the availability of such services and the relevant charges using media of general distribution. As set forth herein, Daktel meets these requirements.

A. Daktel is a Common Carrier.

17. 47 U.S.C.S. § 153(11) defines a common carrier as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.” N.D.C.C. § 49-21-02 states that all persons providing telecommunications service within North Dakota shall be common carriers, and shall be affected with a public interest and subject to the regulation and supervision of the Commission. Daktel will, throughout the requested Designated Service Area, provide broadband access, voice and video services to previously unserved areas in and around Stutsman County, North Dakota. As a telecommunications provider, Daktel is regulated as a common carrier.

B. Daktel Will Offer the Services Supported by the Federal Universal Service While Utilizing its own Facilities.

18. Daktel will provide the following services that are supported by federal universal service support mechanisms while using its own facilities throughout the proposed Designated Service Area:

Pursuant to 47 C.F.R. § 54.101

- Voice Telephony Services
- Minutes of use for local service provided at no additional charge to end users
- Access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911
- Toll limitation services to qualifying low-income consumers as provided in 47 C.F.R. § 54.101(a)(2) if applicable under FCC rules

Pursuant to 47 C.F.R. § 54.405

- Lifeline service to qualifying low-income consumers

Pursuant to RBE Provisional Award

- Broadband service up to 25 Mbps X 5 Mbps

19. Connectivity for voice services is accomplished today through Daktel's parent company DCT's existing Genband C15, which leases lines to Daktel. The C15 has trunking connections to wireless service providers, Century Link (local and long distance), and contains all Daktel and DCT subscribers who can call each other locally throughout the entire service territory. The connectivity for ISP data bandwidth is in place through connections to Dakota Carrier Network's Ethernet backbone. Daktel also has an existing Headend with a 10 meter simulsat dish to receive the video from satellites. This Headend is capable of IPTV (MPEG-2) distributions. Exhibit G depicts the delivery mechanisms to be employed.

C. Daktel Will Advertise the Availability of its Broadband Services and the Relevant Charges Using Media of General Distribution.

20. Daktel commits to advertise the availability of, and charges for, the supported services using media of general distribution. This advertising will occur through some combination of media channels, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet.

**DAKTEL MEETS THE ADDITIONAL REQUIREMENTS FOR ETC DESIGNATION
UNDER 47 C.F.R. § 54.202**

21. As applicable to Daktel, 47 C.F.R. § 54.202 requires the following in order for an entity to obtain ETC status:

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1)

(i) Certify that it will comply with the service requirements applicable to the support that it receives.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards.

(b) Public interest standard. Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

A. Daktel Will Comply with the Applicable Service Requirements.

22. Daktel certifies by this Application that it will comply with service requirements applicable to the support that it receives.

B. Daktel's Five Year Technology Plan and Service Information.

23. When initiating its long-term plan to provide FTTH throughout its service area, Daktel undertook a lengthy examination of the benefits and costs of such a deployment. While the initial capital cost of deploying FTTH is greater than fiber-to-the-node or fixed wireless infrastructure, Daktel concluded the advantages of FTTH were greater, making the FTTH deployment more cost efficient in the long run. First, all fiber networks have the greatest broadband performance capabilities, including the ability to be upgraded easily at lower cost. Daktel recognized that these broadband performance capabilities were important for the economic and social well-being of its subscribers, communities, and critical institutions. Second, all fiber networks have lower long-term operating costs, an especially critical factor given North Dakota's often-severe weather.

24. Daktel has successfully constructed, implemented, managed and operated communications networks to provide voice, video and data services to its customers since 2000 and the parent company DCT since 1951. The Daktel team, along with its outside engineers,

contractors, and vendors, have demonstrated experience in constructing on time and within budget the FTTH networks and the competency to operate them viably.

25. The proposed FTTH network extension consists of the proposed Designated Service Area, serving 259 *eligible* high-cost and extremely high-cost households, all located within Stutsman County, North Dakota. All locations in the proposed Designated Service Area will have service available when the FTTH network extension is completed. All technologies used in the network are standards based. The overall design will be FTTH-GPON, with all splitters in the central office to enable migration to active Ethernet or other new technology. Daktel will rely on Calix's E7 GPON solution, which it has deployed elsewhere in its network. This enables downstream speeds of 2.5 Gbps and upstream speeds of 1.25 Gbps, which Daktel will split to a maximum of 32 customers. As for the ONTs, Daktel's typical installation will be capable of 1000 Mbps to each customer and will be initially enabled at 25 Mbps. Daktel will use its existing infrastructure to connect to the Internet, which these facilities already have ample bandwidth availability for these additional customers. Current broadband capacity is up to 10 Gbps and current average usage has not exceeded 2.5 Gbps.

26. The connectivity for voice services is accomplished today through leasing lines from DCT. The Genband C15 voice switch has trunking connections to wireless service providers Century Link (local and long distance) and contains all Daktel and DCT subscribers who can call each other toll free regardless of location. The connectivity for ISP data bandwidth is in place through connections to Dakota Carrier Network's Ethernet backbone. Daktel also has an existing Headend with a 10 meter simulsat dish to receive the video from satellites. This Headend is capable of IPTV (MPEG-2) distributions. Daktel and its engineering firm, Kadmas, Lee and Jackson, have completed the preliminary designs for the entire project, allowing Daktel

to file for environmental and right-of-way clearances as soon as the award is received. They anticipate the public permitting process will proceed with few, if any, issues.

27. As noted herein, the project will serve the proposed Designated Service Area as depicted on Exhibit A, which encompasses approximately 259 households.

C. Daktel Technology has the Capacity to Remain Functional in an Emergency.⁸

28. Daktel's ISP network uses Brocade MLX 10 Gigabit Ethernet transport on their core network between central offices. Internet access is redundant to two ISPs utilizing 10 gigabit Ethernet ports. All IP switches and routers for the Daktel ISP are existing and have ample capacity to absorb additional broadband subscribers and speeds. All critical central office equipment has a minimum of 8 hours of battery backup, generators, redundant power feeds, redundant power supplies, and redundant processors.

29. Daktel's fiber to the home network utilizes Calix E7s to provide voice, IP video, and data services up to 1 Gbps. All subscribers are connected to the Daktel central office using a dedicated fiber optic line which terminates to Calix Optical Network Terminating (ONT) equipment at the premise. All fiber optic cable is zero water peak and is rated for service from 1300 nm to 1625 nm. The outside plant cable design will accommodate both GPON and Active Ethernet services as necessary. The ONTs used will be capable of multiple phone ports, multiple data ports, T1 interfaces, and a total data capacity of a minimum of 10 Mb and potentially up to 1,000 Mbps.

⁸ See also N.D.A.C. § 69-09-05-12(3)(c).

D. Daktel Will Satisfy Applicable Consumer Protection and Service Quality Standards.⁹

30. Daktel certifies that it will satisfy all consumer protection standards as provided in 47 C.F.R. § 64, Subpart U, as applicable, and will protect Customer Proprietary Network Information, as required by state and federal law, and will certify compliance with the same on an annual basis.

E. Designation of Daktel as an ETC is in the Public Interest.¹⁰

31. In connection with its FCC RBE award, Daktel Communications, LLC (Daktel) is proposing a last-mile broadband project, using FTTH technology, to bring affordable and reliable broadband access, voice and video services to unserved rural areas in and around Stutsman County. Without the RBE, these areas will continue to go unserved due to the extremely high cost of bringing the services proposed by Daktel to these rural areas. The services being brought to the 259 currently unserved households will improve quality of life, enable and encourage economic development, and improve services delivered by community institutions.

DAKTEL MEETS THE REQUIREMENTS OF THE COMMISSION FOR DESIGNATION AS AN ETC¹¹

32. In addition to the other criteria required for ETC designation, which have been identified and satisfied in this Application, Daktel certifies that it will provide service on a timely basis to requesting customers in the proposed Designated Service Area where the Daktel network already passes the potential customer's premises.¹²

⁹ See also N.D.A.C. § 69-09-05-12(3)(d).

¹⁰ See also N.D.A.C. § 69-09-05-12(5).

¹¹ See also N.D.A.C. § 69-09-05-12(2)(b).

¹² See also N.D.A.C. § 69-09-05-12(3)(a)(1).

33. Daktel further certifies that it will provide service within a reasonable period of time, if the potential customer is within Daktel's proposed Designated Service Area but outside its existing network coverage, if service can be provided at reasonable cost by:

- (a) Modifying or replacing the requesting customer's equipment;
- (b) Deploying a roof-mounted antenna or other equipment;
- (c) Adjusting network or customer facilities;
- (d) Reselling services from another carrier's facilities to provide service; or
- (e) Employing, leasing, or constructing additional equipment.¹³

34. Daktel will receive \$875,000 through the FCC RBE program. This funding will be used to expand Daktel's service to new, previously unserved areas, as herein described. Daktel will submit a report providing specific detail regarding the projected start date and completion date for each improvement, the estimated amount of investment for each of the specific geographic area where each improvement will be made, and the estimated population that will be served by each improvement.¹⁴

35. Daktel will provide plans which are comparable to or exceed the current offerings of the incumbent (CenturyLink).^{15,16}

¹³ See also N.D.A.C. § 69-09-05-12(3)(a)(2).

¹⁴ See also N.D.A.C. § 69-09-05-12(3)(b).

¹⁵ See also N.D.A.C. § 69-09-05-12(2)(a).

¹⁶ See also N.D.A.C. § 69-09-05-12(3)(e).

	Century Link	Daktel
Telephone	<p>Basic – unlimited local, no long distance, no calling features</p> <p>Home – unlimited local, 11 calling features, no long distance</p> <p>Home Plus – unlimited local, 11 calling features, \$0.05/minute long distance</p> <p>Home Phone Unlimited – unlimited local, 11 calling features, unlimited long distance</p>	<p>Unlimited local, with 4 calling features, and an “a la carte” menu of add-on options, including various long distance options, personal ringing, telemarketer screening and collect call blocking.</p>
Internet	No broadband available to most of the customers	<p>25 Mbps x 5 Mbps</p> <p>30 Mbps x 5 Mbps</p> <p>50 Mbps x 10 Mbps</p>
Video	<p>Direct TV plans –</p> <p>140 Channels</p> <p>150 Channels</p> <p>210 Channels</p> <p>225 Channels</p> <p>285 Channels</p>	<p>IPTV</p> <p>Over 150 channels of HD and digital music channels and local channels featuring community events. DVR and Whole Home DVR available.</p>

36. Daktel certifies and acknowledges that the Commission may require it to provide equal access to long-distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the proposed Designated Service Area.¹⁷

37. Finally, Daktel certifies that the following forms of advertising of the availability of universal service will be met or exceeded by Daktel: a full description of available services in Daktel’s official telephone directory, including the process to be used by customers to qualify for lifeline and link-up service; and in media of general circulation in each eligible telecommunications carrier’s designated service areas, including newspapers, company newsletters, company or civic internet sites, bill stuffers, direct mailings, and any other means intended to convey availability throughout the service area deemed appropriate by Daktel.¹⁸

¹⁷ See also N.D.A.C. § 69-09-05-12(3)(f).

¹⁸ See also N.D.A.C. § 69-09-05-12(6).

CONCLUSION

WHEREFORE, for the foregoing reasons, Daktel respectfully requests that the Commission expeditiously designate it as an ETC for the provision of the services described herein, in the proposed Designated Service Area.

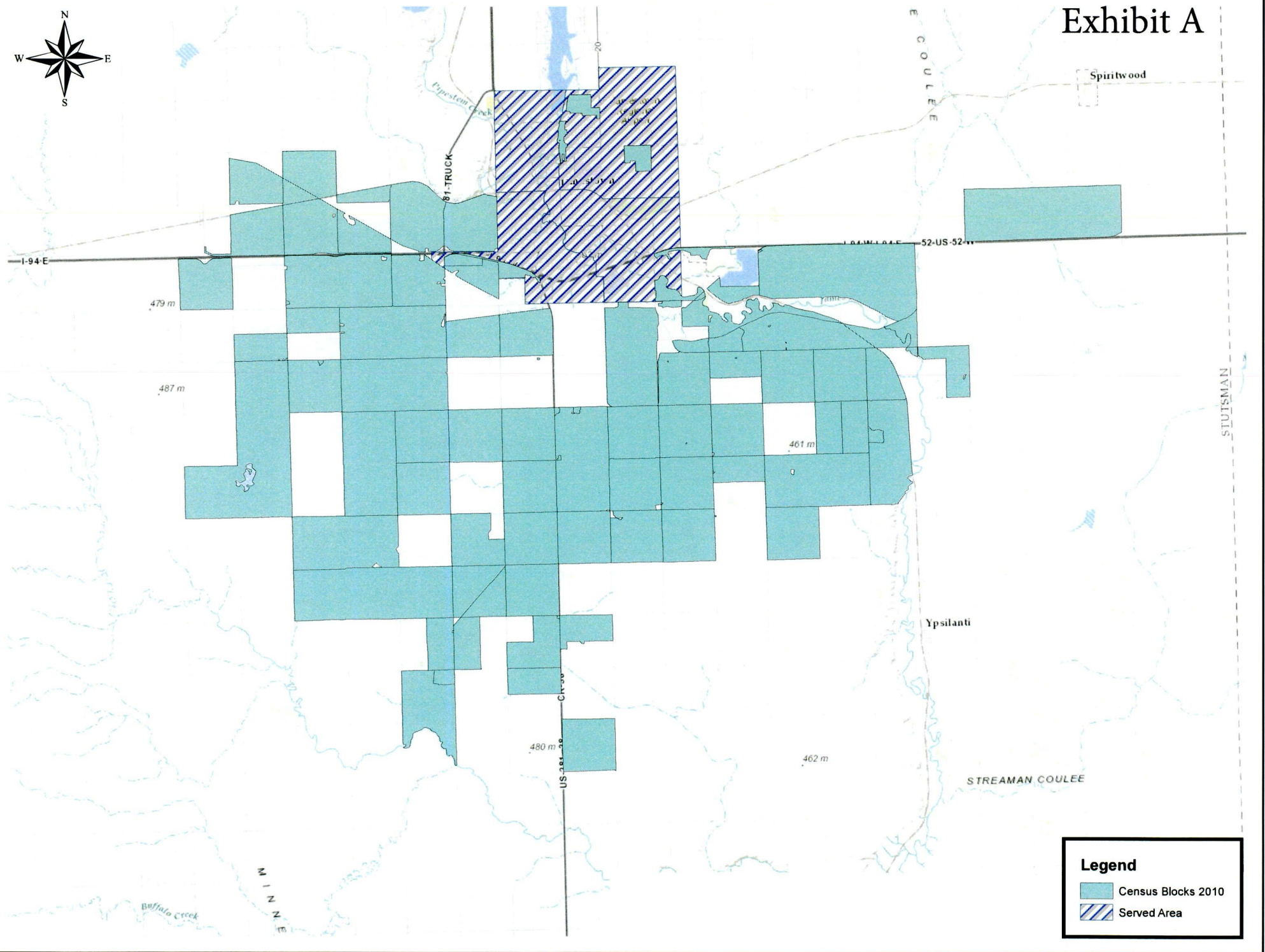
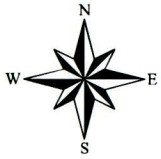
Respectfully submitted this 17th day of March, 2014.

DAKTEL COMMUNICATIONS, LLC





Michael S. Raum
Fredrikson & Byron, P.A.
51 Broadway
Suite 400
Fargo, ND 58102
P: (701) 237-8212
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E: mraum@fredlaw.com

Exhibit A



Legend

-  Census Blocks 2010
-  Served Area

J. Evidence of Legal Authority and Existence

Daktel Communications, LLC is a limited Liability Company organized under North Dakota Century Code Chapter 10-32 (the Limited Liability Company Act). The company did not adopt a member Control Agreement or Bylaws. Essentially, Daktel Communications, LLC is operating pursuant to the provisions of the statute, which governs in the absence of such agreements. Daktel Communications, LLC has been approved and certified to operate in North Dakota, by Public Service Commission (PSC) of the State of North Dakota.

Daktel has provided the bylaws of Dakota Central Telecommunications Cooperative, as evidence of its legal existence and Articles of Organization of Daktel Communications, LLC and a certificate from the North Dakota Secretary of State as evidence of its legal authority.

**DCT BYLAWS
OF
DAKOTA CENTRAL TELECOMMUNICATIONS COOPERATIVE
CARRINGTON, ND**

“The purpose of this association shall be to furnish, improve and expand telecommunications services, on a non-profit basis, for the mutual benefit of its members and patrons.”

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**BYLAWS
OF
DAKOTA CENTRAL
TELECOMMUNICATIONS COOPERATIVE
A MUTUAL AID CORPORATION**

**ARTICLE I
MEMBERSHIP**

Section 1. Requirements for Membership. Any person, firm, association, corporation, or body politic or subdivision thereof will become a member of Dakota Central Telecommunication Cooperative (hereinafter called "the Cooperative") by:

- (a) Subscribing to local exchange telephone service or broadband service within the Cooperative's exchange area boundaries upon terms as the Board may, or the bylaws shall from time to time prescribe.
- (b) Agree to comply with and be bound by the articles of incorporation, bylaws of the Cooperative and any rules and regulations adopted by the Board of Directors.

No member may hold more than one membership in the Cooperative, and no membership in the Cooperative shall be transferable, except as provided in these bylaws.

Section 2. Joint Membership. A husband and wife may apply for a joint membership and, subject to their compliance with the requirements set forth in Section 1 of this Article, may be accepted for such membership. The term "member" as used in these bylaws shall be deemed to include a husband and wife holding a joint membership and any provisions relating to the rights and liabilities of membership shall apply equally with respect to the holders of a joint membership. Without limiting the generality of the foregoing, the effect of the hereinafter specified actions by or in respect of the holders of a joint membership shall be as follows:

- (a) The presence at a meeting of either or both shall be regarded as the presence of one member and shall constitute a joint waiver or notice of meeting;
- (b) The vote of either separately or both jointly shall constitute one joint vote;
- (c) A waiver of notice signed by either or both shall constitute a joint waiver;
- (d) Notice to either shall constitute notice to both;
- (e) Expulsion of either shall terminate the joint membership;
- (f) Withdrawal of either shall terminate the joint membership;
- (g) Either but not both may be elected or appointed as an officer or board member, provided that both meet the qualifications for such office.

Section 3. Conversion of Membership.

- (a) From and after January 1, 1971, all memberships held by a married person, and all memberships held by a person who is married thereafter, shall automatically be

held in joint tenancy with the person's spouse, unless the member shall notify the Secretary of the cooperative in writing that he or she requests sole, or non-joint ownership.

- (b) Upon the death of either spouse who is a party to the joint membership, such membership shall be held solely by the survivor.

Section 4. Service Connection Fees. The Board of Directors may require service connection fees for each connection, extensions, or other available service, pursuant to rules and regulations adopted by the Board of Directors.

Section 5. Purchase of Services. Each member shall as soon as service is available, take service from the Cooperative and shall pay thereafter monthly at rates in accordance with established tariffs as fixed by the Board of Directors. It is expressly understood that amounts paid for services in excess of costs are furnished by members as capital and each member shall be credited with the capital so furnished as provided in these bylaws. Each member shall also pay all amounts owed to the Cooperative as and when the same shall become due and payable.

Section 6. Termination of Membership.

- (a) Any member may withdraw from membership upon compliance with such uniform terms and conditions as the Board of Directors may prescribe. The board may, by the affirmative vote of not less than two-thirds of all members of the Board, expel any member who fails to comply with any of the provisions of the articles of incorporation, bylaws, or rules and regulations adopted by the Board, but only if such member shall have been given written notice by the Cooperative that such failure makes them liable to expulsion and such failure shall have continued for at least 10 days after such notice was given. Any expelled member may be reinstated by vote of the Board or by vote of the members at any annual or special meeting. The membership of a member who for a period of thirty (30) days after service is available has not permitted the installation of service or of a member who has ceased to purchase service from the Cooperative, may be cancelled by resolution of the Board.
- (b) Upon the withdrawal, death, cessation of existence or expulsion of a member the membership of such member shall thereupon terminate. Termination of membership in any manner shall not release a member or estate from any debts due the Cooperative.

ARTICLE II RIGHTS AND LIABILITIES OF MEMBERS

Section 1. Property interest of Members. Upon dissolution, after:

- (a) All debts and liabilities of the Cooperative shall have been paid, and
- (b) All capital furnished through patronage shall have been retired as provided in these bylaws, the remaining property and assets of the Cooperative shall be distributed among the members and former members in the proportion which the aggregate patronage of each bears to the total patronage of all members during the

ten years next preceding the date of the filing of the certificate of dissolution or, if the Cooperative shall not have been in existence for such during the period of its existence.

Section 2. Non-liability for Debts of the Cooperative. The private property of the members shall be exempt from execution or other liability for the debts of the Cooperative and no member shall be liable or responsible for any debts or liabilities of the Cooperative.

ARTICLE III MEETINGS OF MEMBERS

Section 1. Annual Meeting. The annual meeting of the members shall be held during the month of June of each year at such place within the county served by the Cooperative, as selected by the Board and which shall be designated in the notice of the meeting, for the purpose of electing board members, passing upon reports for the previous fiscal year and transacting such other business as may come before the meeting. It shall be the responsibility of the Board to make adequate plans and preparations for the annual meeting. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the Cooperative.

Section 2. Special Meetings. Special meetings of the members may be called by resolution of the Board, or upon a written request signed by any three Board members, by the President, or by not less than 200 members or by ten percent of all the members, whichever shall be the lesser, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the members may be held at any place within one of the counties served by the Cooperative as designated by the Board and shall be specified in the notice of the special meeting.

Section 3. Notice of Members' Meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting or annual meeting at which business requiring special notice is to be transacted, the purpose or purposes for which the meeting is called, shall be delivered not less than ten days nor more than thirty days before the date of the meeting, either personally, by mail or by electronic delivery, by or at the direction of the Secretary, or upon a default in duty by the Secretary, by the persons calling the meeting, to each member. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at the address as it appears on the records of the Cooperative, with postage thereon prepaid. The failure of any member to receive notice of an annual or special meeting of the members shall not invalidate any action which may be taken by the members at any such meeting.

Section 4. Quorum. As long as the total number of members does not exceed five hundred, five percent of the total number of members, present in person, shall constitute a quorum. In case the total number of members shall exceed five hundred, twenty-five members, present in person shall constitute a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to

time without further notice. The minutes of each meeting shall contain a list of the members present in person.

Section 5. Voting. Each member shall be entitled to only one vote upon each matter submitted to a vote at a meeting of the members. All questions shall be decided by a vote of a majority of the members voting thereon in person except as otherwise provided by law, the articles of incorporation, or these bylaws.

Section 6. Order of Business. The order of business at the annual meeting of the members and, so far as possible at all other meetings of the members, shall be essentially as follows, except as otherwise determined by the members at such meeting.

1. Report on the number of members present in person in order to determine the existence of a quorum.
2. Reading of the notice of the meeting and proof of the due publication or mailing thereof, or the waiver or waivers of notice of the meeting, as the case may be.
3. Reading of unapproved minutes of previous meetings of the members and the taking of necessary action thereon.
4. Presentation and consideration of reports of officers, Board of Directors, and committees.
5. Election of board members.
6. Unfinished business.
7. New business.
8. Adjournment.

ARTICLE IV BOARD MEMBERS

Section 1. General Powers. The business and affairs of the Cooperative shall be managed by a board of nine (9) members (one member from each of the eight (8) exchange areas and one member from the Cooperative at large) which shall exercise all of the powers of the Cooperative except such as are by law, the articles of incorporation, or these bylaws conferred upon or reserved to the members.

Section 2. Election and Tenure of Office. One board member shall represent each of the eight (8) exchange areas and one board member shall represent the Cooperative at large, and further, each board member shall be elected for a three-year term in conformance with procedures as hereinafter described.

Section 3. Qualifications. No Person shall be eligible to become or remain a board member of the Cooperative who:

- (a) is not a member and bonafide resident of the district they represent in the area served or to be served by the Cooperative; or
- (b) is in any way employed by or financially interested in a competing enterprise or a business engaged in selling telecommunication services or supplies or constructing or maintaining telecommunication facilities other than a business

operating on a cooperative nonprofit basis for the purpose of furthering rural telephony.

Upon establishment of the fact that a board member is holding the office in violation of any of the foregoing provisions, the Board shall remove such board member from office.

Nothing contained in this section shall affect in any manner whatsoever the validity of any action taken at any meeting of the board.

Section 4. Nomination and Elections.

- (a) Voting districts. The territory served or to be served by the Cooperative shall be divided into districts for the purpose of nomination and election of board members. Each district shall be represented by one board member. The nine (9) districts shall be as follows:

Sykeston Exchange
Woodworth Exchange
Bowdon Exchange
Windsor Exchange
Medina Exchange
Grace City Exchange
Edmunds Exchange
Ypsilanti Exchange
Cooperative at Large

(b) Nomination by Petition. Nomination of candidates for director positions shall be by petition. Any qualified member meeting the requirements of Section 3 of this Article shall be eligible to be a candidate for a director position. Qualified members interested in being nominated shall request an application and petition from the Cooperative. Members shall submit a completed application and a petition containing a minimum of 15 signatures of Cooperative members from the district in which the applicant resides (or 15 signatures of members without regard to residency in the case of the at-large position), to the Cooperative not less than sixty (60) days prior to the annual meeting. The Cooperative Secretary shall certify to the qualifications of the applicant and the accuracy of the petition content. Failure to submit a minimum number of signatures and/or the completed application by the deadline will result in that member's name not being placed on the official ballot. No nominations from the floor of the annual meeting are permitted, except in the event that no candidate has been nominated through the petition process. The Board of Directors is authorized to establish reasonable and uniform policies as it deems appropriate to administer the nomination process consistent with the intent of this Bylaw.

- (c) Election of Directors.

(i) Notice. Not less than ten (10) days before an annual or special meeting of the members at which directors are to be elected, the Secretary of the Cooperative shall be responsible for mailing or electronically delivering to each member a list of the candidate or candidates nominated by petition for each of the director positions to be elected. The

names shall be arranged by districts and the "at large" position, as applicable. This list may be included with the notice of the meeting.

(ii) Nominations. At the meeting, the Secretary of the Cooperative shall place in nomination the names of the official candidate or candidates (as nominated through the petition process) for each of the director positions to be elected. Nominations for board members for a particular position may be made from the floor only if no candidate has been nominated through the petition process.

(iii) Election Process. Election of directors for contested positions shall be by ballot. There shall be no requirement of election by ballot for a non-contested election, and in said case the sole candidate may be elected by voice vote. The ballots shall list the candidate or candidates nominated for each position to be elected, the names to be arranged by districts and "at large," as applicable. In the event that no candidate for a particular director position has been nominated through the petition process, and consequently candidate(s) are nominated from the floor for said position, the members shall vote in a contested election by writing in the name of their chosen candidate on a ballot or, if there is not a contested election, the members shall elect the sole candidate by voice vote. Each member of the Cooperative present at the meeting shall be entitled to vote for one candidate for each of the director positions to be elected. The candidate for each director position receiving the highest number of votes at the meeting shall be deemed elected to that director position.

Section 5. Removal of Board Members by Members. Any member may bring charges against a board member and, by filing with the Secretary such charges in writing together with a petition signed by at least ten per cent of the members or 200, whichever is the lesser, may request the removal of such board member by reason thereof. Such board member shall be informed in writing of the charges at least ten days prior to the meeting of the members at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence in respect to the charges; and the person or persons bringing the charges shall have the same opportunity. The question of the removal of such board member shall be considered and voted upon at the meeting of the members and any vacancy created by such removal may be filled by vote of the members at such meeting without compliance with the foregoing provisions with respect to nominations.

Section 6. Vacancies. Subject to the provisions of these bylaws with respect to the filling of vacancies caused by the removal of board members by the members, a vacancy occurring in the Board shall be filled by the affirmative vote of a majority of the remaining Board members for the unexpired portion of the term, provide, however, that in the event the vacancy is not filled by the Board within sixty days after the vacancy occurs, the members shall have the right to fill such vacancy at a meeting of the members without compliance with the foregoing provisions in respect to nominations.

Section 7. Compensation. The board members shall not receive any salary for their services as such, except that the Board of the Cooperative may, by resolution, authorize a

fixed sum for each day or portion thereof spent on Cooperative business, such as attendance at meetings, conferences and training programs or performing committee assignments when authorized by the Board. If authorized by the Board, board members may also be reimbursed for expenses actually and necessarily incurred in carrying out such Cooperative business or granted a reasonable per diem allowance by the Board in lieu of detailed accounting for some of these expenses. No Board member shall receive compensation for serving the Cooperative in any other capacity, nor shall any close relative of a board member receive compensation for serving the Cooperative, unless the payment and amount of compensation shall be specifically authorized by a vote of the members or the service by the board member or close relative shall have been certified by the Board as an emergency measure. For the purpose of this Section, close relative includes grandparents, parents, husband, wife, children, grandchildren, brothers, sisters, uncles, aunts, nephews and nieces by blood, by marriage or by adoption, and spouses of any of the foregoing.

ARTICLE V MEETINGS OF BOARD

Section 1. Regular Meetings. A regular meeting of the Board shall be held without notice, immediately after, and at the place as, the annual meeting of the members. A regular meeting of the Board shall also be held monthly at such time and place within one of the counties served by the Cooperative as designated by the Board. Such regular monthly meeting may be held without notice other than such resolution fixing the time and place thereof.

Section 2. Special Meetings. Special meetings of the Board may be called by the President or by any three board members, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. The President or Board members calling the meeting shall fix the time and place for the holding of the meeting.

Section 3. Notice of Board Meetings. Written notice of the time, place and purpose of any meeting of the board shall be delivered to each board member either personally, electronically, or by mail. Or at the direction of the Secretary, or upon a default in duty by the Secretary, by the President or one of the board members calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the board members at the address as it appears on the records of the Cooperative, with postage thereon prepaid, at least five days before the date set for the meeting.

Section 4. Quorum. A majority of the board shall constitute a quorum provided, that if less than such majority of the board is present at said meeting, a majority of the board present may adjourn the meeting from time to time; and provided further, that the Secretary shall notify any absent board member of the time and place of such adjourned meeting. The act of a majority of the board members present at a meeting at which a

quorum is present shall be the act of the board, except as otherwise provided in these laws.

ARTICLE VI OFFICERS

Section 1. Number. The officers of the Cooperative shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be determined by the board from time to time. The offices of Secretary and Treasurer may be held by the same person.

Section 2. Election and Term of Office. The officers shall be elected by ballot, annually by and from the board at the meeting of the board held immediately after the annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each officer shall hold office until the first meeting of the board following the next succeeding annual meeting of the members or until a successor shall have been elected and shall have qualified. A vacancy in any office shall be filled by the board for the unexpired portion of the term.

Section 3. Removal of Officers and Agents by the Board. Any officer or agent elected or appointed by the board may be removed by the board whenever in its judgment the best interest of the Cooperative will be served thereby. In addition, any member of the Cooperative may bring charges against an officer, and by filing with the Secretary such charges in writing, together with a petition signed by ten per cent of the members or 200, whichever is the lesser, may request the removal of such officer. The officer against whom such charges have been brought shall be informed in writing of the charges at least ten days prior to the board meeting at which the charges are to be considered and shall have an opportunity at the meeting to be heard in person or by counsel and to present evidence in respect of the charges; and the person or persons bringing the charges shall have the same opportunity. In the event the board does not remove such officer, the question of removal may be considered and voted upon at the next meeting of the members.

Section 4. President. The President shall:

- (a) be the principal executive officer of the Cooperative and, unless otherwise determined by the members of the board, shall preside at all meetings of the members and the board;
- (b) sign, any deeds mortgages, deeds of trust, notes, bonds, contracts, or other instruments authorized by the Board to be executed, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these bylaws to some other officer or agent of the Cooperative, or shall be required by law to be otherwise signed and executed; and
- (c) in general perform all duties incident to the office of President and such other duties as may be prescribed by the board from time to time.

Section 5. Vice President. In the absence of the President, or in the event of inability or refusal to act, the Vice President shall perform the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice President shall also perform such other duties as from time to time may be assigned by the Board.

Section 6. Secretary. The Secretary shall be responsible for:

- (a) keeping the minutes of the meetings of the members and of the board in books provided for that purpose;
- (b) seeing that all notices are duly given in accordance with these bylaws or as required by law;
- (c) the safekeeping of the corporate books and records and the seal of the Cooperative and affixing the seal of the Cooperative to all documents, the execution of which on behalf of the Cooperative under its seal is duly authorized in accordance with the provisions of these bylaws;
- (d) keeping a register of the names and post office addresses of all members;
- (e) signing, with the President, certificates of membership, the issue of which shall have been authorized by the Board or the members;
- (f) keeping on file at all times a complete copy of the articles of incorporation and bylaws of the Cooperative containing all amendments thereto (which copy shall always be open to the inspection of any member) and at the expense of the Cooperative, making available an electronic or hard copy of the bylaws and all amendments thereto to each member; and at the expense of the Cooperative, furnish a copy of the bylaws and all amendments thereto to each member; and
- (g) in general performing all duties incident to the office of Secretary and such other duties as from time to time may be assigned by the Board.

Section 7. Treasurer. The Treasurer shall be responsible for:

- (a) custody of all funds and securities of the Cooperative;
- (b) the receipt of the issuance of receipts for all monies due and payable to the Cooperative and for the deposit of all such monies in the name of the Cooperative in such bank or banks as shall be selected in accordance with the provisions of these by laws; and
- (c) the general performance of all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board.

Section 8. Delegation of Responsibilities. Notwithstanding the duties, responsibilities and authorities of the officers provided for in these bylaws, the Board of Directors by resolution may, except as otherwise limited by law, delegate, wholly or in part, the responsibility and authority for, and the regular and routine administration of, one or more of such officer's duties to one or more agents or other officers of the Cooperative who are not directors.

Section 9. Manager. The Board may appoint a manager who may be, but who shall not be required to be, a member of the Cooperative. The manager shall perform such duties and shall exercise such authority as the board may from time to time assign.

Section 10. Bonds of Officers. The Treasurer and any other officer or agent of the Cooperative charged with responsibility for the custody of any of its funds or property shall be bonded in such sum with such surety as the board shall determine. The board in its discretion, may also require any other officer, agent or employee of the Cooperative to be bonded in such amount and with such surety as it shall determine.

Section 11. Compensation. The powers, duties, and compensation of officers, agents, and employees shall be fixed by the Board subject to the provisions of these bylaws with respect to compensation for a board member and close relatives of a board member.

Section 12. Reports. The officers of the Cooperative shall submit at each annual meeting of the member's reports covering the business of the Cooperative for the previous fiscal year. Such reports shall set forth the condition of the Cooperative at the close of such fiscal year.

ARTICLE VII NON-PROFIT OPERATION

Section 1. Interest or Dividends on Capital Prohibited. The Cooperative shall at all times be operated on a Cooperative non-profit basis for the mutual benefit of its patrons. No interest or dividends shall be paid or payable by the Cooperative on any capital furnished by its patrons.

Section 2. Patronage Capital In Connection with Furnishing Telephone and Other Communication Services. In the furnishing of telephone and other communications services, the Cooperative's operations shall be so conducted that all patrons will, through their patronage, furnish capital for the Cooperative. In order to induce patronage and to insure that the Cooperative will operate on a non-profit basis, the Cooperative is obligated to account on a patronage basis, as long as patronage is readily identifiable and the method of allocation is equitable, for all amounts received and receivable from the furnishing of telephone and other communication services (which includes broadband services) in excess of operating costs and expenses properly chargeable against the furnishing of telephone and other communication services. At such time, when the allocation of capital credits based on patronage is no longer readily identifiable or equitable to the patrons, a fair and equitable alternate method shall be developed. All such amounts in excess of operating costs and expenses at the moment of receipt by the Cooperative are received with the understanding that they are furnished by patrons as capital. The Cooperative is obligated to pay by credits to a capital account for each patron all such amounts in excess of operating costs and expenses. The books and records of the Cooperative shall be set up and kept in such a manner that at the end of each fiscal year the amount of capital, if any, so furnished by each patron, is clearly reflected and credited in an appropriate record to the capital account of each patron, and the Cooperative shall, within a reasonable time after the close of the fiscal year, notify each patron of the amount of capital so credited to the account. All such amounts credited to the capital account of any patron shall have the same status as though they had been paid to the

patron in cash in pursuance of a legal obligation to do so and the patron had then furnished the Cooperative corresponding amounts of capital.

All other nonoperating revenue, after deduction for related expenses, shall, insofar as permitted by law, be (a) used to offset any losses incurred during the current or any prior fiscal year and (b) to the extent not needed for that purpose be allocated to patrons or not allocated to patrons and instead placed in a permanent capital account.

In the event of dissolution or liquidation of the Cooperative, after all outstanding indebtedness of the Cooperative shall have been paid, outstanding capital credits shall be retired without priority on a pro rata basis before any payments are made on account of property rights of members. If, at any time prior to dissolution or liquidation, the board shall determine that the financial condition of the Cooperative will not be impaired thereby, the capital credited to patrons' accounts may be retired in full or in part. Any such retirements of capital shall be made in order of priority according to the year in which the capital was furnished and credited, the capital first received by the Cooperative being first retired.

Capital credited to the account of each patron shall be assigned only on the books of the Cooperative pursuant to written instructions from the assignor and only to successors in interests or successors in occupancy in all or in part of such patron's premises served by the Cooperative unless the board, acting under policies of general application, shall determine otherwise.

Notwithstanding any other provisions of these bylaws, the Board, at its discretion, shall have the power at any time upon the death of any patron who was a natural person if the legal representative of the estate shall request in writing that the capital credited to any such patron be retired prior to the time such capital would otherwise be retired under the provisions of these bylaws, to retire capital credits to any such patron immediately upon such terms and conditions as the Board, acting under policies of general application, and the legal representative of such patron's estate shall agree upon; provided, however, that the financial condition of the cooperative will not be impaired thereby.

The patrons of the Cooperative, by dealing with the Cooperative, acknowledge that the terms and provisions of the Articles of Incorporation and by-laws shall constitute and be a contract between the Cooperative and each patron, and both the Cooperative and the patrons are bound by such contract as fully as though each patron had individually signed a separate instrument containing such terms and provisions. The provisions of this article of the by-laws shall be called to the attention of each patron of the Cooperative by posting in a conspicuous place in the Cooperative's office.

ARTICLE VIII DISPOSITION OF PROPERTY

The Cooperative may not sell, mortgage, lease or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a meeting of the members thereof by the affirmative vote of not less than 85 percent of all of the members of the Cooperative, and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained in the notice of the meeting; provided, however, that notwithstanding anything herein contained, the Board of the Cooperative, without

authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed of trust upon, or the pledging or encumbering of, any or all of the property, assets, rights privileges, licensed, franchises, and permits of the Cooperative whether acquired or to be acquired and wherever situated, as well as the revenues and income there from, all upon such terms and conditions as the board shall determine, to secure any indebtedness of the Cooperative to the United States of America or any instrumentality or agency thereof; provided further that the Board may upon the authorization of a majority of those members of the Cooperative present at a meeting of the members thereof, sell, lease, or otherwise dispose of all or a substantial portion of its property to another Cooperative doing business in this State pursuant to the Act under which this Cooperative is incorporated.

ARTICLE IX SEAL

The corporate seal of the Cooperative shall have inscribed thereon the name of the Cooperative, and the words "Corporate Seal, North Dakota."

ARTICLE X FINANCIAL TRANSACTIONS

Section 1. Contracts. Except as otherwise provided in these bylaws, the Board may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name and on behalf of the Cooperative, such authority may be general or confined to specific instances.

Section 2. Checks, Drafts, etc. All checks, drafts, or other orders for the payment of money, and all notes, bonds, or other evidences of indebtedness issued in the name of the Cooperative shall be signed by such officer or officers, agent or agents, employee or employees of the Cooperative and in such manner as shall from time to time be determined by resolution of the Board.

Section 3. Deposits. All funds except petty cash of the Cooperative shall be deposited from time to time to the credit of the Cooperative in such banks or banks as Board may select.

Section 4. Fiscal Year. The fiscal year of the Cooperative shall begin on the first day of January of each year and shall end on the thirty-first day of December of the same year.

ARTICLE XI MISCELLANEOUS

Section 1. Membership in Other organizations. The Cooperative shall not become a member of or purchase stock in any other organization without an affirmative vote of the Board of Directors at a duly held meeting.

Section 2. Waiver of Notice. Any member or board member may waive in writing any notice of a meeting required to be given by these bylaws. The attendance of a member or board member at any meeting shall constitute a waiver of notice of such meeting by such member or board member, except in case a member or board member shall attend a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

Section 3. Policies, Rules and Regulations. The board shall have power to make and adopt such policies, rules and regulations not inconsistent with law, the articles of incorporation, or these bylaws, as it may deem advisable for the management of the business and affairs of the Cooperative.

Section 4. Accounting System and Reports. The Board shall cause to be established and maintained a complete accounting system which, among other things, and subject to applicable laws and rules and regulations of any regulatory body, shall conform to such accounting system as may from time to time be designated by the Administrator of the Rural Electrification Administration of the United States of America. The Board shall also cause to be made by a certified public accountant a full and complete annual audit of the accounts, books, and financial condition of the Cooperative. The results of such audit shall be reported to the members at the next following annual meeting.

Section 5. Area Coverage. The Board shall make diligent effort to see that telecommunications services are extended to all unserved persons within the Cooperative service area who (a) desire such service and (b) meet all reasonable requirements established by the Cooperative as a condition of such service.

ARTICLE XII AMENDMENTS

These by-laws may be altered, amended or repealed by the affirmative vote of not less than two-thirds of the members present at any regular or special meeting provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal. Further these by-laws may be altered, amended or repealed by the affirmative vote of not less than two-thirds of the Board of Directors at any regular or special meeting provided the notice of such meeting shall have contained a copy of the proposed alteration, amendment or repeal and subject to confirmation by the membership at the next regular or special membership meeting.

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**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
DAKTEL COMMUNICATIONS, LLC**

**RECEIVED
APR 28 2004
SEC. OF STATE**

The following Amended and Restated Articles of Organization have been adopted by the Company's Members and Board of Governors pursuant to N.D.C.C. Ch. 10-32:

**ARTICLE I
NAME**

The name of this Company is Daktel Communications, LLC.

**ARTICLE II
DURATION**

The period of existence for this Company shall be perpetual.

**ARTICLE III
REGISTERED OFFICE AND AGENT**

The registered office of this Company is located at 630 5th Street North, Carrington, North Dakota 58420.

The name of the Registered Agent of this Company is Keith Larson.

**ARTICLE IV
PURPOSES**


This Company is organized for the purposes of offering communications services and products, offering video services and products, and to conduct general business purposes consistent with the North Dakota Limited Liability Company Act.

**ARTICLE V
INTERNAL REGULATION PROVISIONS**

The provisions for the internal regulation of the Company are as follows:

- A. Each manager and governor, past or present of the Company, and each person who serves or may have served at the request of the Company as director, officer, governor, manager, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, and their respective heirs and legal representatives, shall be indemnified by the Company in accordance with, and to the fullest extent permissible under, the provisions of North Dakota Statutes Chapter 10-32, as it may be from time to time amended. Whenever the applicable provisions of North Dakota Statutes Chapter 10-32 make indemnification permissible upon the

NORTH DAKOTA
Filed 4-30 2004
Alvin D. Angus
Secretary of State MDA



finding that certain standards are met, such indemnification shall be mandatory by the Company.

- B. No governor of the Company shall be personally liable to the Company nor to its members for any monetary damages or breach of fiduciary duty as a governor. However, this provision shall not eliminate or limit the liability of a governor:
- (1) For any breach of the governor's duty of loyalty to the limited liability company or to its members;
 - (2) For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
 - (3) For any distributions from the Company which are determined to be illegal under North Dakota Statutes (Section 10-32-66 or any successor thereto);
 - (4) For any transaction from which the governor derived an improper personal benefit; or,
 - (5) For any act or omission occurring before the date when the provision in the Articles of Organization eliminating or limiting liability becomes effective.

DATED this 22nd day of April, 2004.

Daktel Communications, LLC

By: 
Craig Headland, President

This Document Was Prepared By:
Steven E. Noack
Vogel Law Firm
Attorneys at Law
PO Box 1389
Fargo ND 58107-1389
Telephone: (701) 356-6380

State of North Dakota

SECRETARY OF STATE



RESTATED ARTICLES OF ORGANIZATION OF

DAKTEL COMMUNICATIONS, LLC

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that Restated Articles of Organization of

DAKTEL COMMUNICATIONS, LLC

duly signed and executed pursuant to the provisions governing a North Dakota Limited Liability Company, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Secretary of State and by virtue of the authority vested in him by law, hereby issues this Restated Certificate of Organization to

DAKTEL COMMUNICATIONS, LLC

Effective Date: April 30, 2004

A handwritten signature in cursive script, reading "Alvin A. Jaeger".

Alvin A. Jaeger
Secretary of State

State of North Dakota

SECRETARY OF STATE



CERTIFICATE OF GOOD STANDING OF

DAKTEL COMMUNICATIONS, LLC

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that DAKTEL COMMUNICATIONS, LLC, a North Dakota LIMITED LIABILITY COMPANY, was issued a certificate of organization which was effective on April 11, 2000 and, according to the records of this office as of this date, has paid all fees due this office as required by North Dakota statutes governing a North Dakota LIMITED LIABILITY COMPANY.

ACCORDINGLY the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Good Standing to

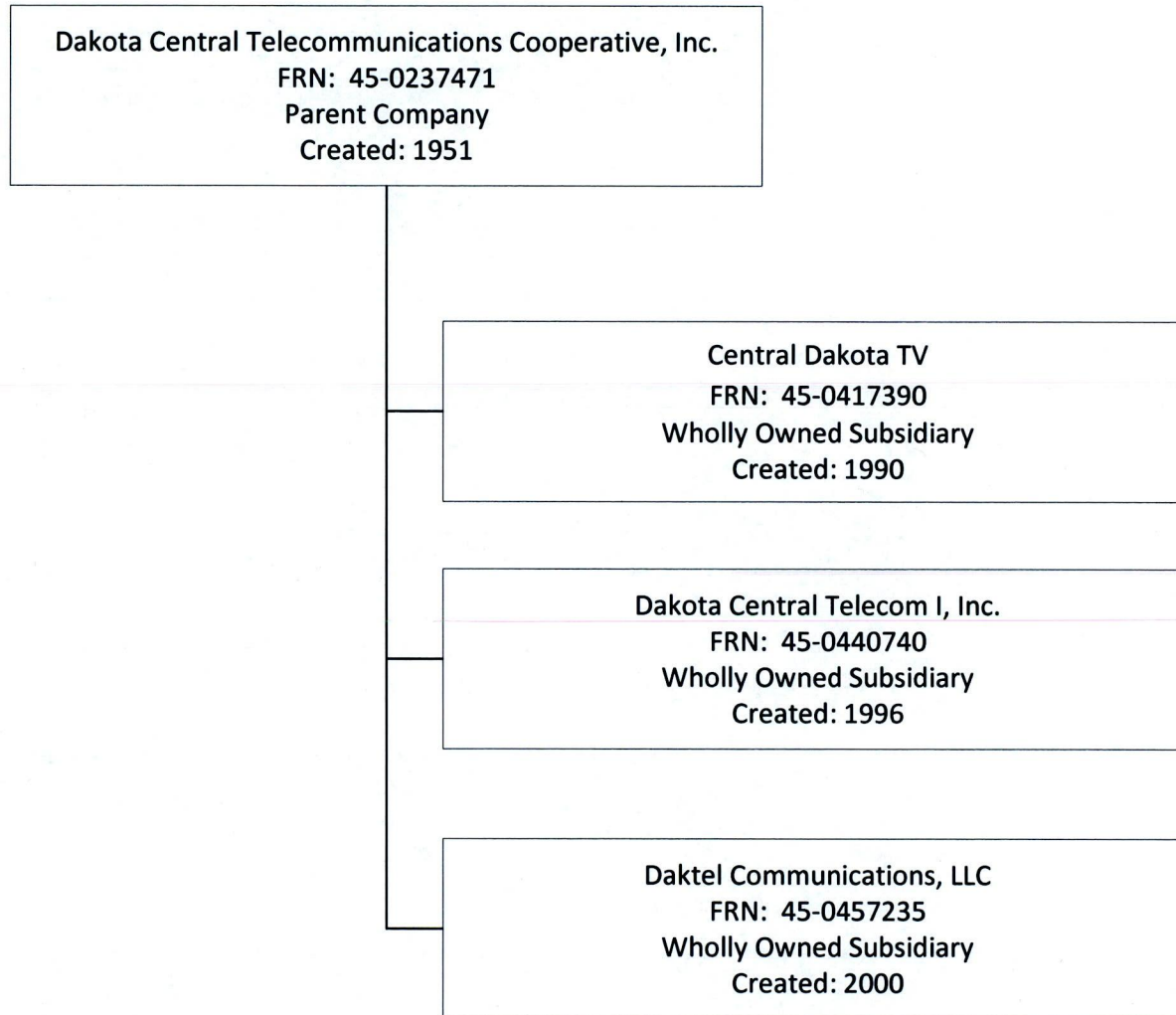
DAKTEL COMMUNICATIONS, LLC

Issued: March 18, 2015

A handwritten signature in black ink, reading "Alvin Jaeger".

Alvin Jaeger
Secretary of State

Exhibit D



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

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: July 11, 2014

Released: July 14, 2014

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel, and Pai issuing separate statements; Commissioner O’Rielly concurring and issuing a statement.

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I. INTRODUCTION

1. Today we take 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. We finalize 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. This 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*.¹ We describe the application process and announce that formal applications must be submitted by 90 days from release of the Order. We 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. In the Further Notice of Proposed Rulemaking (FNPRM), we seek comment on how best to maximize the reach of our existing Connect America budget and leverage non-Federal funding to extend broadband to as many households as possible when we implement Phase II.

II. BACKGROUND

2. In the *USF/ICC Transformation Order*, the Commission concluded that it would use a competitive bidding mechanism for Phase II of the Connect America Fund to award support in price cap territories in those states where price cap carriers decline to make a state-level commitment in exchange for model-based support.² In the January 2014 *Tech Transitions Order*, the Commission adopted an experiment to test how tailored economic incentives can advance the deployment of next generation networks, both wireline and wireless, in rural, high-cost areas, including Tribal lands.³

3. The Commission sought to gain useful information through these experiments to help inform our policy decisions in various pending proceedings. For example, we sought to address the extent of interest among providers in deploying high-capacity fiber-based services that deliver high speeds to rural communities.⁴ In particular, we sought to learn whether providers are willing and able to deliver services with performance characteristics well in excess of the minimum standards that price cap carriers accepting model-based support are required to offer to all funded locations, for at most the same amount of support as calculated by the model.⁵ We also sought to develop a greater understanding of the geographic and demographic characteristics of where service providers (both incumbents and non-incumbents) would choose to offer wireless services at prices reasonably comparable to urban wireline

¹ See *Technology Transitions et al.*, GN Docket No. 13-5 et al., Order et al., 29 FCC Rcd 1433, 1462-79, paras. 82-136, 1498-1504, paras. 202-23 (2014) (*Tech Transitions Order and/or FNPRM*).

² See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17725, para. 156 (2011) (*USF/ICC Transformation Order and/or FNPRM*), *aff'd sub nom. In re FCC 11-161*, ___ F.3d ___, 2014 WL 2142106 (10th Cir. May 23, 2014).

³ *Tech Transitions Order*, 29 FCC Rcd at 1463, para. 83.

⁴ *Id.* at 1466, para. 94.

⁵ *Id.*

offerings.⁶

4. The Commission adopted a framework for experiments to be conducted in price cap territories.⁷ It stated an expectation that the funding to be made available would not exceed the amount of model-calculated support associated with the relevant geographic area.⁸ The Commission sought comment in the *Tech Transitions FNPRM* on the budget, selection criteria, and additional issues relating to implementation of the rural broadband experiments.⁹

5. In the *Tech Transitions Order*, we invited parties to file non-binding expressions of interest regarding the rural broadband experiments, which have informed us as we finalize the details of how to implement these experiments.¹⁰ As of May 31, 2014, we had received a total of 1,024 expressions of interest from a wide range of entities, collectively requesting \$11 billion in Federal funding.¹¹ Of these, nearly 60 percent proposed using fiber-to-the-premises (FTTP) to serve all or most of their proposed service areas. Another 30 percent planned on using fixed wireless technologies to serve either the entire proposed service area, or to augment proposed FTTP or mobile networks. The remaining 10 percent planned on using either mobile wireless, or some other type of technology, such as digital subscriber line (DSL), or hybrid fiber coax (HFC). Forty-four percent of the expressions of interest were from entities that self-identified as either incumbent local exchange carriers (LECs) or competitive LECs; 11 percent were electric utilities, 11 percent were wireless Internet service providers (WISPs), and 11 percent were agencies of state, county or local governments. Entities predominantly self-identifying as Internet service providers (ISPs) constituted four percent, cable companies four percent, mobile carriers two percent, and Tribal entities two percent. The remaining 11 percent were various forms of consortia or research and education networks. We appreciate the interest of numerous stakeholders in these experiments, but remind all parties that in order to compete for funding, they must file a formal application as described more fully below.

III. DISCUSSION

6. We explained in the *Tech Transitions Order* that we must “ensure that all Americans benefit from the technology transitions, and that we gain 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.”¹² In this Order, we adopt certain parameters and requirements for the rural broadband experiments that will assist us with accomplishing these goals. We expect 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.¹³ In addition

⁶ *Id.* at 1466-67, para. 95.

⁷ *Id.* at 1472, para. 111.

⁸ *Id.* at 1473, para. 112.

⁹ *Tech Transitions FNPRM*, 29 FCC Rcd at 1498-1504, paras. 202-23.

¹⁰ *See Tech Transitions Order*, 29 FCC Rcd at 1470, para. 105.

¹¹ *See* Federal Communications Commission, *Rural Broadband Experiments* (updated as of Apr. 25, 2014), <http://www.fcc.gov/encyclopedia/rural-broadband-experiments>. A substantial number of the expressions of interest, however, lacked sufficient information to conduct a detailed analysis. For example, 30 percent of the expressions did not indicate the total funding requested, and 50 percent did not indicate the number of homes to be passed.

¹² *Tech Transitions Order*, 29 FCC Rcd at 1464, para. 87.

¹³ *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 28 FCC Rcd 5301 (Wireline Comp. Bur. 2013) (*CAM Platform Order*); *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 3964 (Wireline Comp. Bur. 2014) (*CAM Inputs Order*).

to gathering information relevant to broader questions implicated by technology transitions, we expect these experiments also will inform key decisions that we 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. We still expect to implement the offer of model-based support to price cap carriers in the coming months, and we 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, we expect to be considering near-term reforms for rate-of-return carriers, based on the record we will shortly receive in response to the recent *Connect America Fund FNPRM*, while we continue to develop a Connect America Fund for those carriers.

7. We adopt 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. We also determine the objective methodology for selecting projects among the applications we receive for the experiments. Given the manner in which we have structured the budget and the selection criteria, we believe that we will be able to fund a range of diverse projects throughout the country. Finally, we outline 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.¹⁴

8. In the *Technology Transitions Order*, we noted our desire to work cooperatively with other governmental entities to advance our shared objectives of ensuring access to broadband services. We noted that we were “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.”¹⁵ We 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. We also seek comment in the attached Further Notice of Proposed Rulemaking regarding measures we 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

9. In the *Tech Transitions FNPRM*, the Commission sought comment on the amount of support it should make available for the rural broadband experiments.¹⁶ Here, we adopt 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.¹⁷ We now conclude it is appropriate to provide another round of funding in price cap territories that will advance our swift implementation of Phase II.

¹⁴ The Commission’s rules in Part 1, Subpart AA regarding competitive bidding for universal service support generally apply to the rural broadband experiments to the extent they are not modified for these experiments by the *Tech Transitions Order* and this Order. See 47 C.F.R. §§ 1.21000-1.2004; *Tech Transitions Order*, 29 FCC Rcd 1433. In particular, we remind potential participants that they are subject to the Commission’s rules prohibiting certain communications. See 47 C.F.R. § 1.21002.

¹⁵ *Tech Transitions Order*, 29 FCC Rcd at 1467, para. 97.

¹⁶ *Tech Transitions FNPRM*, 29 FCC Rcd at 1499, para. 204.

¹⁷ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17712-13, para. 128; *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7766 (2013).

10. We conclude 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 we identified in the *Tech Transitions Order*.¹⁸ We intend 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 we should maximize the number of experiments that get funding and advocate adoption of a budget that exceeds the \$100 million we adopt today,¹⁹ we note that the Commission's goal is not to fund as many experiments as possible, but rather to advance implementation of the Connect America Fund.²⁰ We are mindful of our commitment not to delay the implementation of Phase II.²¹ 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.²² Instead, our goal is to quickly gather data from submitted formal proposals about various technologies in different geographic areas to inform our judgment as we address important policy issues regarding how to maintain universal access in rural areas during technology transitions.²³ We expect that what we learn 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

¹⁸ *Tech Transitions Order*, 29 FCC Rcd at 1466-67, paras. 94-97. See, e.g., Comments of the Fiber to the Home Council Americas, WC Docket No. 10-90, at 3-5 (filed Mar. 31, 2014) (FTTH Council Mar. 31, 2014 Comments); Comments of the United States Telecom Association, WC Docket No. 10-90, at 4 (filed Mar. 31, 2014) (USTelecom Mar. 31, 2014 Comments); Comments of American Cable Association, WC Docket No. 10-90, at 3-4 (filed Mar. 31, 2014) (ACA Mar. 31, 2014 Comments); Comments of CenturyLink, WC Docket No. 10-90, at 4 (filed Mar. 31, 2014) (CenturyLink Mar. 31, 2014 Comments); Comments of ITTA, WC Docket No. 10-90, at 2-4 (filed Mar. 31, 2014) (ITTA Mar. 31, 2014 Comments).

¹⁹ See, e.g., Comments of the Alaska Rural Coalition, WC Docket No. 10-90, at 7 (filed Mar. 31, 2014) (ARC Mar. 31, 2014 Comments); Comments of ValleyNet, WC Docket No. 10-90, at 1 (filed Mar. 31, 2014); Comments of BARC Electric Cooperative, WC Docket No. 10-90 et al., at 2-3 (filed Mar. 31, 2014) (BARC Mar. 31, 2014 Comments); Comments of Co-Mo Comm, Inc., WC Docket No. 10-90 et al., at 1 (filed Mar. 31, 2014); Comments of Douglas Service, Inc., WC Docket No. 10-90, at 1 (filed Mar. 31, 2014); Reply Comments of Johnson County REMC, WC Docket No. 10-90, at 1 (filed Mar. 31, 2014); Comments of John Staurulakis, Inc., WC Docket No. 10-90 et al., at 2-5 (filed Mar. 31, 2014); Comments of Midwest Energy Cooperative, WC Docket No. 10-90 et al., at 2 (filed Mar. 31, 2014); Comments of the Utilities Telecom Council, WC Docket No. 10-90 et al., at 3-4 (filed Mar. 31, 2014) (UTC Mar. 31, 2014 Comments); Comments of the Vermont Telecommunications Authority, WC Docket No. 10-90 et al., at 2 (filed Mar. 31, 2014) (VTA Mar. 31, 2014 Comments); Comments of Lake Region Electric Cooperative, Inc., WC Docket No. 10-90 et al., at 2 (filed Mar. 28, 2014) (LREC Mar. 28, 2014 Comments); Comments of Atlantic Tele-Network, Inc., WC Docket No. 10-90 et al., at 5 (filed Mar. 31, 2014) (Atlantic Tele-Network Mar. 31, 2014 Comments); Comments of the Rural Independent Competitive Alliance, WC Docket No. 10-90 et al., at 6 (filed Mar. 31, 2014); Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 5-6 (filed Mar. 31, 2014).

²⁰ See *Tech Transitions Order and FNPRM*, 29 FCC Rcd at 1471, 1499, paras. 109, 204 (stating that the Commission “expect[s] a relatively small number of projects . . . will be selected for funding” and that the Commission does not “envision using all unallocated funds in the broadband reserve for experiments in rural areas, but rather an amount that is sufficient to enable us to award funding to a limited number of projects that enable evaluation” of the policy questions identified by the Commission).

²¹ *Tech Transitions Order*, 29 FCC Rcd at 1467, para. 98.

²² See Comments of NTCA—The Rural Broadband Association, The National Exchange Carrier Association, Inc., and the Eastern Rural Telecom Association, WC Docket No. 10-90 et al., at 4 (filed Mar. 31, 2014) (stating “that the experiments must not divert much-needed funds or attention away from expanding broadband access to all Americans in favor of a few, select projects”).

²³ *Tech Transitions Order*, 29 FCC Rcd at 1467, 1471, paras. 98, 109.

efficiently the availability of voice and broadband-capable infrastructure.²⁴

11. *Source of Funds.* As we proposed in the *Tech Transitions FNPRM*,²⁵ 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.²⁶ We find 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 us design the Phase II competitive bidding process and the Remote Areas Fund to efficiently achieve this goal throughout the country.²⁷ Using unallocated support from the reserve account will also ensure that we will not increase the size of the Universal Service Fund or Connect America budget, that we will not increase the contribution burden on consumers, and that we will not divert resources from other universal service programs.²⁸ We will consider appropriate treatment of any unallocated funds in the future.

B. Support Term

12. We conclude that we 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.²⁹ Subsequently, in April, the Commission adopted a support term of 10 years for the competitive bidding process in the *Connect America Fund Order*.³⁰ One of our primary objectives for these experiments is to learn how to structure a competitive bidding process for recurring support. We therefore conclude 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.³¹ Moreover, permitting entities to define the length of their support

²⁴ *Id.* at 1473, para. 112.

²⁵ *Tech Transitions FNPRM*, 29 FCC Rcd at 1498-99, para. 203.

²⁶ The reserve account has a balance of \$1.76 billion as of the third quarter of 2014, with \$1.54 billion of those funds already allocated to Connect America Phase I, Tribal Mobility Fund Phase I, and Mobility Fund Phase II. Universal Service Administrative Company, Federal Universal Service Support Mechanisms Fund Size Projections for Third Quarter 2014, at 9-11 (May 2, 2014), <http://www.usac.org/about/tools/fcc/filings/2014/Q3/USAC%20Q3%202014%20Federal%20Universal%20Service%20Mechanism%20Quarterly%20Demand%20Filing.pdf>.

²⁷ See ARC Mar. 31, 2014 Comments at 7 (stating that “[g]iven the strong interest in the program and great need for fiber deployment to reach rural citizens, it makes sense for the Commission to distribute unallocated Connect America funding rather than continuing to hold those funds in reserve”).

²⁸ Cf. UTC Mar. 31, 2014 Comments at 4 (urging “the Commission to find creative ways to increase the budget for the rural broadband experiments” and citing as an example “draw[ing] funds from other programs within the universal service fund in addition to the Connect America Fund”); VTA Mar. 31, 2014 Comments at 2-3 (suggesting the Commission “draw future recurring support from future Connect America Funds”).

²⁹ *Tech Transitions Order*, 29 FCC Rcd at 1476, paras. 124-25.

³⁰ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., FCC 14-54, paras. 35-36 (rel. June 10, 2014) (*Connect America Fund Order and/or FNPRM*).

³¹ See *Tech Transitions Order*, 29 FCC Rcd at 1477, para. 126 (concluding “that providing a longer term of support in the experiment could provide us with valuable information regarding how to elicit greater participation in the Connect America Phase II competitive bidding process in price cap territories, which will help ensure that funding is targeted efficiently to expand broadband-capable infrastructure throughout the country”). We disagree with ITTA’s claim “that it makes little sense to distribute the funding on a recurring basis” if we adopt a budget of \$100 million.

(continued...)

terms would add to the complexity of administering the experiments.

C. Eligibility

1. Eligible Areas

13. In the *USF/ICC Transformation FNPRM*, we 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.³² 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.³³ In the *Tech Transitions Order*, we 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.³⁴ We did so because we were 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.³⁵ 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.³⁶

14. 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, we now conclude that

(Continued from previous page) _____

ITTA Mar. 31, 2014 Comments at 3. We find that gauging competitive interest in how we intend to structure Phase II, even on a smaller scale, will be helpful when making decisions for competitive bidding process.

³² See *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18806, para. 1192.

³³ See, e.g., Comments of the American Cable Association, WC Docket No. 10-90 et al., at 8 (filed Jan. 18, 2012); Comments of CenturyLink, WC Docket No. 10-90 et al., at 12-13 (filed Jan. 18, 2012) (CenturyLink Jan. 18, 2012 Comments); Comments of CTIA—The Wireless Association, WC Docket No. 10-90 et al., at 13 (filed Jan. 18, 2012); Comments of Frontier Corporation, WC Docket No. 10-90 et al., at 14-15 (filed Jan. 18, 2012) (Frontier Jan. 18, 2012 Comments); Comments of the National Cable and Telecommunications Association, WC Docket No. 10-90 et al., at 12 (filed Jan. 18, 2012).

³⁴ *Tech Transitions Order*, 29 FCC Rcd at 1472, para. 111. In some limited circumstances, not all of the locations in a census block will be eligible for support because the cost per location has been calculated on a sub-census-block basis, i.e., a split census block. For example, if only part of a block is served by a given price cap carrier, each carrier's total costs and cost per location are calculated independently. Similarly, if a block is served by multiple wire centers, the cost associated with each wire center is calculated separately. Finally, if a block is served by more than one splitter (node2), the cost is calculated separately. This was done to ensure that a block that includes both low-cost and extremely high-cost locations would not be eligible for support if those costs averaged over the entire block fall into the range where Phase II support is calculated. See CostQuest Associates, Inc., Connect America Cost Model: Model Methodology at 16, n.16 (Apr. 11, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0417/DOC-326628A1.pdf. The list of eligible census blocks that the Bureau will release will identify the number of locations that are eligible for funding in each census block.

³⁵ *Tech Transitions Order*, 29 FCC Rcd at 1472, para. 111. Incumbent carriers had argued that the minimum geographic unit for competitive bidding should be a county. See Letter from Jonathan Banks, Senior Vice President Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 et al. (filed Aug. 29, 2013) (submitting a White Paper titled: "Connect America Fund Phase II: A Proposal for a State-and-County-Based Approach to Reverse Auctions for CAF Phase II Support").

³⁶ *Tech Transitions Order*, 29 FCC Rcd at 1472, para. 111.

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. We recognize that some parties may be able to submit cost-effective proposals that would encompass all of the eligible census blocks within a tract, and we continue 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, we waive the requirement to file proposals at the census tract level.³⁷ By accepting proposals at the census block level, we hope 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.

15. 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.³⁸ We require 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.³⁹

16. 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

³⁷ We do not require these entities to file an individual petition for waiver to avail themselves of this option; rather, we will automatically consider any proposal that does not propose to serve all of the eligible census blocks in a given census tract.

³⁸ Thus, we will not entertain proposals to serve census blocks that are shown on the most current version of the National Broadband Map (data as of June 2013) as served by cable or fixed wireless providers offering 3 Mbps downstream and 768 kbps upstream. For purposes of Connect America Phase II, the Wireline Competition Bureau has already released a list and also a map detailing the eligible census blocks, with the number of locations eligible for funding in each block. See *Wireline Competition Bureau Commences Connect America Phase II Challenge Process*, WC Docket Nos. 10-90, 14-93, Public Notice, DA 14-942 (Wireline Comp Bur. rel. June 30, 2014); see also Federal Communications Commission, *Connect America Phase II – Initial Eligible Areas Map* (updated July 7, 2014), <http://www.fcc.gov/maps/fcc-connect-america-fund-phase-ii-initial-eligible-areas-map>. We direct the Bureau to release the amount of support determined by the model for each block, as well as a list of extremely high-cost census blocks and Tribal census blocks eligible for the rural broadband experiments and the number of locations in each of those blocks, within 15 days of release of this Order.

³⁹ Thus, for instance, if \$5,000 in Phase II support is available for a particular high-cost census block with 50 eligible locations, while an adjacent extremely high-cost census block contains seven extremely high-cost locations, with five of those locations physically adjacent to the eligible census block, a bidder could bid \$5,000 and commit to serve 55 locations (50 locations in the eligible census block and five out of seven of the locations in the extremely high-cost block). See *infra* para. 36.

model-based support to price cap carriers because they are also served by an unsubsidized competitor.⁴⁰ After reviewing the record, we conclude 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.⁴¹ Further, CenturyLink observes that allowing partially-served blocks would require the Commission to adjust model-based support amounts and conduct a challenge process.⁴² Because doing so would add complexity and time, as well as divert Commission attention and resources, we decline 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.

17. We also decide that we will accept rural broadband experiment proposals only from entities that seek to provide service in price cap territories.⁴³ Over the coming months, we will be focused on reviewing the record we will shortly receive regarding near term and longer term reforms to develop a Connect America Fund for rate-of-return carriers. We believe 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.

18. 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.⁴⁴ A number of commenters supported this proposal.⁴⁵ We adopt 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 (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.⁴⁶ We also determine that we will exclude any area funded through the rural broadband experiments from the Phase II competitive bidding process.

19. We conclude that areas served by competitive eligible telecommunications carriers (ETCs) will be eligible for support in the rural broadband experiments. We note that we received a number of expressions of interest from competitive affiliates of rate-of-return carriers operating out of region in price cap territories, and we recognize that these carriers may be interested in submitting rural

⁴⁰ *Tech Transitions Order*, 29 FCC Rcd at 1503, para. 221.

⁴¹ Comments of the National Cable and Telecommunications Association, WC Docket No. 10-90 et al., at 4 (filed Mar. 31, 2014) (NCTA Mar. 31, 2014 Comments).

⁴² CenturyLink Mar. 31, 2014 Comments at 8.

⁴³ To the extent that there is a potential mismatch between the study area boundaries used by the cost model to define the price cap carrier portion of a given census block and the actual boundaries, we prohibit any rural broadband experiment winners from building in the portion of the census block that is served by a rate-of-return incumbent; experiment funding is only to be used in price cap territories.

⁴⁴ *Tech Transitions FNPRM*, 29 FCC Rcd at 1503-04, para. 223.

⁴⁵ See, e.g., CenturyLink Mar. 31, 2014 Comments at 9; ITTA Mar. 31, 2014 Comments at 11; USTelecom Mar. 31, 2014 Comments at 11.

⁴⁶ *Tech Transitions FNPRM*, 29 FCC Rcd at 1503-04, para. 223 n.348.

broadband experiment proposals, alone or in partnership with other entities.⁴⁷ We are 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.

20. 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.⁴⁸ 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. We believe 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

21. We concluded in the *Tech Transitions Order* that we 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.⁴⁹ We were 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.

22. We remind 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.⁵⁰ As stated in the *Tech Transitions Order*, we expect entities to confirm their ETC status within 90 days of the public notice announcing the winning bidders selected to receive funding.⁵¹ 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. We conclude this is necessary so that we 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.⁵²

23. We 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.⁵³ Multiple commenters supported this proposal.⁵⁴ We now conclude that, for purposes of

⁴⁷ See, e.g., Letter from Michael R. Romano, Senior Vice President, NTCA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 1 (filed July 1, 2014).

⁴⁸ *Connect America Fund Order*, FCC 14-54, at paras. 53.

⁴⁹ *Tech Transitions Order*, 29 FCC Rcd at 1474, para. 116.

⁵⁰ *Id.* at 1474-75, para. 118.

⁵¹ *Id.* See also *infra* para. 54.

⁵² See 47 C.F.R. § 1.3. We expect entities selected for funding to submit their ETC applications to the relevant jurisdiction as soon as possible after release of the public notice announcing winning bids, and will presume an entity to have shown good faith if it files its ETC application within 15 days of release of the public notice. A waiver of the 90-day deadline would be appropriate if, for example, if an entity has an ETC application pending with a state, and the state's next meeting at which it would consider the ETC application will occur after the 90-day window.

⁵³ *Tech Transitions FNPRM*, 29 FCC Rcd at 1503, para. 222.

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).⁵⁵ Although we are confident that states share our desire to work cooperatively to advance broadband, and we expect 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, we also recognize 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.⁵⁶

3. Three Types of Experiments

24. 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 our current standards; and \$10 million for projects dedicated to serving extremely high-cost locations. Below, we outline 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.

25. We stated in the *Tech Transitions Order* that our 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.⁵⁷ 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, we 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 than 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,⁵⁸ 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 we expect to make in the coming months regarding proposals set forth in the *Connect America Fund FNPRM*.

26. Given the number of providers that submitted expressions of interest for projects of

(Continued from previous page) _____

⁵⁴ See, e.g., ACA Mar. 31, 2014 Comments at 9; LREC Mar. 28, 2014 Comments at 5; UTC Mar. 31, 2014 Comments at 9.

⁵⁵ See 47 U.S.C. § 214(e)(6).

⁵⁶ See *Connect America Fund FNPRM*, FCC 14-54, at paras. 182-83.

⁵⁷ *Tech Transitions Order*, 29 FCC Rcd at 1473, para. 113.

⁵⁸ *Connect America Fund FNPRM*, FCC 14-54, at paras. 138-152. The current reasonable comparability benchmark for standalone fixed voice services is \$46.96. See *Wireline Competition Bureau Announces Results of Urban Rate Survey for Voice Services; Seeks Comment on Petition for Extension of Time to Comply with New Rate Floor*, WC Docket No. 10-90, Public Notice, DA 14-384 (Wireline Comp. Bur. rel. Mar. 20, 2014). The Bureau has proposed a methodology for a reasonable comparability benchmark for standalone fixed broadband services that deliver 10 Mbps downstream/1 Mbps upstream at a price ranging from \$74.63 to \$77.99, depending on usage. Under an alternative approach, the benchmark for standalone broadband services delivering 10 Mbps/1 Mbps, irrespective of usage, would be \$84.15. See *Wireline Competition Bureau Announces Posting of Broadband Data from Urban Rate Survey and Seeks Comment on Calculation of Reasonable Comparability Benchmark for Broadband Services*, WC Docket No. 10-90, Public Notice, DA 14-944 (Wireline Comp. Bur. rel. June 30, 2014). The Bureau expects to adopt the reasonable comparability benchmark for fixed broadband services in the coming months; for purposes of the rural broadband experiments, we establish an interim presumption for 10 Mbps downstream/1 Mbps upstream service that an entity can charge no more than \$85 for fixed broadband service, pending adoption of a final benchmark. We expect that usage would be available in both peak and non-peak hours. Participants in Phase II are free to offer bundled service offerings in addition to the required standalone offerings.

significant size to deploy fiber to the premises, and to ensure that our budget permits the selection of several such projects to ensure diversity, we make 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.⁵⁹ 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).

27. We 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.

28. We also are 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. We 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.⁶⁰ 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. We expect 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, we hope 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.

29. Satellite providers that are interested in serving extremely high-cost locations may submit proposals for participation in the rural broadband experiments. We recognize, however, that these providers may not be able to satisfy the 100 ms latency standard that we establish for the other two groups. Therefore, we 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

30. In the *Tech Transitions NPRM*, 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.⁶¹ 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.

31. Based on further consideration and our review of the record, we conclude that we should

⁵⁹ If an entity determines it is economically feasible for it to serve locations in extremely high-cost census blocks in addition to locations in funded census blocks, it will be subject to the same service requirements in those extremely high-cost census blocks. See *infra* para. 36.

⁶⁰ For purposes of the rural broadband experiments, only census blocks where all price cap locations are extremely high-cost will be eligible in this third category.

⁶¹ *Tech Transitions FNPRM*, 29 FCC Rcd at 1501, paras. 213-16.

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 we have structured our selection process to choose experiments from three separate categories, we expect to select a diversity of projects in terms of geography and technologies. Recognizing unique challenges in serving Tribal lands, we provide 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, we require 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.

32. We conclude that we should use cost-effectiveness to select applications, and we 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, we 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, we will select applications based on the lowest-cost per location.⁶² We find 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. We 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. We seek more focused comment in the attached 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.

33. 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.⁶³ We conclude that we 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. We recognize that we could potentially extend the availability of broadband-capable networks to more locations if we 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, we also hope 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, we expect 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.

⁶² As discussed below, proposals in categories one and two may include locations in census blocks with costs above the extremely high-cost threshold, although no additional support would be provided to serve these locations. See *infra* para. 36.

⁶³ See, e.g., USTelecom Mar. 31, 2014 Comments at 4-5 (arguing that rural broadband experiments should be evaluated solely on cost-effectiveness); Comments of the Competitive Carriers Association, WC Docket No. 10-90, at 7 (filed Mar. 31, 2014) (agreeing that cost-effectiveness should be primary); Atlantic Tele-Network Mar. 31, 2014 Comments at 3; FTTH Council Americas Mar. 31, 2014 Comments at 5; Comments of SPITwSPOTS, Inc, WC Docket No. 10-90, at 4 (filed Mar. 31, 2014); NCTA Mar. 31, 2014 Comments at 8-9.

34. Some commenters suggest that we should measure cost-effectiveness in relation to broadband speeds.⁶⁴ We conclude that the approach we adopt 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.

35. For purposes of evaluating cost-effectiveness in comparison to the model, among applicants in each of the first two experiment categories, we 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, we will divide the total amount of support requested for each proposal by ten so we can compare proposals to annual model-based support amounts. Then we will calculate each proposal's requested support per location and divide that number by the model-based support per location.⁶⁵ Using these ratios, we 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.⁶⁶

36. 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. We anticipate 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, we 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.⁶⁷ 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.⁶⁸

37. For purposes of evaluating proposals in category three, we will calculate the cost per location, and rank these applications on a dollar requested per location basis, from lowest to highest. We

⁶⁴ See, e.g., BARC Mar. 31, 2014 Comments at 3; LREC Mar. 28, 2014 Comments at 3; UTC Mar. 31, 2014 Comments at 5-6.

⁶⁵ Each proposal's requested support per location will be determined by dividing the total requested support by the number of funded locations within the census blocks (and in the case of split census blocks, also the extremely high-cost locations within the census blocks) the entity proposes to serve, even if the proposal includes census blocks where the total number of locations is greater. See *supra* para. 15.

⁶⁶ In the event we do not exhaust the entire \$75 million budget for the first category due to per project or per entity funding limits, or insufficient amounts remaining in the budget to fund the next ranked project, we will not roll over any unused funds to the second category. Similarly, we will not roll over any unused funding in the second category to the third category.

⁶⁷ See *supra* n.60 (limiting eligibility of extremely high-cost census blocks to those blocks where all locations are extremely high-cost).

⁶⁸ The cost per location will be lower if the project's cost does not increase significantly to serve those locations over the extremely high-cost threshold, and the requested support per location will be lower as well. For example, assume the cost model estimates the annual support available to serve 100 funded locations is \$10,000, i.e., \$100 per location per year. Bidder A proposes serving those 100 funded locations for \$9,000, or \$90 per location. This scores a 0.9 (= \$90/\$100). Bidder B also proposes to serve the 100 funded locations but additionally will serve 10 extremely high-cost locations in an adjacent census block. Bidder B requests \$9,000 to serve these 110 locations, resulting in \$80.18 per location, for a score of 0.818 (= \$80.18/\$100).

will select projects based on the lowest cost per location, until the budget is exhausted.⁶⁹ 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.

38. 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. We do 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, we 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, we 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, we will select the supported project randomly.

2. Measures to Ensure Diversity of Projects

39. Given our interest in testing how a variety of entities use Connect America funds in various geographic locations, and deploy different types of technologies, we find that it will be advantageous to award support to a diverse group of projects within the \$100 million budget.⁷⁰ Below, we adopt 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.

40. *Funding Limits.* There has been a wide variety in the funding amounts requested by interested entities.⁷¹ To preclude one entity or one project from exhausting the entire budget, we place limits on the amount of funding that each project and each entity can receive. With these limits, we balance 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, we expect that the projects that ultimately win support will be geographically diverse.

41. First, we adopt project limits for each experiment category we adopt above to ensure that we award support to multiple projects within each category. We place 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. We choose these numbers to ensure that we are able to select at least two projects in each category, to provide greater diversity.

⁶⁹ The Commission sought comment on whether to limit the support available in areas where the average cost per location is higher than the extremely-high-cost threshold to the amount per location equal to that the extremely high-cost threshold. *Tech Transitions NPRM*, 29 FCC Rcd at 1502, para. 220. While we decline to adopt a hard cap for purposes of these experiments, we reserve the right not to select any projects that significantly exceed that threshold.

⁷⁰ See ACA Mar. 31, 2014 Comments, at 3-4 (suggesting that 25 experiments would be reasonable to administer and “determine the value of new deployment models for robust, scalable broadband networks”); FTTH Council Mar. 31, 2014 Comments, at 4-5 (suggesting that 20 to 30 experiments are “reasonable to administer and will provide a sufficient sample size to test a wide array of business models in areas reflecting a real diversity of geographic and demographic characteristics”).

⁷¹ See Federal Communications Commission, *Rural Broadband Experiments* (updated as of Apr. 25, 2014), <http://www.fcc.gov/encyclopedia/rural-broadband-experiments>.

42. Second, we adopt an overall limit of \$20 million per entity, including its affiliates.⁷² Each entity and its affiliates will be precluded from being awarded more than \$20 million in support across all three experiment categories.⁷³ This limit also applies in situations where an entity is in more than one consortium.⁷⁴

43. *Service to Tribal Lands.* In the *Tech Transitions FNPRM*, we sought comment on including as a selection criterion whether applicants propose to offer high-capacity connectivity to Tribal lands.⁷⁵ Rather than a separate selection criterion that we would have to measure against cost-effectiveness, we now conclude that using a bidding credit is more consistent with the type of objective selection criteria we are adopting for the experiments and the Commission's precedent.⁷⁶ This is consistent with our *Connect America Fund FNPRM*, which sought comment on using bidding credits for service to Tribal lands.⁷⁷

44. For the purposes of the rural broadband experiments, we adopt 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, we direct 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.⁷⁸ Because we are focused on swiftly implementing these experiments, we will not entertain any proposals to modify this list.

3. Mechanics of the Bidding Process

45. To participate in the rural broadband experiments, entities must submit a formal application to the Commission.⁷⁹ The formal application must be submitted no later than 90 days from

⁷² An affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. The term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent. Person is defined to include an individual, partnership, association, joint-stock company, trust, or corporation. 47 U.S.C. §§ 153(2), (39).

⁷³ For example, if an entity is awarded \$18 million in the very high performance standards category, that entity and any of its affiliates would be precluded from winning support for another project that exceeds \$2 million, regardless of whether the second project was also submitted in the very high performance standards category, or was submitted in category two or three.

⁷⁴ For example, if an entity that is part of consortium A wins \$15 million in support for its project because it is one of the most cost-effective projects, and that entity is also part of consortium B (with an entirely different group of entities than consortium A) that submitted a less cost-effective project that requests \$10 million in support, consortium B would be precluded from winning because otherwise the entity that is in both consortia would exceed the \$20 million limit.

⁷⁵ *Tech Transitions FNPRM*, 29 FCC Rcd at 1501, para. 216.

⁷⁶ See *USF/ICC Transformation Order*, 26 FCC Rcd at 17807, para. 430; *Tribal Mobility Fund Phase I Auction Rescheduled for Dec. 19, 2013; Notice and Filing Requirements and Other Procedures for Auction 902*, AU Docket No. 13-53, Public Notice, 28 FCC Rcd at 11628, 11664, paras. 115-19 (Wireless Tel. Bur. and Wireline Comp. Bur. 2013) (*Tribal Mobility Fund Phase I Auction Procedures Public Notice*).

⁷⁷ *Connect America Fund FNPRM*, FCC 14-54, at para. 232.

⁷⁸ See *supra* note 38.

⁷⁹ We expect the Wireline Competition Bureau will implement a process for electronic submission of the formal applications similar to what was used for the Mobility Fund auctions.

the release of the Order.⁸⁰ 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.⁸¹

46. We require 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, we require only one entity in the partnership to be registered with a FRN.

47. 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.

48. Entities must provide the census block IDs for each census block they propose to serve, the number of funded locations and extremely high-cost locations in each of those blocks, and the total amount of support they request.⁸² We note 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.⁸³ Applications with a total request for funding that exceeds the model-based support calculation will not be considered. Therefore, we expect 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

⁸⁰ The contents of the formal application are subject to approval by the Office of Management and Budget under the Paperwork Reduction Act (PRA). We delegate authority to the Bureau to adjust this deadline as necessary to be consistent with the timing of PRA requirements.

⁸¹ Any entity proposing to serve Tribal land areas must demonstrate they have meaningfully engaged the Tribal government(s) in the areas they plan to serve. *See, e.g., USF/ICC Transformation Order*, 26 FCC Rcd at 17822-24, 17858, 17868-69, at paras. 489-92, 604, 636-37 (adopting and describing the Tribal Engagement Obligation).

⁸² As discussed above, entities may include in their proposals locations within extremely high-cost census blocks if they determine it is economically feasible to serve these locations with the amount of support requested. *See supra* para. 36. These entities must also include the census block IDs of those extremely high-cost census blocks, as well as the number of locations they are proposing to serve. We remind entities that the support requested must not exceed the model-determined support for the funded census blocks they are also proposing to serve, even if they choose to serve locations in extremely high-cost census blocks.

⁸³ *Tech Transitions FNPRM*, 29 FCC Rcd at 1502, para. 220.

census blocks.

49. 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.⁸⁴ As we noted in the *Tech Transitions Order*, rural areas are home to a higher proportion of low-income Americans.⁸⁵ We seek 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,⁸⁶ whether it will have a broadband offering for low-income consumers,⁸⁷ and whether it will permit qualifying consumers to apply the Lifeline discount to bundled voice and data services.⁸⁸

50. 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. We conclude 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

51. 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.⁸⁹ To the extent that a challenge is granted in

⁸⁴ In the *Connect America Fund FNPRM*, we sought comment on whether we should exclude from the offer of model-based support areas in which we receive well-developed formal proposals. *Connect America Fund FNPRM*, FCC 14-54, at paras. 220-23. We do not preclude here whether we may adopt such an approach.

⁸⁵ *Tech Transitions Order*, 29 FCC Rcd at 1464, para. 88.

⁸⁶ We note that all ETCs are required to offer Lifeline services to qualifying low income consumers throughout their designated service areas. 47 C.F.R. § 54.405.

⁸⁷ In the *Tech Transitions FNPRM*, we sought comment on requiring recipients of the rural broadband experiments to offer discounted broadband services to low-income customers. *Tech Transitions FNPRM*, 29 FCC Rcd at 1503, para. 222. Recipients of support should offer a discounted broadband plan to low-income households, but we decline to mandate specific requirements for such plans. Rather, the experiments will be an additional learning opportunity to gather more information about the types of low-cost broadband offerings that providers receiving support to extend broadband are willing to offer to low-income households.

⁸⁸ See 47 C.F.R. 54.401(b) (permitting ETCs to allow qualifying consumers to apply the Lifeline discount to voice and data bundles).

⁸⁹ See *Tech Transitions Order*, 29 FCC Rcd at 1473, para. 113. The Commission reasoned that it would not be efficient to conduct a challenge to the eligibility of census blocks within a census tract when formal proposals are initially submitted, which could place a burden on outside parties and Commission staff. *Id.*

whole or in part, funding for those locations will be adjusted proportionately.⁹⁰

52. *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.

53. The Commission has recognized network security as an imperative in technology transitions.⁹¹ 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, we seek to promote the sustainability of rural broadband through early planning to incorporate effective cybersecurity risk management measures. We commit 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.⁹² 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.⁹³

54. Within 10 business days of public notice of winning bidders, we require 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, we require all winning bidders to submit a letter from an acceptable

⁹⁰ For example, if a challenger establishes that one census block in a project actually is served and that census block would be eligible for one tenth of the total model-based support for the proposed areas, the requested support would be reduced by one tenth.

⁹¹ See *Tech Transitions Order*, 29 FCC Rcd at 1448, para. 43 (observing that “[n]etwork security must be maintained in experiments and as technologies evolve”).

⁹² The Commission has a history of working collaboratively with providers of all sizes to encourage the development and implication of sound cybersecurity practices, most notably through multi-stakeholder bodies such as the Communications Security, Reliability and Interoperability Council (CSRIC) and the Technological Advisory Council (TAC), and also was a key participant in the development of the Framework for Improving Critical Infrastructure Cybersecurity related by the National Institute of Standards and Technology in February 2014.

⁹³ This would not preclude the Commission from sharing information, however, as required for law enforcement or national security purposes or otherwise required by Federal law.

bank committing to issue an irrevocable stand-by original letter of credit (LOC) to that entity.⁹⁴ 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.⁹⁵ 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, we require 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 we describe 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.

55. *Requirements for Letters of Credit.* We require a winning bidder to secure an irrevocable stand-by original LOC for its winning project before support will be disbursed.⁹⁶ Our decision to require entities to obtain a LOC is consistent with the requirements we have adopted for other competitive bidding processes we have conducted to distribute Connect America funds, where both existing providers and new entrants were required to obtain LOCs.⁹⁷ 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.⁹⁸ 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 we adopt in this Order, and fails to cure within the requisite time period,⁹⁹ 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.¹⁰⁰ 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.

56. As the Commission found when it established Mobility Fund Phase I,¹⁰¹ 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

⁹⁴ The commitment letter will at a minimum provide the dollar amount of the LOC and the issuing bank's agreement to follow the terms and conditions of the Commission's model LOC, found in Appendix A. The requirements that a bank must meet to be deemed acceptable are described below.

⁹⁵ As discussed above, a winning bidder may file a petition for waiver for this 90-day deadline pursuant to section 1.3 of the Commission's rules if it believes that it will be unable to obtain an ETC designation within this 90-day timeframe due to circumstances outside its control. *See supra* Section III.C.2. *See also* 47 C.F.R. § 1.3. We delegate authority to the Wireline Competition Bureau to act on any such waivers.

⁹⁶ The Commission sought comment on requiring all recipients of Connect America Fund support to post financial security as a condition of receiving support from the Fund, specifically an irrevocable stand-by LOC. *USF/ICC Transformation Order*, 26 FCC Rcd at 18066-68, paras. 1103-16.

⁹⁷ *See USF/ICC Transformation Order*, 26 FCC Rcd at 17810-12, paras. 444-51; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11680, para. 187.

⁹⁸ *See infra* Appendix A. The rules we adopt today provide specific requirements for a bank to be acceptable to the Commission to issue the LOC. Those requirements vary for U.S. banks and non-U.S. banks.

⁹⁹ *See infra* Sections III.E.1. *See also supra* Section III.C.3;

¹⁰⁰ *See infra* Section III.F. While such letter may not foreclose an appeal or challenge by the recipient, it will not prevent a draw on the LOC.

¹⁰¹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-12, para. 444-51.

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.¹⁰² These concerns are relevant to both new entrants and established providers.

57. While our existing accountability measures help ensure that Connect America funds are being used to deploy or sustain broadband and voice-capable networks,¹⁰³ we conclude 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 we see no reason to depart from this practice for the rural broadband experiments.¹⁰⁴ We continue to view them as beneficial and our experience has shown that winning bidders are able to obtain LOCs.

58. *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.¹⁰⁵ 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.¹⁰⁶

¹⁰² As the Commission noted in the *USF/ICC Transformation Order*, in a proper draw upon a LOC, the issuer honors a draft under the LOC from its own assets and not from the assets of the debtor who caused the LOC to be issued. Thus, absent extreme circumstances such as fraud, neither the LOC nor the funds drawn down under it are subject to the automatic stay provided by the Bankruptcy Code. *See id.* at 17812, para. 450 (citing 11 U.S.C. § 541 and *Kellogg v. Blue Quail Energy, Inc.*, 831 F.2d 586, 589 (5th Cir. 1987)).

¹⁰³ When the Commission proposed requiring LOCs for Connect America recipients generally, a number of commenters suggested that the Commission already has adequate safeguards in place by requiring carriers to receive ETC designation, requiring carriers to meet reporting obligations, or through our general forfeiture powers. *See, e.g.,* Comments of Adtran, Inc., WC Docket No. 10-90 et al., at 18 (filed Jan. 18, 2012) (Adtran Jan. 18, 2012 Comments); Comments of ITTA, WC Docket No. 10-90 et al., at 11-13 (filed Jan. 18, 2012) (ITTA Jan. 18, 2012 Comments); Reply Comments of GVNW Consulting, Inc., WC Docket No. 10-90 et al., at 7 (filed Feb. 17, 2012). None of these measures, however, guarantee that the Commission will be able to recover past support disbursements from a defaulting recipient. Other commenters encouraged the Commission to adopt alternative methods of securing Connect America funds, such as performance bonds, field inspections, or denials of certification. *See, e.g.,* Comments of the Satellite Broadband Providers, WC Docket No. 10-90 et al., at 18 (filed Jan. 18, 2012); Comments of the Wireless Internet Service Providers Association, WC Docket No. 10-90 et al., at 15 (filed Jan. 18, 2012); Comments of AT&T, WC Docket No. 10-90 et al., at 31 n.46 (filed Jan. 18, 2012) (AT&T Jan. 18, 2012 Comments); Comments of Alaska Communications Systems Group, Inc., WC Docket No. 10-90 et al., at 14 (filed Jan. 18, 2012); Comments of the Indiana Utility Regulatory Commission, WC Docket No. 10-90 et al., at 7 (filed Jan. 18, 2012) (IURC Jan. 18, 2012 Comments). Based on our experience to date, we conclude that requiring LOCs is an effective means of protecting the government's interests.

¹⁰⁴ *USF/ICC Transformation Order*, 26 FCC Rcd at 17810-12, paras. 443-51; *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11681-82, paras. 188-91.

¹⁰⁵ *See* 47 C.F.R. § 54.1007(b). *See also* *Mobility Fund Phase I Auction Scheduled for Sept. 27, 2012; Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice 27 FCC Rcd 4725, 4771, para. 171 (Wireless Tel. Bur. and Wireline Comp. Bur. 2012) (*Mobility Fund Phase I Auction Procedures Public Notice*); *Tribal Mobility Fund Phase I Auction Procedures Public Notice*, 28 FCC Rcd at 11680, para. 189.

¹⁰⁶ 11 U.S.C. § 541.

59. *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 we adopt are largely the same as the requirements the Commission adopted for Mobility Fund Phase I and Tribal Mobility Fund Phase I, although we adopt several modifications to enlarge the potential pool of eligible banks for purposes of these experiments. First, we require 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). We expand the pool of eligible banks from the top 50 to the top 100 banks for purposes of these rural broadband experiments because we expect the projects to be small in scale,¹⁰⁷ and thus drawing on the LOC is unlikely to exhaust the assets of any bank in the top 100. We have 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 we expect 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 we find that it is beneficial to increase the number of options from which they can choose. We also require 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, we require 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, we will enlarge the pool of eligible issuing banks, without significantly increasing risk to the universal service fund.

60. To provide more flexibility, we also conclude 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). We find that Farm Credit System Insurance Corporation (FCSIC) insurance provides protection that is equivalent to those indicated by holding FDIC-insured deposits.¹⁰⁸ Thus, the agricultural credit bank must have its obligations insured by the FCSIC. The agricultural credit bank must also meet the other requirements that we have 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.¹⁰⁹ 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.¹¹⁰

61. 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. We also reserve the right to temporarily cease disbursements of monthly support until the recipient submits to us a new LOC that meets our

¹⁰⁷ See *supra* Section III.D.2.

¹⁰⁸ The Wireless Telecommunications Bureau reached a similar conclusion in the context of Mobility Fund Phase I. *Mobility Fund Phase I, et al.*, WC Docket No. 10-90, Order, 27 FCC Rcd 13457, 13461, para. 10 (Wireless Tel. Bur. 2012) (*CoBank Waiver Order*).

¹⁰⁹ This determination will be made on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the LOC.

¹¹⁰ The Wireless Telecommunications Bureau granted waiver of the bank eligibility requirements for Mobility Fund Phase I and permitted carriers to obtain LOCs from CoBank. See *CoBank Waiver Order*. CoBank was initially excluded from eligibility because it was not FDIC-insured. *Id.*

requirements.

62. *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.

63. *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.

64. *Costs of Obtaining LOCs.* Now that we have experience with LOCs in the Mobility Fund Phase I and Tribal Mobility Fund Phase I auction, we are confident that winning bidders will be able to secure LOCs. We note 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. We recognize that banks charge fees for obtaining LOCs and also may charge renewal fees. But we find 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.¹¹¹ And as the Commission noted in the *USF/ICC Transformation Order*, LOCs are regularly used in the course of business, and companies that use existing lenders are able to use multiple forms of financing.¹¹² 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. We also note that applicants can factor in the costs of LOCs when submitting their bids.

65. *Applicability to All Winning Bidders.* Our paramount objective is to establish strong safeguards to protect against misuse of the Connect America Fund.¹¹³ We conclude that requiring all

¹¹¹ In response to the *USF/ICC Transformation FNPRM*, a number of commenters suggested that imposing a LOC requirement on Connect America recipients could be costly and may deter parties from seeking Connect America funding. See, e.g., IURC Jan. 18, 2012 Comments at 7; ITTA Jan. 18, 2012 Comments at 11; Frontier Jan. 18, 2012 Comments at 12; Reply Comments of AT&T, WC Docket No. 10-90 et al., at 12 (filed Feb. 17, 2012); Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, WC Docket 10-90 et al., at 43-44 (filed Jan. 18, 2012) (The Rural Associations Jan. 18, 2012 Comments). Some commenters also claimed that banks may require carriers to keep the value of the LOC on deposit with the bank for the time that the LOC is open, and that having open LOCs affect debt ratings and constrain recipients' borrowing capacity. See, e.g., Adtran Jan. 18, 2012 Comments at 16; ITTA Jan. 18, 2012 Comments at 11; Comments of the United States Telecom Association, WC Docket No. 10-90 et al., at 22 (filed Jan. 18, 2012); Comments of United States Cellular Corporation, WC Docket No. 10-90 et al., at 50-51 (filed Jan. 18, 2012) (US Cellular Jan. 18, 2012 Comments); Reply Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance, WC Docket No. 10-90, at 51-52 (filed Feb. 17, 2012).

¹¹² *USF/ICC Transformation Order*, 26 FCC Rcd at 17811, para. 446.

¹¹³ See The National Association of State Utility Consumer Advocates, Maine Office of the Public Advocate, the New Jersey Division of Rate Counsel, and the Utility Reform Network, WC Docket No. 10-90 et al., at 59-60 (filed Jan. 18, 2012) (NASUCA et al. Jan. 18, 2012 Comments).

entities to obtain a LOC is a necessary measure to ensure that we can recover support from any recipient that cannot meet the build-out obligations and public service obligations of the rural broadband experiments. We also agree 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.¹¹⁴

66. We are not persuaded by arguments that we 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.¹¹⁵ 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. We find 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.

67. *Tribal Nations and Tribally-Owned Applicants.* Based on our experience in implementing LOCs for Mobility Fund Phase I and Tribal Mobility Fund Phase I, we recognize 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.¹¹⁶ 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.¹¹⁷ We find that such situations with respect to Tribal Nations are best handled on a case-by-case basis through the waiver process.¹¹⁸

68. 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, we conclude that it will be manageable to address this situation on a waiver basis if such entities become winning bidders.

¹¹⁴ See, e.g., US Cellular Jan. 18, 2012 Comments at 51 (urging the Commission, if it chooses to adopt a LOCs requirement, to apply the requirement "in a uniform manner, so that all funding recipients face the same consequences in the event of non-compliance"). See *infra* Section III.F.

¹¹⁵ See, e.g., ARC Mar. 31, 2014 Comments at 16; AT&T Jan. 18, 2012 Comments at 30-31; Frontier Jan. 18, 2012 Comments at 11-12; CenturyLink Jan. 18, 2012 Comments at 11.

¹¹⁶ We note that Standing Rock Telecommunications, Inc., a Tribally-owned entity, was able to obtain a LOC for the Mobility Fund Phase I auction after receiving a four week extension to obtain a bank commitment letter. *Standing Rock Telecommunications, Inc. Request for Limited Extension of Time to Submit Bank Commitment Letter for Mobility Fund Phase I Support*, Order, 28 FCC Rcd 12853 (Wireless Tel. Bur. 2013).

¹¹⁷ Navajo Nation Telecommunications Regulatory Commission, WC Docket No. 10-90 et al., at 8 n.22 (filed Mar. 31, 2014) (stating that Tribally-owned entities have difficulty obtaining financing instruments "because they are unable to provide collateral, since so many Tribal assets are held in trust by the federal government").

¹¹⁸ 47 C.F.R. § 1.3.

69. *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. We also adopt 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.¹¹⁹

70. 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.

71. Moreover, we are not persuaded that LOCs raise due process concerns.¹²⁰ 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 we discuss 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

72. 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”¹²¹ The Commission also sought comment on whether it should adopt any rules or requirements specific to the rural broadband experiments.¹²² Here, we adopt several conditions that winning bidders must meet to receive rural broadband experiment support. The conditions we adopt 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 we can leverage when making key policy decisions

¹¹⁹ See NASUCA et al. Jan. 18, 2012 Comments at 60 (stating that they did not oppose the Commission giving recipients the opportunity to cure deficiencies).

¹²⁰ Comments of the Blooston Rural Broadband Carriers, WC Docket 10-90 et al., at 11-12 (filed Jan. 18, 2012); The Rural Associations Jan. 18, 2012 Comments at 44-45.

¹²¹ *Tech Transitions Order*, 29 FCC Rcd at 1477, para. 128. The Commission noted that such relevant universal service rules included but were not limited to “ETC requirements to the extent that they apply to recipients of high-cost and Lifeline support, reporting requirements, audits, and enforcement mechanisms for non-compliance with rules.” *Id.* Similarly, all Connect America recipients, including participants in the rural broadband experiments, are required to demonstrate on an annual basis that they have meaningfully engaged Tribal governments in their supported areas. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17868, para. 637; 47 C.F.R. § 54.313(a)(9). Moreover, all recipients of Connect America support, including participants in the rural broadband experiments, and are expected to engage with community anchor institutions in the network planning stages and are required to report on the community anchor institutions that newly gain access to fixed broadband service in their project areas. *USF/ICC Transformation Order*, 26 FCC Rcd at 17700-01, para. 102; 47 C.F.R. §§ 54.313(e)(3)(ii), (f)(1)(ii). See also *infra* Section III.E.2.

¹²² *Tech Transitions FNPRM*, 29 FCC Rcd at 1503, para. 222.

regarding both universal service and technology transitions.

1. Build-Out Requirements

73. We require winning bidders to meet certain build-out requirements during their support term. Consistent with the build-out requirements we have already adopted for the Connect America Fund,¹²³ we find 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.

74. *Build-Out Requirements for all Recipients.* As we discuss 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 we have adopted for the Phase II competitive bidding process.¹²⁴ 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.¹²⁵ During this support term, the recipients will be required to meet interim build-out requirements consistent with the build-out requirements we have adopted generally for recipients of Connect America Phase II funding.¹²⁶ By the end of the third year, the recipients must offer service meeting the public service obligations we 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 we 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.

75. *Accelerated Disbursement Option.* Although we adopt 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 we can learn from these deployments and leverage that knowledge when making policy decisions regarding technology transitions,¹²⁷ we also provide 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, we 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, we require 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).

¹²³ *USF/ICC Transformation Order*, 26 FCC Rcd at 17701, para. 103.

¹²⁴ *Connect America Fund Order*, FCC 14-54, at paras. 34-36.

¹²⁵ *See supra* Section III.D.4.

¹²⁶ 47 C.F.R. § 54.310(c).

¹²⁷ ACA Mar. 31, 2014 Comments at 3-4; Letter from Thomas W. Cohen, Counsel for Fiber to the Home Council Americas, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90, at 1 (filed May 29, 2014).

2. Accountability Requirements

76. 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.¹²⁸ Here, we provide more details regarding the framework for accountability that we adopt for recipients of the rural broadband experiments. The reports, certifications, and other accountability measures we adopt serve a dual purpose. First, a framework for accountability “is critical to ensure appropriate use of high-cost support” and allows us to detect and deter waste, fraud, and abuse.¹²⁹ Second, the framework we adopt below will permit us to quickly gather data about how the experiment funds are being put to use, which will inform policy decisions we ultimately make for Phase II and our other universal service programs.

77. *Annual Reports.* All recipients of Connect America support are required to file an annual report pursuant to section 54.313 of the Commission’s rules by July 1st of each year.¹³⁰ This requirement also applies to recipients of support in the rural broadband experiments. We find there is good cause, however, to waive on our own motion section 54.313(a)(1) of the Commission’s rules for recipients of rural broadband experiment support.¹³¹ Because we adopt other requirements for the rural broadband experiments recipients that will ensure that we will be kept apprised of their build-out progress, we find that it is unnecessary to require these entities to file a five-year service quality plan.

78. As we require of price cap carriers accepting model-based support, we also require 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.¹³² Recipients may use the approach adopted in the Bureau’s *Phase II Service Obligations Order* to measure latency.¹³³

79. In addition, because these rural broadband experiments represent the first implementation of Phase II of the Connect America Fund, we require 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.¹³⁴ We conclude 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.¹³⁵

¹²⁸ *Tech Transitions Order*, 29 FCC Rcd at 1477, para. 128.

¹²⁹ *USF/ICC Transformation Order*, 26 FCC Rcd at 17850, para. 573.

¹³⁰ 47 C.F.R. §§ 54.313(a), (j). All required reports and certifications must be filed in WC Docket No. 14-58. Recipients will need to continue to file these reports until the year after their support term ends. Thus, recipients of will file their last report by July 1st following their tenth year of support.

¹³¹ See 47 C.F.R. §§ 1.3, 54.313(a)(1).

¹³² In lieu of this requirement, any satellite providers that are winning bidders in category three may submit an annual certification that they are delivering service with a MOS of four or better.

¹³³ *Connect America Fund*, WC Docket No. 10-90, Order, 28 FCC Rcd 15060, 15069-75, paras. 19-36 (Wireline Comp. Bur. 2013) (*Phase II Service Obligations Order*).

¹³⁴ 47 C.F.R. § 54.313(e)(3)(ii).

¹³⁵ *Tech Transitions Order*, 29 FCC Rcd at 1467, para. 96. Moreover, we reiterate, as for all recipients of Connect America support, we expect that experiment recipients will likely offer broadband at greater speeds to the community anchor institutions in their project areas and that they will engage with community anchor institutions in the network planning stages. *USF/ICC Transformation Order*, 26 FCC Rcd at 17700-01, para. 102.

80. We 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.¹³⁶ 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, we require all recipients of the rural broadband experiments to file with their annual reports evidence demonstrating to which locations they have deployed facilities.¹³⁷ This information must be current as of the June 1st immediately preceding the July 1st deadline.¹³⁸ 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.¹³⁹ The materials must at least detail the pricing, offered broadband speed, and data usage allowances available in the relevant geographic area.

81. To ensure that rural broadband experiment funds are being used for their intended purposes, we also find that it would be helpful to monitor the recipients' progress in deploying their networks prior to the deadline for the first annual report, which we anticipate will be July 2016.¹⁴⁰ Thus, we will require all recipients to file an interim report on the November 1st after they receive their first disbursement.¹⁴¹ 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.¹⁴² 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.

82. *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 section 54.314 of the Commission's rules stating that "all federal high-

¹³⁶ *Tech Transitions Order*, 29 FCC Rcd at 1466, para. 94.

¹³⁷ Recipients should ensure that the submission of this data protects customer privacy consistent with applicable privacy laws and regulations. *See, e.g.*, 47 U.S.C. § 222; 47 C.F.R. §§ 64.2001-64.2011. Providers should also consider the applicability of the Electronic Communications Privacy Act as well as prohibitions related to customer privacy described in 47 U.S.C. § 551. *See* 18 U.S.C. § 2702(a)(3), (c); 47 U.S.C. § 551. This is not an exhaustive list of statutes and regulations related to subscriber privacy. Each provider must exercise its own due diligence in ensuring its submissions comply with applicable law.

¹³⁸ Thus if an annual report is filed July 1, 2016, the data must include all locations that the recipient has deployed to as of June 1, 2016.

¹³⁹ *See supra* Section III.C.3.

¹⁴⁰ We expect that winning bidders will be identified before the end of 2014 and authorized to receive support in the first half of 2015. Because an entity must submit information and certifications related to the preceding year in its annual report, the first annual report would be due in July 2016.

¹⁴¹ Thus recipients that begin receiving support in early 2015 will file this report on November 1, 2015. The data that will need to be submitted must reflect all locations that the recipient has deployed to as of September 30, 2015.

¹⁴² *See supra* Section III.C.3.

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.”¹⁴³ 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.¹⁴⁴

83. We also require experiment recipients to certify when they have met the build-out requirements defined above.¹⁴⁵ 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.¹⁴⁶ 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 we describe 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. We expect 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.

84. *Compliance Reviews.* We reiterate that all recipients of rural broadband experiment support are subject to compliance reviews and other investigations so that we can detect and deter waste, fraud, and abuse, and ensure that rural broadband experiment support is being used for its intended purpose.¹⁴⁷

85. *Record Retention.* We also reiterate that rural broadband experiment recipients are subject to the 10 year record retention requirement adopted in the *USF/ICC Transformation Order*.¹⁴⁸ This requirement will ensure that documents related to the experiments are available to facilitate USAC audits and other oversight measures.

3. Data Gathering

86. 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.¹⁴⁹ 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.¹⁵⁰ We find that collecting data from the rural broadband experiments would similarly help

¹⁴³ 47 C.F.R. § 54.314(b).

¹⁴⁴ 47 C.F.R. § 54.314(a).

¹⁴⁵ The Commission adopted build-out certification requirements for recipients of Connect America Phase I and Phase II funding, and Mobility Fund Phase I. See 47 C.F.R. §§ 54.313(b)-(c), (e), 54.1008(b); see also *supra* Section III.E.1.

¹⁴⁶ See *supra* Section III.E.1.

¹⁴⁷ *Tech Transitions Order*, 29 FCC Rcd at 1477, para. 126; 47 C.F.R. § 54.320(a).

¹⁴⁸ *USF/ICC Transformation Order*, 26 FCC Rcd at 17864, paras. 620-21; 47 C.F.R. § 54.320(b).

¹⁴⁹ *Tech Transitions Order*, 29 FCC Rcd at 1458, para. 73.

¹⁵⁰ *Tech Transitions FNPRM*, 29 FCC Rcd at 1503, para. 222. The Commission adopted service-based experiments in the *Tech Transitions Order* “to advance new network technologies and learn how best to protect and enhance the

(continued....)

us answer some of the key policy questions we identified in the *Tech Transitions Order*.¹⁵¹ We therefore require 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.

87. As the Wireline Competition 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. We believe 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, we expect 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. We note 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.¹⁵²

F. Measures to Ensure Compliance

88. 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."¹⁵³ Here, we adopt specific measures to ensure participants meet the terms and conditions of the rural broadband experiments.

89. 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.¹⁵⁴ Thus, here we adopt 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. We also note that we intend to enforce the terms and conditions vigorously.

(Continued from previous page) _____
core statutory values of public safety, universal access, competition, and consumer protection when the time comes that legacy systems may no longer be available." *Tech Transitions Order*, 29 FCC Rcd at 1446-62, paras. 37-81.

¹⁵¹ *Tech Transitions Order*, 29 FCC Rcd at 1466-67, paras. 94-97.

¹⁵² See, e.g., 47 U.S.C. § 222; 47 C.F.R. §§ 64.2001-64.2011. Providers should also consider the applicability of the Electronic Communications Privacy Act as well as prohibitions related to customer privacy described in 47 U.S.C. § 551. See 18 U.S.C. § 2702(a)(3), (c); 47 U.S.C. § 551. This is not an exhaustive list of statutes and regulations related to subscriber privacy. Each provider must exercise its own due diligence in ensuring its submissions comply with applicable law.

¹⁵³ *Tech Transitions Order*, 29 FCC Rcd at 1477, para. 128. In the *USF/ICC Transformation Order*, the Commission adopted a rule requiring support reductions in the event that recipients of Connect America support failed to file the required reports and certifications on time. *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17862, para. 617; 47 C.F.R. §§ 54.313(j), 54.314(d). The Commission also adopted a rule that entities receiving high-cost support, including Connect America support, would "receive reduced support should they fail to fulfill their public interest obligations." *USF/ICC Transformation Order*, 26 FCC Rcd at 17863, para. 618; 47 C.F.R. § 54.320(c).

¹⁵⁴ *Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight et al.*, WC Docket No. 05-195 et al., Report and Order, 22 FCC Rcd 16372, 16386, para. 30 (2007).

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.

90. *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,¹⁵⁵ or the winning bidder failed to keep open and renew its LOC as required above,¹⁵⁶ it will be a performance default.¹⁵⁷ 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 we have adopted for the experiments, including speed, latency, data usage, and reasonably comparable pricing.¹⁵⁸ We expect 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.

91. 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.¹⁵⁹

92. *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.

93. 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.¹⁶⁰ If after USAC recovers the support under the LOC, the winning bidder is able to

¹⁵⁵ See *supra* Section III.E.1.

¹⁵⁶ See *supra* Section III.D.4.

¹⁵⁷ There are a number of different ways that a default could come to the Commission's attention. For example, the winning bidder may be unable to make the required certifications that it is in compliance, a Commission or USAC compliance review or a Commission investigation may show that the bidder is not in compliance, or an outside party like a customer or competitor may report to the Commission or USAC that the winning bidder has failed to meet the experiment's terms and conditions. In all cases, the Bureau will release a letter finding default before USAC draws on the LOC.

¹⁵⁸ See *supra* Section III.C.3.

¹⁵⁹ As we discuss above, the Wireline Competition Bureau has specified how price cap carriers that accept model-based support may demonstrate that they are meeting the Commission's latency requirements. See *supra* Section III.E.2. See also *Phase II Service Obligations Order*, 28 FCC Rcd at 15068-75, paras. 19-36. Recipients of funding in the rural broadband experiments may use the same approach to demonstrate they are meeting latency requirements. The Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology have not adopted a methodology to test compliance with the Commission's other public interest obligations. *USF/ICC Transformation Order*, 26 FCC Rcd at 17708, para. 112.

¹⁶⁰ See *supra* Section III.D.4.

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.

94. *Forfeiture.* To further impress upon recipients the importance of complying with the rural broadband experiments' terms and conditions, we note that we will enforce these requirements vigorously. The Enforcement Bureau may initiate an enforcement proceeding in the event of a default or after the Wireline Competition 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.¹⁶¹

95. *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 section 1.3 of the Commission's rules.¹⁶² The petitioning entity will then have the cure period described above to meet the terms and conditions of the experiment. We encourage 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. We note 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. We expect 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.

96. *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.¹⁶³ 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

¹⁶¹ 47 C.F.R. § 1.80(b)(8).

¹⁶² Generally, the Commission's rules may be waived if good cause is shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *Northeast Cellular*, 897 F.2d at 1166.

¹⁶³ See 47 C.F.R. §§ 54.313(j), 54.314(d). In the *Connect America Fund FNPRM*, the Commission proposed to modify these support reductions. See *Connect America Fund FNPRM*, FCC 14-54, at paras. 318-325. If those proposals are adopted, the rules would apply to recipients of support through the rural broadband experiments as well as other recipients of high-cost support.

disqualification from future competitive bidding for universal service support.¹⁶⁴

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

97. The Commission recognized in the *USF/ICC Transformation Order* that universal service is a shared Federal and state responsibility, and that “it is critical to our reforms’ success that states remain key partners even as these programs evolve and traditional roles shift.”¹⁶⁵ We sought comment in the *Tech Transitions FNPRM* on how to leverage non-Federal governmental sources of funding for the rural broadband experiments,¹⁶⁶ but did not receive a sufficient record to enable us to resolve the implementation details associated with this proposal. We remain committed to working with our state and other governmental partners to advance our mutually shared goals of preserving voice service and extending broadband-capable infrastructure to consumers across the nation. We thus wish to further explore how best to maximize the reach of our existing Connect America budget and leverage non-Federal funding to extend broadband to as many households as possible.

98. We now seek more focused comment on how to create inducements for state action to assist in the expansion of broadband. We seek comment on providing bidding credits in the Phase II competitive bidding process that will occur after the offer of model-based support to price cap carriers in order to create incentives for states to share financial responsibility for preserving and extending broadband-capable infrastructure. In particular, we seek comment on providing a bidding credit to any bidder that is leveraging governmental support from non-Federal sources to lower the amount of funding requested from the Connect America Fund. For example, we could provide a 10 percent bidding credit in situations where an applicant has obtained a commitment from a non-Federal government entity to match Federal dollars on a four-to-one basis, and a 5 percent bidding credit an applicant has obtained a commitment to match Federal dollars on an eight-to-one basis.¹⁶⁷ If we were to adopt such a bidding credit, what documentation would the bidder need to provide when submitting its bid so that the Commission could confirm its eligibility for the bidding credit? For instance, should the bidder be required to provide a letter indicating that non-Federal funding has been authorized, contingent on the entity being a winning bidder?

99. For purposes of awarding such a bidding credit, we propose to consider all forms of non-Federal assistance, including but not limited to support from a state universal service fund, state broadband authority, other state institutions that provide funding for communications infrastructure development, appropriated funds, regional and local governmental authorities, or Tribal government funding. We seek comment on this proposal.¹⁶⁸

100. In order to qualify for the bidding credit, must the matching funds be in the form of a grant, or should we also provide a credit if the bidder has a commitment for a loan from the relevant state

¹⁶⁴ See 47 C.F.R. §§ 1.21004, 54.320.

¹⁶⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17671, para. 15.

¹⁶⁶ *Tech Transitions FNPRM*, 29 FCC Rcd at 1501, para. 215

¹⁶⁷ Thus, if a bidder is seeking \$20 million in Federal support and demonstrates the availability of \$5 million of state funding, it would get a 10 percent bidding credit, which effectively lowers its bid to \$18 million for purposes of comparison to other bids. If a bidder is seeking \$20 million in Federal support and demonstrates the availability of \$2.5 million in state funding, it would get a 5 percent bidding credit, which would lower its effective bid to \$19 million for purposes of comparison to other bids.

¹⁶⁸ We note that for purposes of the Healthcare Connect Fund, we require health care providers to contribute 35 percent of the cost of services and infrastructure, and allow providers to utilize state grants, funding, or appropriations; Federal funding, grants, loans or appropriations except for other Federal universal service funds; Tribal governmental funding; and other grant funding, including private grants, as their required contribution. 47 C.F.R. § 54.633. See also TCA Comments, WC Docket 10-90, at 3-4 (filed March 31, 2014) (urging Commission to require that the funding amount requested be no more than 75 percent of the total cost to deploy the network).

or other non-Federal governmental authority?

101. As an alternative, should we award a bidding credit to any bidder in a state that is a net donor to the universal service fund?¹⁶⁹ This would be simple to administer and would provide one means of creating greater equity between states in terms of their respective net draws from the fund. If we were to adopt such an approach, we propose to utilize the most recent Universal Service Monitoring Report to determine which states are net donors.

V. PROCEDURAL MATTERS

A. Paperwork Reduction Analysis

102. 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, we note that pursuant to the Small Business Paperwork Relief Act of 2002,¹⁷⁰ we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA) in Appendix B, *infra*.

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

B. Congressional Review Act

104. The Commission will send a copy of this Report and Order and Further Notice of Proposed Rulemaking to Congress and the Government Accountability Office pursuant to the Congressional Review Act.¹⁷¹

C. Final Regulatory Flexibility Analysis

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

D. Initial Regulatory Flexibility Analysis

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

¹⁶⁹ See Comments of California Public Utility Commission, WC Docket 10-90, at 5-6 (filed Mar. 28, 2014).

¹⁷⁰ Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

¹⁷¹ *See* 5 U.S.C. § 801(a)(1)(A).

the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

E. Filing Requirements

107. *Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,¹⁷² interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).¹⁷³

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

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

109. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be publically available online via ECFS.¹⁷⁴ These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

110. *Additional Information.* For additional information on this proceeding, contact Alexander Minard of the Wireline Competition Bureau, Telecommunications Access Policy Division, Alexander.Minard@fcc.gov, (202) 418-7400.

VI. ORDERING CLAUSES

111. 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 this Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 10-90 and WC Docket No. 14-58 IS ADOPTED, effective thirty (30) days after publication of the text or summary

¹⁷² 47 C.F.R. §§ 1.415, 1.419.

¹⁷³ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

¹⁷⁴ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

thereof in the Federal Register, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the Federal Register of OMB approval.

112. IT IS FURTHER ORDERED, that, pursuant to the authority contained in sections 1, 2, 4(i), 218-220, 214, 254, 303(r), 403 of the Communications Act of 1934 as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 152, 154(i), 214, 218-220, 254, 303(r), 403, and 1302, and sections 1.1 and 1.421 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.42, NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this Further Notice of Proposed Rulemaking.

113. IT IS FURTHER ORDERED, that pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the Commission waives on its own motion section 54.313(a)(1) of the Commission's rules, 47 C.F.R. § 54.313(a)(1) for all recipients of the rural broadband experiments.

114. IT IS FURTHER ORDERED, that the Commission SHALL SEND a copy of this 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).

115. IT IS FURTHER ORDERED, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 10-90 and WC Docket No. 14-58, including the Further Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
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DA 14-1772

Released: December 5, 2014

WIRELINE COMPETITION BUREAU ANNOUNCES ENTITIES PROVISIONALLY SELECTED FOR RURAL BROADBAND EXPERIMENTS; SETS DEADLINES FOR SUBMISSION OF ADDITIONAL INFORMATION

WC Docket No. 10-90

On November 7, 2014, the Federal Communications Commission closed the application window for the rural broadband experiments. By this date, applicants were required to complete FCC Form 5610 and attach project bid forms, a descriptive data form listing all of their proposed projects, and certain other project information.¹ Subsequently, the FCC Auction System ranked the submitted bids meeting requirements for the rural broadband experiments from the most cost-effective to the least cost-effective within each funding category.

This Public Notice announces the bidders that have been provisionally selected for funding in each category, subject to the post-selection review process. Each identified bidder must complete certain steps in order to be authorized to receive Connect America Fund support for its rural broadband experiment.

Attachment A provides summary information concerning the provisionally selected bidders, including the number of project bids, the states in which these proposed projects are located, the total amount of support requested for these projects, and the total number of census blocks covered by these projects.² These bidders are seeking support to serve diverse geographic areas with different cost characteristics. Collectively, they have bid on support to cover 26,867 census blocks in 25 states and Puerto Rico³:

¹ *Wireline Competition Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 10016, 10020, 10028-29, paras. 16-17, 36 (Wireline Comp. Bur. 2014).

² Additional information about the proposals of the provisionally selected bidders will be released at a future date.

³ A number of the census blocks that provisionally selected bidders seek to serve are the subject of a pending challenge in the Phase II challenge process. *See id.* at 10035-36, paras. 64-66. The Wireline Competition Bureau is currently reviewing the challenges and responses received in the Phase II challenge process to determine whether a census block or blocks that a selected bidder proposed to serve should be deemed ineligible for rural broadband experiment funding. In the event that census blocks are deemed ineligible for rural broadband experiment funding, support for any project selected for funding that includes such census blocks will be adjusted proportionally. *See Connect America Fund: ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8786-87, para. 51 (2014) (*Rural Broadband Experiments Order*).

- 19 entities seeking support to build networks that are capable of delivering 100 Mbps downstream and 25 Mbps upstream to all locations⁴ in the project census blocks in Arkansas, California, Colorado, Delaware, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Puerto Rico, and Texas.⁵
- 12 entities seeking support to build networks capable of delivering 10 Mbps downstream and 1 Mbps upstream to all locations in the project census blocks in Colorado, Idaho, Iowa, Kansas, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Texas, Virginia, and Washington.
- 9 entities seeking support to build networks capable of delivering 10 Mbps downstream and 1 Mbps upstream to all locations in project census blocks that are extremely costly to serve in California, Illinois, Maryland, Michigan, North Dakota, Kansas, South Dakota, and Texas.

With the release of this Public Notice, the post-selection review process for these bidders now begins. The Bureau is required to 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.⁶ We emphasize that selected bidders are required to deliver the required minimum speeds to all locations within the funded census blocks.⁷

Attachment B provides instructions for these entities on how to complete FCC Form 5620 and upload their post-selection review attachments. The identified bidders are required, within 10 business days of this Public Notice, to submit 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.⁸ Entities proposing to use wireless technologies also must provide a description of spectrum access in the areas for which the applicant seeks support.⁹ The bidders identified in Attachment A are required to submit these materials by **Friday, December 19, 2014 at 11:59p.m. EST**. Failure to submit the requested materials by this deadline will constitute a default, and the bidder will no longer be considered for the identified rural broadband experiment.

Finally, we note that three bidders that initially appeared on the provisionally selected bidders list for funding category one submitted project bids that were facially non-compliant with the requirements

⁴ For purposes of this Public Notice and the associated attachments, “all locations” refers to all price cap locations in each census block.

⁵ Bidders in this category must offer at least one service plan that provides 25 Mbps downstream/5 Mbps upstream to all locations within the selected census blocks. *See Rural Broadband Experiments Order*, 29 FCC Rcd at 8779-80, para. 26.

⁶ *Id.* at 8787, para. 52.

⁷ Under the Commission’s rules, recipients of support are required annually to provide the results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology. 47 C.F.R. § 54.313(a)(11). The Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology (together, the Bureaus) recently sought comment to further develop the record on a proposed methodology for high-cost recipients to measure and report speed and latency performance to fixed locations. The Bureaus have proposed that recipients be required to perform tests at least once an hour during peak period over a four-week period, with 95% of the observations at or above the required minimum speed. *See Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology Seek Comment on Proposed Methodology for Connect America High-Cost Universal Service Support Recipients to Measure and Report Speed and Latency Performance to Fixed Locations*, WC Docket No. 10-90, Public Notice, DA 14-1499 (rel. Oct. 16, 2014).

⁸ *See Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-88, para. 54.

⁹ *Id.*

for this category.¹⁰ Those three bidders were removed from consideration, and the FCC Auction System produced the provisionally selected bidders shown on Attachment A.

One of these bidders, ViaSat, Inc., sought a waiver of the Commission's 100 millisecond (ms) latency standard for categories one and two. We deny ViaSat's waiver request for the rural broadband experiments, without prejudice to ViaSat's submission of this request into the docket for further consideration for the Phase II competitive bidding process that will occur to the extent price cap carriers decline the offer of Phase II model-based support. We are not convinced that ViaSat has demonstrated that special circumstances warrant a deviation of the rural broadband experiment rules established for categories one and two, and that waiving the rules for categories one and two would serve the public interest.¹¹ ViaSat's petition raises issues that warrant further consideration with public input for the Phase II competitive bidding process, which remains pending, but we conclude that waiving one of the core requirements for one bidder in the rural broadband experiments without public input after the close of the filing window would be prejudicial to the integrity of the competitive bidding process.¹²

For additional information on this proceeding, contact Ian Forbes (Ian.Forbes@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

– FCC –

¹⁰ Two of these bidders proposed to offer service not meeting the required speeds for category one.

¹¹ See 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² Because ViaSat submitted its waiver request in its FCC Form 5610 submitted into the FCC Auction System, rather than separately in the docket, other bidders and the general public have not had the opportunity to provide input on the request.

**ATTACHMENT A
PROVISIONALLY SELECTED BIDDERS**

Category One

Bidder Name	State(s)	Selected Bids	Support Requested for Selected Bids	Census Blocks Covered by Selected Bids	Selected Bid Project IDs
Airnorth Communications, Inc.	MI	16	\$1,990,400.00	1,187	1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 15, 16, 17, 18
Brainstorm Internet Inc.	CO	1	\$1,737,648.00	332	3
Broad Valley Micro Fiber Networks Inc.	DE	1	\$110,000.00	33	1
Cricelli, Inc.	CA	3	\$522,300.00	666	1, 2, 3
Donnell, Michael D. (d/b/a San Joaquin Broadband)	CA	4	\$14,833,187.00	2,585	1, 3, 4, 5
Halstad Telephone Company	ND	1	\$303,760.00	72	2
Lake County d/b/a Lake Connections	MN	1	\$3,499,965.00	847	1
Liberty Cablevision of Puerto Rico, LLC	PR	2	\$41,831.15	3	3, 15
LTD Broadband LLC	IA, MN	1	\$20,000,000.00	10,122	1
NCRESA	MI	1	\$500,000.00	328	1
New Lisbon Telephone Company	IN	1	\$37,695.60	7	3
Northeast Rural Services, Inc.	OK	6	\$1,029,274.00	107	1, 4, 6, 8, 10, 12
Rural Broadband Services Corporation, Inc.	OK	1	\$17,500,648.00	2,829	1
Skybeam, LLC	IA, NE, IL, KS, TX	7	\$8,839,194.00	2,839	2, 3, 4, 7, 8, 10, 11
Southwest Arkansas Telephone Cooperative	AR	2	\$17,420.00	2	1, 2
Terastream Broadband (USA), Inc.	NM	1	\$1.00	149	1
Tower Communications LLC	AR	1	\$3,191,090.40	727	1
Valley Electric Association, Inc.	NV	2	\$527,326.00	35	1, 2
Wichita Online, Inc.	OK	1	\$314,633.00	55	1
	Totals	53	\$74,996,373.15	22,925	

Category Two

Bidder Name	State(s)	Selected Bids	Support Requested for Selected Bids	Census Blocks Covered by Selected Bids	Selected Bid Project IDs
Agile Network Builders, LLC	OH	1	\$3,224,400.00	687	3
Airnorth Communications, Inc.	MI	2	\$420,000.00	199	8, 9
Allamakee-Clayton Electric Cooperative, Inc.	IA	4	\$1,453,593.00	209	1, 2, 3, 4
Big Bend Telecom, LTD	TX	1	\$14,800.00	2	8
Chaffee County Telecom, LLC	CO	2	\$2,586,882.00	563	3, 4
Cloudwyze Inc.	NC	1	\$23,000.00	1	1
Crystal Broadband Networks, Inc.	KY	1	\$427,361.00	34	1
Declaration Networks Group, Inc.	VA	3	\$1,246,052.00	470	1, 2, 3
First Step Internet, LLC	ID, WA	1	\$415,855.00	116	1
Giant Communications, Inc.	KS	1	\$650,000.00	85	1
Mercury Wireless, Inc.	KS	1	\$4,450,000.00	910	1
Meriweather Lewis Electric Cooperative	TN	1	\$41,600.00	5	3
	Totals	19	\$14,953,543.00	3,281	

Category Three

Bidder Name	State(s)	Selected Bids	Support Requested for Selected Bids	Census Blocks Covered by Selected Bids	Selected Bid Project IDs
Big Bend Telecom, LTD	TX	4	\$163,625.00	13	7, 9, 11, 13
Consolidated Communications Networks, Inc.	ND	1	\$3,096,810.00	103	2
De Novo Group	CA	2	\$609,600.00	24	2
Delta Communications LLC	IL	1	\$2,196,000.00	78	108, 109
Last Mile Broadband LLC	MD	2	\$260,000.00	8	3, 4
Lennon Telephone Company	MI	1	\$60,000.00	2	3
Mercury Wireless Inc.	KS	1	\$250,000.00	141	2
Northern Valley Communications, LLC	SD	1	\$2,022,120.00	258	2
Worldcall Interconnect Inc.	TX	1	\$850,000.00	34	9
	Totals	14	\$9,508,155.00	661	

ATTACHMENT B
FORM 5620 FILING INSTRUCTIONS

This attachment provides instructions for the identified selected bidders to complete and file materials for the rural broadband experiments post-selection review process using FCC Form 5620.

I. APPLICATION PREPARATION

The identified bidders are reminded that they must submit certain information by specific deadlines, discussed in greater detail below. Failure to meet any of these deadlines or provide the requisite information to enable the Bureau to fully and thoroughly conduct its post-selection review will result in default, with those bidders no longer under consideration for rural broadband experiments support.

A. Logging On

To submit attachments for the post-selection review process using the electronic FCC Form 5620, the identified bidder should open its web browser and navigate to either <http://auctions.fcc.gov/> or <http://auctions2.fcc.gov/>. Once on the FCC Auction System page, the bidder must log in using the same applicant FCC Registration Number (FRN) and password that was used in creating and filing the applicant's FCC Form 5610 application. On the "My Auctions" page, select the link titled "Click here to file FCC Form 5620" under the Rural Broadband Experiments section. This produces the Auction Application Manager page. Select the link titled "Auction 501" under Create New Form 5620 Application. Only an entity that has been identified as a provisionally selected bidder in this Public Notice will be able to create a submit attachments for the post-selection review process.

B. Application Filing Instructions

The FCC Auction System will prefill certain categories of information from the identified bidder's FCC Form 5610 application into its FCC Form 5620. Information will prefill in the following sections of each bidder's Form 5620: Applicant Information, Agreements and Ownership. Bidders should be aware, however, that the bidder is solely responsible for ensuring that all information contained in a submitted application is accurate, updated and complete.

Please note that while certain categories of information are prefilled, any attachments that an applicant may have submitted with the Form 5610 **WILL NOT** be carried over to the Form 5620. For example, if an entity indicated on its Form 5610 that it has an indirect ownership interest and uploaded an attachment describing that interest, the information regarding the indirect ownership interest will be prefilled but the attachment describing that interest **WILL NOT** be attached. Therefore, the bidder must attach the indirect ownership description to the Form 5620 in order for the FCC Auction System to accept the submission.

Because certain information is prefilled into the FCC Form 5620, the identified bidders should ensure the accuracy of this information and make any minor modifications or updates as necessary. Minor modifications include correcting typographical errors and supplying non-material information that was inadvertently omitted or was not available at the time the FCC Form 5610 was submitted. If an applicant makes a major modification to the prefilled information, however, it will no longer be considered for rural broadband experiment support. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, any changes in the identity of the applicant, or any changes in the required certifications.

1. Applicant Information Section

Each provisionally selected bidder should carefully review its applicant information, including its name, address, legal classification and contact information, which will have been prefilled from its Form 5610.

This information should be reviewed carefully to confirm that it is complete and accurate. If there have been any changes to the information or corrections are needed, make the appropriate changes and verify the information before continuing to the next section.

2. Agreements Section

In the Agreements section, the agreement information that was provided on the provisionally selected bidder's FCC Form 5610 will be prefilled into its FCC Form 5620. Any updates or changes should be made to ensure that the bidder's agreement information remains complete and accurate.

3. Ownership Information Section

Similarly, the ownership disclosure information that was provided on the identified bidder's FCC Form 5610 will be prefilled into its FCC Form 5620. Any minor modifications should be made to ensure that the bidder's ownership information remains complete and accurate. As mentioned above, any attachments submitted in connection with the ownership disclosures on the FCC Form 5610 will not be carried over automatically to the FCC Form 5620, and must be uploaded again before submitting the FCC Form 5620.

4. Summary Section

The Summary screens summarize information that applicants have provided in previous screens, offering an overview of an applicant's FCC Form 5620 to help locate specific information. These screens will appear prior to the "Certify and Submit" screens, in order to permit the applicant to review all the information entered in previous screens and to provide an opportunity to check for certain inconsistencies or omissions in the information within the FCC Form 5620.

The first *Summary* screen, the *Summary Overview* screen, lists the first four series of screens in the application and provides a **VIEW/EDIT** button to access each one.

- Clicking **VIEW/EDIT** for Applicant Information produces a *Detail for Applicant Information* screen showing the information entered for each data entry field. To change any data item, the applicant should click the **Edit** icon for the relevant data field.
- Clicking **VIEW/EDIT** for Agreements takes the applicant to the *Agreements* screen discussed above in the Agreements section.
- Clicking **VIEW/EDIT** for Ownership takes the applicant to the *View/Edit Ownership Disclosure Information* screen discussed above in the Ownership section.

Clicking on the CHECK ERRORS button initiates an automated check of the application. If the automated check encounters certain inconsistencies or omissions in information within the FCC Form 5620 that must be corrected before submitting the application, the inconsistency or omission will be listed in an Error box at the top of the screen. To correct one of these errors, click its corresponding EDIT button. In addition, if the automated check encounters certain apparent inconsistencies or omissions that might render the application incomplete or deficient if the application is submitted with current information, the apparent error will be listed in a Warning box. To revise the information related to the apparent inconsistency or omission, click its corresponding EDIT button.

II. POST-SELECTION REVIEW PROCESS: REQUIRED INFORMATION AND DEADLINES

Following the review outlined above and prior to certifying and submitting the FCC Form 5620, the identified bidders should navigate to the "Attachments" link to upload the required attachments for the post-selection review process. We outline the requirements for these attachments below, as well as the deadlines for bidders to submit these materials.

A. Technical and Financial Review

The identified bidders are required to provide the most recent three consecutive years of audited financial statements, including balance sheets, net income, and cash flow, in order to enable a thorough financial review.¹ Bidders must provide this required information in an attachment to the FCC Form 5620 using the attachment type “Audited Financial Statements.”

The identified bidders also are required to submit a description of the technology and system design that would be used to deliver voice and broadband service meeting the requisite speeds to all locations in the funded census blocks, including a network diagram, which must be certified by a professional engineer.² Selected bidders are required to deliver the required minimum speeds to all locations within the funded census blocks.³ As part of that description, bidders should identify the network components that will need to be deployed, the type of technology that will be deployed, and the type of spectrum (e.g., 700 MHz, Cellular, Broadband PCS, AWS, fixed wireless bands, etc.) to be used with the technology, if applicable. Bidders should explain how the use of this particular technology will allow them to meet the service obligations for the particular rural broadband experiments category for which they are seeking support. Bidders must provide this required information in an attachment to the FCC Form 5620 using the attachment type “Technology Description.”

Finally, the identified bidders proposing to use wireless technologies are required to provide a description of spectrum access in the areas for which the applicant seeks support.⁴ This should include whether the bidder currently holds a license for or leases the spectrum or otherwise has contracted for access to the spectrum consistent with Commission rules. The description should identify the license applicable to the spectrum to be accessed and must include the type of service (e.g., AWS, 700 MHz, BRS, PCS, or pertinent microwave frequency bands), the particular frequency bands, and the call sign. If the licensee is a different party than the bidder, the licensee name and the relationship between the bidder and the licensee that provides the applicant with the required access should be described. If the bidder is leasing spectrum, the lease number should be provided along with the license information. Bidders must provide this required information in an attachment to the FCC Form 5620 using the attachment type “Spectrum Description.”

¹ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8787-88, para. 54 (2014) (*Rural Broadband Experiments Order*).

² *Id.*

³ Under the Commission’s rules, recipients of support are required annually to provide the results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology (together, the Bureaus). 47 C.F.R. § 54.313(a)(11). The Bureaus recently sought comment to further develop the record on a proposed methodology for high-cost recipients to measure and report speed and latency performance to fixed locations. The Bureaus have proposed that recipients be required to perform tests for a specified number of customers at least once an hour during peak period over a four-week period, with 95% of the observations at or above the required minimum speed. See *Wireline Competition Bureau, Wireless Telecommunications Bureau, and the Office of Engineering and Technology Seek Comment on Proposed Methodology for Connect America High-Cost Universal Service Support Recipients to Measure and Report Speed and Latency Performance to Fixed Locations*, WC Docket No. 10-90, Public Notice, DA 14-1499 (rel. Oct. 16, 2014).

⁴ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787-88, para. 54. Selected bidders should include as part of this description an exhibit specifying the frequency band, required bandwidth, channelization plan, applicable licensed geographical area and any required frequency coordination exhibits or applicable Commission Rules. If a selected bidder is proposing to use unlicensed bands, it should provide the frequency bands, required bandwidth and exhibits in meeting all the pertinent Commission requirements in deploying such spectrum in addition to demonstrating that the deployment of applicable network is not constrained by unlicensed band interference.

This information must be submitted with the appropriate certification within 10 business days of release of this Public Notice.⁵ Consequently, this information must be attached to the FCC Form 5620 and submitted no later than **Friday, December 19, 2014 at 11:59p.m. EST.**

B. Letter of Credit Commitment Letter

The identified bidders must submit a written commitment letter from an acceptable bank to issue a Letter of Credit (“LOC”) for each selected project bid. The commitment letter must, at a minimum, provide the dollar amount of the LOC and the issuing bank’s agreement to follow the terms and conditions of the Commission’s model LOC.⁶ The commitment letter must be from an acceptable bank, as defined in the *Rural Broadband Experiments Order*.⁷

The LOC commitment letter must be submitted with the appropriate certification within 60 days of the release of this Public Notice.⁸ Consequently, this information must be attached to the FCC Form 5620 and submitted no later than **Tuesday, February 3, 2015 at 11:59p.m. EST.**

C. Eligible Telecommunications Carrier Designation

The identified bidders must provide appropriate documentation of their eligible telecommunications carrier (ETC) designation in each census block for which they are provisionally selected to receive support and certify that the information submitted is accurate. Appropriate documentation should include the original designation order and any relevant modifications, e.g., expansion of service area, along with any name change orders. An ETC designation attachment must be provided for each selected project bid. Any relevant information should be provided as an attachment to the FCC Form 5620 using the attachment type “ETC Designation.”

The ETC designation documentation must be submitted with the appropriate certification within 90 days of the release of this Public Notice.⁹ Consequently, this information must be attached to the FCC Form 5620 and submitted no later than **Thursday, March 5, 2015 at 11:59p.m. EST.**

D. Conditions for Funding Authorization

Once the Bureau has determined that the entity is financially and technically qualified to receive Connect America support for specific census blocks, the LOC commitment letter is sufficient, and the required documentation of ETC designation has been submitted, the Bureau will release a public notice stating that the entity is ready to be authorized for support. Within 10 business days of that public notice, the bidder is required to 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 we describe 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.

If a bidder is unable to meet all of these requirements, it must file a request for a waiver and meet the requisite standards for waiver in order to be authorized to receive support. To the extent any bidder believes it must seek a waiver, it should contact Bureau staff in advance of filing to determine the procedures for submitting such a request consistent with the Commission’s rules. Parties should file this

⁵ *Id.*

⁶ *Id.* at 8805-06. App. A.

⁷ *Id.* at 8790-91, paras. 59-61

⁸ *Id.* at 8787-88, para. 54.

⁹ *Id.*

information in the Commission's Electronic Comment Filing System (ECFS) in WC Docket No. 10-90, seeking confidential treatment to the extent they deem that necessary.

III. APPLICATION SUBMISSION

The *Certify and Submit* screen lists the certifications required of all provisionally selected bidders in the rural broadband experiments and requests that the applicant's certifying official be identified and sign the application. Once the provisionally selected bidder has attached the required post-selection review materials for each step in the process, it must certify and submit its FCC Form 5620. Bidders must certify and submit their FCC Form 5620 no later than **each** of the deadlines specified above. For example, no later than December 19, bidders must upload the required technical and financial materials and certify and submit their FCC Form 5620; no later than February 3, bidders must upload the required LOC commitment letter and certify and submit their FCC Form 5620; and no later than March 5, bidders must upload the required ETC documentation and certify and submit their FCC Form 5620. Identified bidders may file the requisite information at any time and are encouraged not to wait until the end of the day to do so, as failure to submit the information in a timely manner will constitute default.

Bidders are reminded that submission of the FCC Form 5620 constitutes a representation by the certifying official that he or she is an authorized representative of the applicant and has read the form's instructions and certifications, and that the contents of the application, its certifications and any attachments are true, complete and correct. Submission of a false certification to the Commission is grounds for denial of Connect America support for a rural broadband experiment. A change of certifying official between the FCC Form 5610 and the FCC Form 5620 is considered a major change and will not be permitted.

Once the Certify and Submit screen has been filled out, the application may be submitted by clicking on the **SUBMIT** button.

After the application has been submitted, a confirmation screen will be displayed that states the submission time and date, along with a unique file number. Applicants should print a copy of the confirmation page for their records. They may then view and print copies of their submitted applications by clicking on the **PRINT PREVIEW** button.

IV. TECHNICAL SUPPORT

For technical assistance with using FCC software, contact the FCC Technical Support Hotline at (877) 480-3201, option nine; (202) 414-1250; or (202) 414-1255 (TTY). The FCC Technical Support Hotline is available Monday through Friday from 8 a.m. to 6 p.m. ET. All calls to the FCC Technical Support Hotline are recorded.

For questions regarding potential waiver requests or other non-technical issues, contact Alexander Minard (Alexander.Minard@fcc.gov) or Ian Forbes (Ian.Forbes@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

Paperwork Reduction Act Approval: The FCC Form 5620 was assigned control number 3060-1200 and was approved by the Office of Management and Budget on September 18, 2014.



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
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DA 15-288

Released: March 4, 2015

WIRELINE COMPETITION BUREAU ANNOUNCES ADDITIONAL PROVISIONALLY SELECTED BIDDERS FOR RURAL BROADBAND EXPERIMENTS AND SETS DEADLINES FOR SUBMISSION OF ADDITIONAL INFORMATION

WC Docket No. 10-90
WC Docket No. 14-259

On December 18, 2014, the Federal Communications Commission (Commission) established a process to enable the provisional selection of additional bidders for rural broadband experiments support in the event any of the initial provisionally selected bidders defaulted before the Wireline Competition Bureau (Bureau) finalized the list of census blocks that will be offered to the price cap carriers for Phase II of the Connect America Fund.¹ Specifically, rural broadband experiments bidders interested in being considered for any newly available support were required to file certain financial and technical information by Tuesday, January 6, 2015.²

Today, the Bureau announces additional bidders have been provisionally selected for rural broadband experiments funding in category one, subject to the post-selection review process.³ The Attachment provides summary information concerning these new provisionally selected bidders, including the number of project bids, the states in which these proposed projects are located, the total amount of support requested for these projects, and the total number of census blocks covered by these projects. The Bureau plans to issue a Public Notice in the near future identifying all of the specific census blocks that have been provisionally selected for rural broadband experiment funding that will be removed from the offer of model-based support to price cap carriers.⁴

¹ See *Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, WC Docket Nos. 10-90, 14-58, 14-192, Report and Order, 29 FCC Rcd 15644, 15674-75, para. 83 (2014).

² See *Wireline Competition Bureau Announces Deadline for Bidders Interested in Remaining Under Consideration for Rural Broadband Experiments Support to File Additional Information*, WC Docket Nos. 10-90, 14-259, Public Notice, 29 FCC Rcd 15132 (Wireline Comp. Bur. 2014).

³ See *Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90, 14-259, Order, DA 15-139 (Wireline Comp. Bur. rel. Jan 30, 2015).

⁴ A number of the census blocks that provisionally selected bidders seek to serve are the subject of a pending challenge in the Phase II challenge process. See *Wireline Competition Bureau Announces Application Process for Entities Interested in Participating in the Rural Broadband Experiments*, WC Docket No. 10-90, Public Notice, 29 FCC Rcd 10016, 10035-36, paras. 64-66 (Wireline Comp. Bur. 2014). The Bureau is currently reviewing the challenges and responses received in the Phase II challenge process. In the event that census blocks are deemed served and therefore ineligible for rural broadband experiment funding, support for any project selected for funding that includes such census blocks will be adjusted proportionally. See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8786-87, para. 51 (2014) (*Rural Broadband Experiments Order*).

With the release of this Public Notice, we establish additional deadlines for the post-selection review process for these new provisionally selected bidders. These bidders already have filed their technical and financial information on January 6, 2015.⁵ Therefore, within 60 days of this Public Notice, the bidders identified in the Attachment are required to submit a letter from an acceptable bank committing to provide the bidder with a letter of credit (LOC) in the amount of the support the bidder will receive for each of its projects.⁶ These letters must be uploaded to the FCC Form 5620 by **Monday, May 4, 2015 at 11:59p.m. EST.**⁷ Failure to submit the requested materials by this deadline will constitute a default, and the bidder will no longer be considered for rural broadband experiments support. Within 90 days of this Public Notice, by **Tuesday, June 2, 2015, at 11:59p.m. EST,** the bidders identified in the Attachment are required to upload to the FCC Form 5620 appropriate documentation of their designation as an eligible telecommunications carrier (ETC) in all areas for which they will receive support.⁸

For additional information on this proceeding, contact Ian Forbes (Ian.Forbes@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

– FCC –

⁵ *Rural Broadband Experiments Order*, 29 FCC Rcd at 8787, para. 52.

⁶ The Bureau previously has released information regarding the LOCs that new provisionally selected bidders may find helpful in obtaining their commitment letters. See *Wireline Competition Bureau Reminds Provisionally Selected Rural Broadband Experiments Bidders of Letter of Credit Requirements*, WC Docket Nos. 10-90, 14-259, Public Notice, DA 15-99 (Wireline Comp. Bur. rel. Jan. 23, 2015).

⁷ The Bureau previously has released instructions for provisionally selected bidders regarding how to complete FCC Form 5620. See *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, 29 FCC Rcd 14684, 14690-94 (Wireline Comp. Bur. 2014).

⁸ The Commission expects provisionally selected bidders to submit their ETC applications to the relevant jurisdiction as soon as possible and has indicated that it will presume an entity is acting in good faith to complete the requirements necessary for it to be authorized for funding if the entity files its ETC application within 15 days of release of the public notice. *Rural Broadband Experiments Order*, 29 FCC Rcd at 8778, para. 22 n.52. We recognize that several of the bidders listed on Attachment A previously were provisionally selected for other projects and may wish to amend an existing ETC petition to include the newly identified projects.

ATTACHMENT
Additional Provisionally Selected Bidders

Bidder Name	State(s)	Selected Bids	Support Requested for Selected Bids	Census Blocks Covered by Selected Bids	Selected Bid Project IDs
BARC Electric Cooperative	VA	1	\$239,918.00	64	1
City of Chanute, Kansas	KS	1	\$508,467.00	37	1
Daktel Communications LLC	ND	1	\$875,000.00	109	1
Douglas Services, Inc.	OR	1	\$2,375,000.00	325	1
EPB	TN	1	\$710,147.00	128	1
Federated Telephone Cooperative	MN	1	\$1,455,961.71	95	2
Lake Region Technology & Communications, LLC	OK	2	\$591,987.00	68	1, 2
Midwest Energy Cooperative d/b/a Midwest Connections	MI	1	\$211,532.00	31	1
Northeast Rural Services, Inc.*	OK	6	\$7,415,062.00	588	2, 3, 5, 7, 9, 11
Paul Bunyan Rural Telephone Cooperative	MN	2	\$1,962,000.00	134	1, 3
Skybeam, LLC*	IA, MN, TX	4	\$11,012,274.00	1,771	1, 5, 6, 9
West Central Telephone Association	MN	1	\$274,727.00	15	1
	Totals	22	\$27,632,075.71	3,365	

* Denotes previous provisionally selected bidder that is now being provisionally selected for additional projects.

Exhibit G



630 5th St N
Carrington, ND 58421
Office 701 652 3164
www.daknet.com

Project No. 18140901
File Name EXST_NTWK
Drafted By DS
Drafted Date 07/02/14
Record Drawing By
Record Drawing Date
Revised By
Revision Date
Paper Size 11X17

DAKTEL COMMUNICATIONS, LLC
EXISTING NETWORK

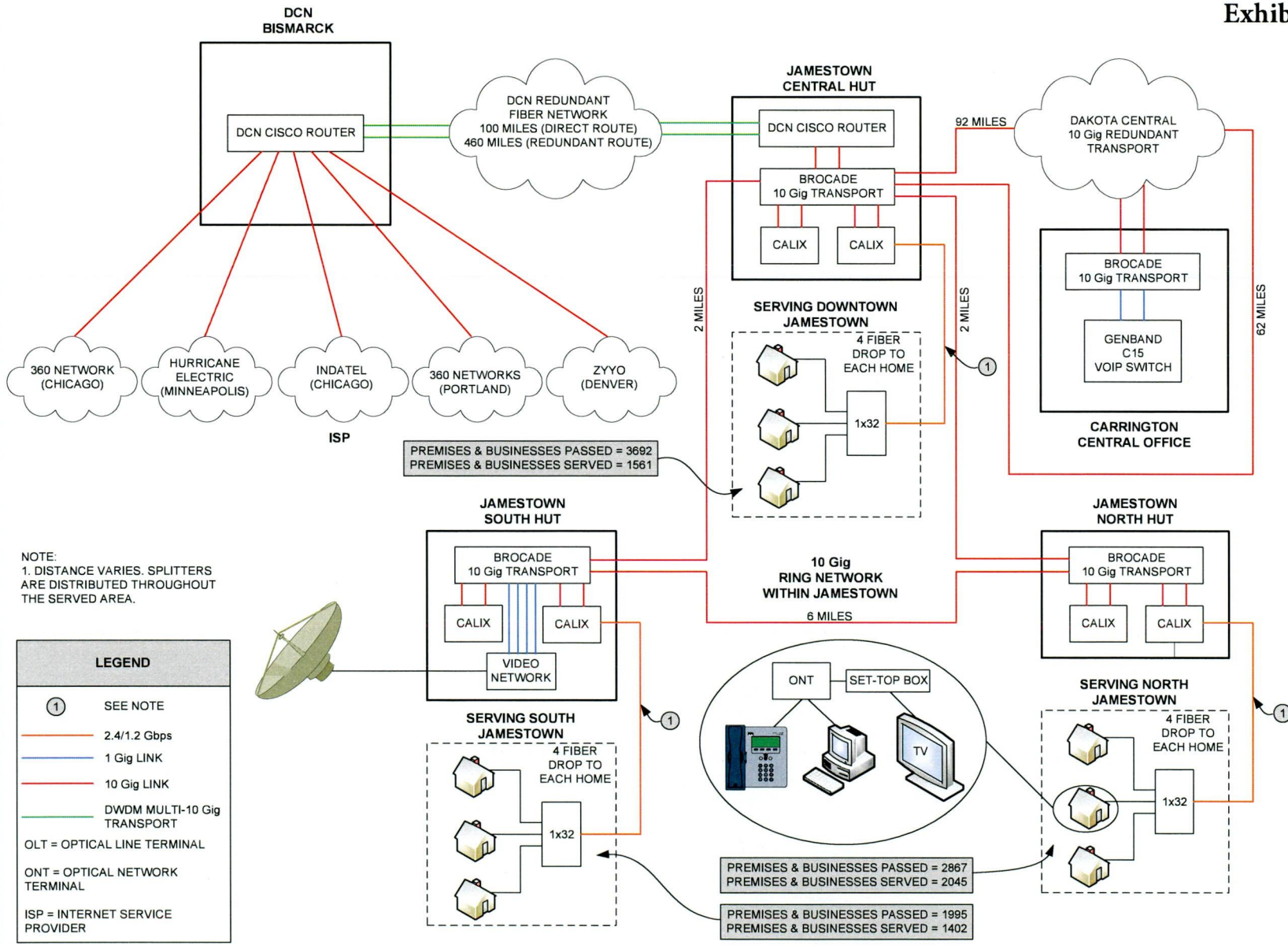


4345 Coleman Street
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1 OF 1

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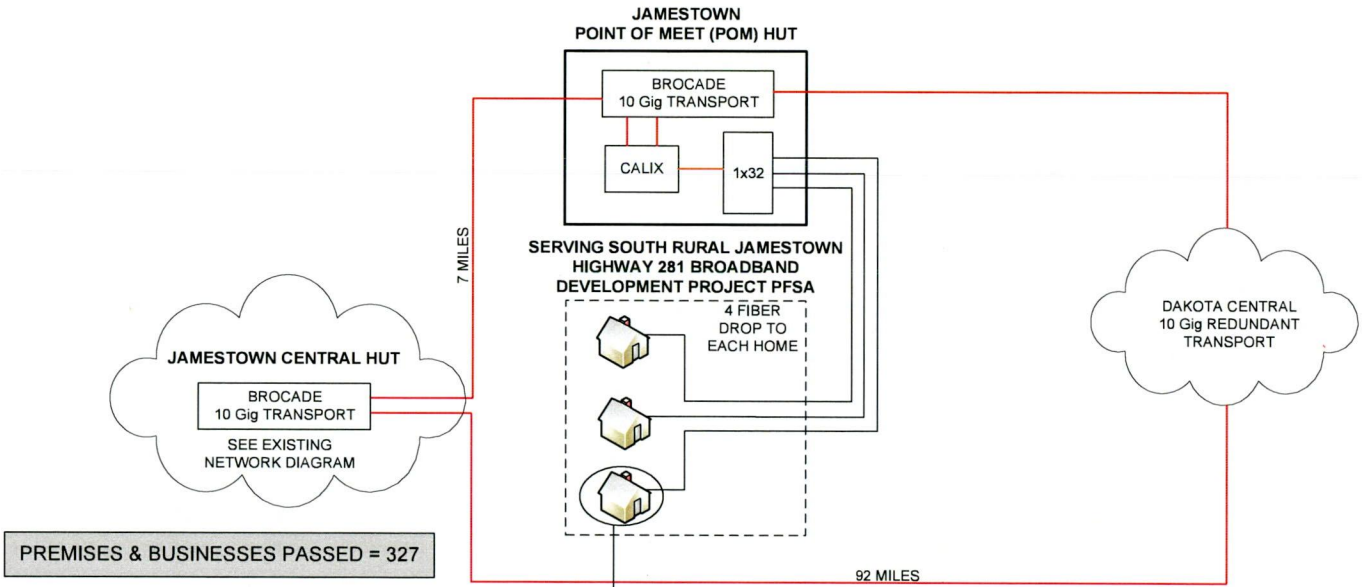


NOTE: SHOWING NEW SERVICES ONLY. REFER TO EXISTING NETWORK DIAGRAM FOR MORE DETAILS.



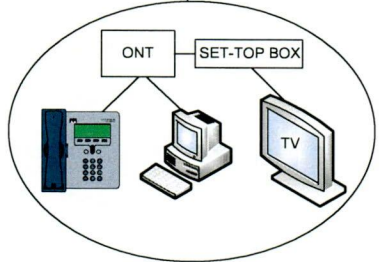
630 5th St N
Carrington, ND 58421
Office 701 652-3184
www.dakotai.com

Project No. 18140901
File Name PROP_NTWK
Drafted By DS
Drafted Date 07/028/14
Record Drawing By
Record Drawing Date
Revised By
Revision Date
Paper Size: 11X17



DAKTEL COMMUNICATIONS, LLC
PROPOSED NETWORK

LEGEND	
	2.4/1.2 Gbps
	1 Gig LINK
	10 Gig LINK
	DWDM MULTI-10 Gig TRANSPORT
OLT = OPTICAL LINE TERMINAL	
ONT = OPTICAL NETWORK TERMINAL	
ISP = INTERNET SERVICE PROVIDER	



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