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ISSUE UPDATE

November 21, 2011

FCC Releases its Order and FNPRM In the USF and ICC Reform Proceeding

On November 18, 2011, the Federal Communications Commission (FCC) released the full text of its Order on comprehensive Universal Service Fund (USF) and Intercarrier Compensation (ICC) reform. The package released by the FCC contains Order language and Further Notice of Proposed Rulemaking (FNPRM) sections for both for USF and ICC issues, as well as 16 Appendices. The package totals 759 pages[1], and is composed as follows

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Introduction and Executive Summary	16
Universal Service Order	192
Intercarrier Compensation Order	174
Universal Service FNPRM	62
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Due to the complexity and scope of the Order, we will be dividing our summary into two parts. This first part contains a summary of the Order and FNPRM provisions for Universal Service issues. A similar document summarizing the ICC Order and FNPRM provisions will be released following the Thanksgiving holidays. Together, these documents will summarize the major components of the Orders and FNPRMs of interest to rural wireline carriers to the best of our abilities based upon an initial analysis of the text released by the FCC. Of necessity, these summaries do not contain all of the provisions and ideas discussed in the Orders and FNPRMs. Interested readers are encouraged to read the full text of the Order document which can be found at www.fcc.gov. We have attempted to organize the flow of this summary and the headings for the various sections to follow those used in the FCC Order to allow for a simple reference between the two documents.

The FCC has requested comments and reply comments on the FNPRM issues as follows:

- Universal Service Issues
  - Comments **January 18, 2912**
  - Reply Comments **February 17, 2012**
- Intercarrier Compensation Issues
  - Comments **February 24, 2012**
  - Reply Comments **March 30, 2012**

[1] The Order also contains 2,582 footnotes, not including those in the Appendices.

I. High Level Summary – Universal Service Order

A. Support for broadband-capable networks becomes an express universal service principle under Section 254(b).

B. Specific performance goals for high-cost universal service support are set to ensure that reforms are achieving their intended purposes:

   1. Preserve and advance universal availability of voice service;
   2. Ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions;
   3. Ensure universal availability of modern networks capable of providing advanced mobile voice and broadband service;
   4. Ensure that rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation; and
   5. Minimize the universal service contribution burden on consumers and businesses.

C. A firm and comprehensive budget for high-cost universal service programs is set at $4.5B per year:

   - This is the same level as high-cost support in Fiscal Year 2011;
   - There will be an automatic review trigger if the budget is threatened to be exceeded;
   - The FCC may revisit and adjust accordingly the appropriate size of each of these programs by the end of the six-year period, based on market developments, efficiencies realized, and further evaluation of the effect of these programs in achieving the stated goals.

D. Price Cap Reforms

   1. Phase I

      a. All existing legacy high-cost support will be frozen at 2011 levels;

      b. An additional $300M in CAF support will be made available;

      c. Frozen support will be subject to performance and build-out requirements;

      d. Any carrier that elects to receive additional support will be required to:

         - Provide broadband with actual speeds of 4 Mbps downstream and 1 Mbps upstream (4/1);
         - Deploy broadband to at least one currently unserved location for each $775 in additional high/cost support it receives;

      e. Support levels will be reduced in any areas where a price cap company charges artificially low end-user voice rates.

   2. Phase II

      a. A combination of a forward-looking cost model and competitive bidding will be used to distribute CAF support.

      b. Support will not be provided in areas with an unsubsidized competitor.

      c. The Wireline Competition Bureau (WCB) will undertake a public process to develop the model.

      d. In each state, each incumbent price cap carrier will be asked to undertake a “state-level commitment” to provide affordable broadband to all high-cost locations in its service territory in that state, excluding extremely high cost areas as determined by the model.

      e. Where the incumbent declines the state-level commitment, CAF support will be distributed through competitive bidding.

      f. Phase II will distribute up to $1.8B of CAF annually, the model and competitive bidding mechanism will be adopted by December 2012, and disbursements will ramp up in 2012 and continue through 2017.

E. Rate-of-Return (RoR) Reforms
   1. RoR carriers receiving legacy high-cost support, or CAF support to offset lost ICC revenues, must offer broadband service as defined by the new CAF rules, with actual speeds of at least 4/1 upon their customers' reasonable request.
   2. In addition, the FCC will adopt new broadband service rules to:
      a. Establish a framework to limit reimbursements for excessive capital and operating expenses, which will be implemented no later than July 1, 2012, after an additional opportunity for public comment;
      b. Encourage efficiencies by extending existing corporate operations expense limits to the existing high-cost loop support and interstate common line support mechanisms, effective January 1, 2012;
      c. Ensure fairness by reducing high-cost loop support for carriers that maintain artificially low end-user voice rates, with a three-step phase-in beginning July 1, 2012;
      d. Phase out the Safety Net Additive component of high-cost loop support over time;
      e. Address Local Switching Support as part of comprehensive ICC reform;
      f. Phase out over three years support in study areas that overlap completely with an unsubsidized facilities-based terrestrial competitor that provides voice and fixed broadband service, beginning July 1, 2012;
      g. Cap per-line support at $250 per month, with a gradual phase-down to that cap over a three-year period commencing July 1, 2012; and
      h. Seek comment on reducing the interstate rate-of-return from its current level of 11.25 percent level.
   3. The FCC expects RoR carriers will receive approximately $2 billion per year in total high-cost universal service support through 2017.
F. CAF Mobility Fund
   1. Phase I
      a. Up to $300M in one time support will be awarded through a nationwide reverse auction in 3Q2012.
      b. Eligible areas will include census blocks unserved today by mobile broadband services, and carriers may not receive support for areas they have previously stated they plan to cover.
      c. The auction will maximize coverage of unserved road miles within the budget, and winners will be required to deploy 4G service within three years, or 3G service within two years.
      d. The FCC also establishes a separate and complementary one-time Tribal Mobility Fund Phase I to award up to $50 million in additional universal service funding to Tribal lands.
   2. Phase II
      a. The Phase II mobility fund will expand to provide up to $500M per year in ongoing support, including up to $100M for Tribal areas.
      b. In the FNPRM the FCC proposes a structure and operational details for the ongoing Mobility Fund, including the proper distribution methodology, eligible geographic areas and providers, and public interest obligations.
      c. The FCC expects to adopt the distribution mechanism for Phase II in 2012 with implementation in 2013.
      d. The providers receiving support through the CAF Phase II competitive bidding process will also be eligible for the Mobility Fund, but carriers will not be allowed to receive redundant support for the same service in the same areas.
      e. Mobility Fund recipients will be subject to public interest obligations, including data roaming and collocation requirements.

3. Identical Support Rule
    a. Identical support per study area will be frozen as of year-end 2011, and existing support will be phased-down over a five-year period beginning on July 1, 2012.
    b. This phase-down, in conjunction with the new funding provided by Mobility Fund Phase I and II, will ensure that an average of over $900 million is provided to mobile carriers for each of the first four years of reform (through 2015).
    c. The phase down of competitive ETC support will stop if Mobility Fund Phase II is not operational by June 30, 2014, ensuring approximately $600 million per year in legacy support will continue to flow until the new mechanism is operational.
5. Remote Areas Fund
    a. The FCC allocates at least $100 million per year for service through alternative technology platforms, including satellite and unlicensed wireless services.
    b. The FNPRM proposes a structure and operational details for that mechanism, including the form of support, eligible geographic areas and providers, and public interest obligations. The FCC expects to finalize the Remote Areas Fund in 2012 with implementation in 2013.
6. The FCC provides for an explicit waiver mechanism under which a carrier can seek relief from some or all of our reforms if the carrier can demonstrate, through a rigorous and defined process, that the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony.

It is often said when discussing universal service policy issues that "the devil is in the details." In the following sections we provide a high-level summary of the details that the FCC provides regarding the provisions of its Order for each of these funding areas. In the final section of this summary we will discuss the issues that the FCC has put out for further input and comment in the FNPRM, and some of the specific questions that are asked in each of these areas.

II. Providing Support in Areas Served by Price Cap Carriers

1. More than 83% of the approximately 18M Americans who lack access to fixed broadband live in price cap study areas.
    - In Phase I, support under current mechanisms will be frozen, and up to $300M in "incremental support" will become available.
    - In Phase II, the CAF budget for areas served by price cap carriers will be capped at no more than $1.8B for a 5 year period. At the end of this 5 year period all CAF support in price cap areas will be distributed through a market-based mechanism such as competitive bidding.
2. Determining and awarding Phase I CAF support
    a. Based upon the FCC's existing forward-looking cost model and data provided by three price cap carriers, the FCC has developed a regression analysis to estimate costs on an interim basis at the wire center level.
    b. The funding threshold will be set so that all $300M of incremental support potentially available will be allocated.
    c. The WCB will calculate, on a holding company basis, how much CAF Phase I incremental support price cap carriers are eligible for.
        - Carriers will be eligible to receive all, none, or a portion of the incremental support for which they are eligible.
        - A carrier accepting incremental support will be required to deploy broadband to a number of locations equal to the amount of incremental funding it accepts divided by $775.
        - Within 90 days, each carrier must notify the FCC, USAC, the state commission and any affected Tribal government of the amount of support it wishes to accept, and the areas by wire center and census block in which it intends to deploy broadband, if any.

- Carriers accepting incremental support must certify:
    1. Deployment will occur in areas shown on the National Broadband Map as unserved by broadband at 768 Kbps down, 200 Kbps up.
    2. The carrier's current capital improvement plan did not already include plans to complete broadband deployment to that area within the next 3 years, and
    3. Phase I incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.
- Effective January 1, 2012, the FCC will require carriers to use their frozen high-cost support in a manner consistent with achieving universal availability of voice and broadband. If Phase II CAF has not been implemented to go into effect by January 1, 2013, the FCC will phase in a requirement that carriers use frozen legacy high-cost support for expanding broadband into currently unserved locations.

3. Determining Phase II CAF support
    a. Support will be allocated through the following process:
        1. The FCC will model forward-looking costs to estimate the cost of deploying broadband-capable networks in high-cost areas and identify at a granular level the areas where support will be available.
        2. Using the cost model, the Commission will offer each price cap LEC annual support as determined by the model for a period of five years in exchange for a commitment to offer voice across its service territory within a state and broadband service to supported locations within that service territory, subject to robust public interest obligations and accountability standards.
        3. For all territories for which price cap LECs decline to make that commitment, the Commission will award ongoing support through a competitive bidding mechanism.
    b. Support under CAF Phase II will be phased-in as follows:
        1. For carriers accepting the state-wide commitment, in the first year the carrier will receive one-half of the amount they will receive under Phase II plus one-half of the amount would have received under Phase I (frozen legacy support plus incremental support, if any). In the second year they will receive the full Phase II amount.
        2. A carrier declining the state-wide commitment will continue to receive Phase I support until the first month that the winner of any competitive process receives Phase II support. At that time all high-cost support will cease.
        3. Carriers declining the state-wide commitment will be required to meet their pre-existing Phase I obligations, but will not be required to deploy additional broadband in connection with their receipt of transitional funding.
4. Public interest obligations of price cap carriers
    a. Phase I Incremental CAF support:
        - Speed of at least 4/1 to a specified number of locations depending on the level of incremental support:
        - Latency sufficient for real-time applications, including VoIP;
        - Usage levels comparable to terrestrial residential fixed broadband service in urban areas;
        - Extend broadband into areas lacking 768 Kbps per National Broadband Map;
        - Incremental CAF funding cannot be used for areas already in that carrier's capital improvement plan, to fulfill merger commitments, or for ARRA projects.

b. Phase II CAF support

- Latency sufficient for real-time applications, including VoIP;
- Usage levels comparable to terrestrial residential fixed broadband service in urban areas;
- By the end of the 3rd year, carriers must offer at least 4/1 to at least 85% of their high-cost locations. By the end of the 5th year, must offer 4/1 to all supported locations, and at least 6/1.5 to a number of supported locations to be specified by the model.

c. Exceptions

- To the extent a CAF recipient can demonstrate that support is insufficient to enable 1 Mbps upstream for all locations, temporary waivers for some locations will be available.
- Areas that lack terrestrial backhaul options must certify annually that no such options exist, and offer speeds of at least 1 Mbps downstream and 256 Kbps upstream. Latency requirements will not apply in such cases.

5. Forward-Looking Cost Model

a. The FCC delegates to the WCB the authority to select the specific engineering cost model and associated inputs.

b. The model should direct funds to support 4/1 service to all supported locations, subject only to the waiver process for upstream speed, and should ensure that the most locations possible receive 6/1.5 or faster service at the end of the five year term.

c. The WCB may choose between a greenfield or brownfield model, the modeled architecture, and the cost inputs for the model.

d. The model should estimate cost at a granular level – the CB or smaller – in all areas of the country.

e. The model should estimate the cost of a wireline network. (Note: The FCC concludes at ¶191 "The record fails to persuade us that, in general, the costs of cellular wireless networks are likely to be significantly lower than wireline networks for providing broadband service that meets the CAF Phase II speed, latency, and capacity requirements. In particular, we emphasize that, as described above, carriers receiving CAF Phase II support should expect to offer service with increasing download and upload speeds over time, and that allows monthly usage reasonably comparable to terrestrial fixed residential broadband offerings in urban areas.")

f. The FCC directs the FCC to issue a public notice within 30 days of release of this Order requesting parties to file models for consideration in this proceeding consistent with this Order, and to report to the Commission on the status of the model development process no later than June 1, 2012.

3. Universal Service Support for RoR Carriers

a. Overview

1. The FCC implements a number of reforms to eliminate waste and inefficiency and improve incentives for rational investment and operations by RoR LECs.
2. These reforms will lay the foundation for subsequent FCC action that will set RoR companies on a path toward a more incentive-based form of regulation.
3. The proposed reforms will ensure that the overall size of the Fund is kept within budget by maintaining total funding for RoR carriers at approximately the current levels of $2B per year.
4. Among the reforms proposed in the Order and FNPRM are:

    a. Establish benchmarks to limit reimbursable capital and operations expenses for purposes of determining HCLS support, to be implemented no later than July 1, 2012 after further public comment, and to extend current HCLS caps on corporate operations expense to ICLS effective January 1, 2012.

b. Address low end-user rates by reducing HCLS to the extent that a carrier's local rates are below a specified urban local rate floor. These rules will become effective July 1, 2012, and will be phased in gradually before full implementation in 2014.
c. Eliminate Safety Net Additive (SNA) support. Such support received as a result of line loss will be phased out during 2012. The remaining current recipients of SNA will continue to receive such support pursuant to the existing rules, however no new carriers may receive SNA.
d. Eliminate Local Switching Support (LSS) effective July 1, 2012; thereafter, any allowable recovery for switching investment will occur through the recovery mechanism adopted as part of ICC reform.
e. Adopt a rule to eliminate support for RoR companies in any study area that is completely overlapped by an unsubsidized competitor.
f. Adopt a rule that support in excess of $250 per line per month will no longer be provided to any carrier. Support reductions will be phased in over three years for carriers currently above the cap, beginning July 1, 2012.

5. To the extent that any individual company can demonstrate that it needs temporary and/or partial relief from one or more of these reforms in order for its customers to continue receiving voice service in areas where there is no terrestrial alternative, the FCC is prepared to review a waiver request for additional support. However, the FCC does not expect to routinely grant requests for additional support, and any company that seeks additional funding will be subject to a thorough total company earnings review.
6. The 2012 HCLF cap will be rebased to remove the RoR study areas of price cap companies from the cap calculation.
7. The FCC seeks comment in the FNPRM on the specific long-term CAF proposal offered by the RLEC Associations.

b. Public Interest obligations of RoR carriers
   1. RoR carriers that receive USF or CAF support must provide broadband service at speeds of at least 4/1, with latency suitable for real-time applications, such as VoIP, and with usage capacity reasonably comparable to that available in residential terrestrial fixed broadband offerings in urban areas, upon reasonable request.
   2. Although many RoR carriers may experience some reduction in support as a result of the reforms in this Order, those reforms are necessary to eliminate waste and inefficiency and improve incentives for rational investments. RoR carriers will benefit by receiving certain and predictable funding through the CAF created to address access charge reform, and will not necessarily be required to build out to and serve the most expensive locations within their service territory.
   3. The FCC agrees with the State Joint Board Members that construction charges may be assessed consistent with pre-existing state requirements, and subject to limits.
   4. All ETCs will be required in their annual reports to USAC and to the relevant state commission to include the number of unfilled requests for service from potential customers and the number of customer complaints, broken out separately for voice and broadband service.
c. Limits on Reimbursable Capital and Operating Costs
   1. To ensure that companies do not receive more support than necessary to serve their communities, the FCC adopts a framework consisting of benchmarks for prudent levels of capital and operating costs for purposes of determining high-cost support amounts for RoR carriers.
   2. This framework will create structural incentives for RoR companies to operate more efficiently and make prudent expenditures.
   3. The FNPRM seeks comment on a specific proposed methodology contained in Appendix H to the Order that uses quantile regression techniques for setting the benchmark levels of capital expenses and operating expenses for each RLEC study area, using publicly available data.

4. Although many small RoR carriers seem to imply that we should not adopt operating expense benchmarks because their operating expenses are "fixed," other representatives of rural RoR companies support the concept of imposing reasonable benchmarks.
5. We reject the argument that imposing benchmarks in this fashion would negatively impact companies that have made past investments in reliance upon the current rules of the "no barriers to advanced services" policy. Rather, as the FCC has indicated and the courts have agreed, the "purpose of universal service of universal service is to benefit the customer, not the carrier."
6. The proposal from the Rural Associations to tie allowable investments to a company's accumulated depreciation in existing plant would only limit future investment and would do little to limit support if past investments for a particular company were too high, and would do nothing to limit operating expenses.
7. The proposal presented by the Nebraska Companies used proprietary cost data which the FCC staff was not able to verify.
8. The FCC delegates authority to the WCB to implement this methodology, and expects that limits will be implemented no later than July 1, 2012.

d. Corporate Operations Expense

1. Corporate operations expenses are general and administrative expenses including overall administration and management, accounting and financial services, legal services, and public relations. For many years the FCC has limited the amount of recovery for these expenses through HCLS but not LSS and ICLS.
2. As supported by many parties, rather than totally eliminating support for corporate operations expenses, the FCC adopts the more modest reform proposal to extend the limit on recovery of these expenses to ICLS.
3. Since the current formula for limiting the eligibility of corporate operations expenses has not been revised since 2001, the FCC adopts an alternative formula that is developed and defined in Appendix C to the Order. This new formula results in slightly higher allowed expenses for the smallest study areas, and slightly lower allowed expenses for the largest.
4. The new formula will go into effect January 1, 2012 for both HCLS and ICLS.

e. Reducing high-cost loop support for artificially low end-user rates

1. The FCC adopts a rule to limit high-cost support where end-user rates plus state regulated fees (specifically, state SLCs, state universal service fees, and mandatory EAS charges) do not meet a specified local rate floor. This rule will apply to both RoR and price cap companies.
2. The rate floor will phase in in three steps, beginning with an initial rate floor of $10 for the period July 1, 2012 through June 30, 2013 and $14 for the period July 1, 2013 through June 30, 2014. Beginning July 1, 2014, and in each subsequent calendar year, the rate floor will be established after the Wireline Competition Bureau completes an updated annual survey of voice rates.
3. Under this approach, the Commission will reduce, on a dollar-for-dollar basis, HCLS and CAF Phase I support to the extent that a carrier's local rates (plus state regulated fees) do not meet the urban rate floor.
4. This offset does not apply to ICLS because that mechanism provides support for interstate rates, not intrastate end-user rates.

f. Safety Net Additive (SNA)

1. The original purpose of SNA was to provide additional support for RLECS who made significant additional investments, notwithstanding the cap on HCLS.
2. To Qualify for SNA, a company's year-over-year telephone plant in service (TPIS) *on a per-line basis* must increase by a minimum of 14%. The majority of ILECs that currently receive SNA qualified due to significant line loss, not because of significant new investment.

3. The FCC orders that SNA should be eliminated. Carriers whose *total* TPIS increased by more than 14% will receive such support for the remainder of their eligibility period, all other carriers will have SNA reduced by 50% in 2012 and eliminated in 2013.
4. There will be no new SNA for costs incurred after 2009.

g. Local Switching Support

1. The historic rationale for LSS was that traditional circuit switches were relatively expensive for the smallest carriers. Qualification was based on the size of the carrier and not the costs that it incurred.
2. Due to the emergence of soft switches and routers for which costs are more scalable, the FCC had proposed eliminating LSS or combining it with ICLS. While a number of commenters agreed that LSS should be eliminated, the Rural Associations proposed that reforms to LSS should be integrated with reforms to ICC and the creation of a CAF to provide measured replacement of lost ICC revenues.
3. The FCC concludes that LSS should end as a stand-alone universal service mechanism, and that limited recovery of the costs previously recovered by LSS be available through ICC reform and the introduction of the CAF.
4. From January 1 until June 30, 2012, LSS payments will be frozen at 2011 levels, and eliminated July 1, 2012. To the extent that the elimination of LSS affects ILECs interstate switched access revenue requirement that will be addressed in the ICC context.

h. Other High-Cost Rule Changes

1. Adjusted High-Cost Loop Cap for 2012
   - Since 2001, the FCC has adjusted the cap based on changes in DDP/CPI and growth in access lines. In recent years with low inflation and line loss, the annual cap for HCLS has been adjusted down.
   - Since some HCLS goes to a few RoR study areas of price cap carriers, and such carriers will begin receiving all high-cost support through the CAF, the cap will be further reduced in 2012 to remove HCLS that these study areas would have received under the old rules.
2. Study Area Waivers
   a. Standards for Review
      - A criterion in the prior review process was whether the waiver would impact the total size of the USF by more than 1%.
      - Given the growth in the overall size of the fund, 1% is a very large number and thus this criterion will be removed from the waiver review process.
      - The new criteria for study area review will be:
        1. The number of lines at issue:
        2. The projected universal service fund cost per line; and
        3. Whether such a grant would result in consolidation of study areas that facilitates reductions in cost by taking advantage of economies of scale.

   b. Streamlining the Study Area Waiver Process
      - Petitions for study area waiver will be placed on public notice and will be deemed granted on the 60th day after the reply comment date, absent any reasons to subject the petition to further review.

   C. Revising the "Parent Trap" Rule
      - Effective January 1, 2012, any ILEC currently and prospectively subject to the provisions of Section 54.305, that would otherwise receive no support or lesser support based on the actual costs of the study area, will receive the lesser of the support pursuant to 54.305 or the support based on its own costs.

i. Limits on Total per-Line High-Cost Support
   1. The FCC sought comment on whether requiring American consumers and businesses, whose contributions pay for universal service, to pay more than $250 per month for a single phone line is consistent with fiscally responsible universal service reform.
   2. The Rural Associations argue that a cap on per-line support should not be imposed without considering individual circumstances, and the FCC should consider the consequences of imposing such a limit on past investments.
   3. The cap will impact only 5,000 customers, and the FCC will consider individual circumstances when applying the $250 monthly cap if waiver requests are filed with additional financial information and justification. The FCC does not anticipate granting any waivers of undefined duration, but rather would expect carriers to periodically re-validate any need for support above the cap
   4. The cap will be phased in over three years beginning July 1, 2012.

j. Elimination of Support in Areas with 100% Overlap
   1. Providing support in areas of the country where another voice and broadband provider is offering high-quality service without government assistance is an inefficient use of limited universal service funds.
   2. At the same time, the FCC realizes that there are areas where an unsubsidized competitor offers broadband and voice service in a town or other high-density area but not in the surrounding area where continued support may be required.
   3. The FNPRM seeks comment on the methodology and data for determining overlap. In areas where there is 100% overlap high-cost support will be frozen at 2010 levels and phased out over 3 years. The FNPRM also seeks comment on a process for determining support in areas with less than 100% overlap.

k. Impact of These Reforms on RoR Carriers and the Communities they serve
   1. The FCC takes a number of important steps to modify certain existing universal service mechanisms to enhance performance and improve sustainability, and is careful to implement these changes in a gradual manner so that these efforts do not jeopardize service to consumers or investments made consistent with existing rules.
   2. Today's package is targeted at eliminating inefficiencies and closing gaps in the system, not making indiscriminate industry-wide reductions, and will not affect all carriers in the same manner or in the same magnitude.
   3. Based on calendar year 2010 support levels, the FCC's analysis shows that nearly 9 out of 10 RoR carriers will see reductions in universal service receipts of less that 20%, 7 out of 10 will see reductions of less than 10%, 34% will see no reductions at all, and more than 12% will see an increase in high-cost universal service receipts.
   4. The FCC rejects the sweeping argument that the rule changes would unlawfully necessarily affect a taking. Commenters seem to suggest that they are entitled to continued USF support as a matter of right.
   5. To the extent that any RoR carrier can effectively demonstrate that it needs additional support to avoid constitutionally confiscatory rates, the FCC will consider a waiver request for additional support. The FCC will seek the assistance of the relevant state commission in review of such a waiver. The FCC does not expect to routinely grant requests for additional support, but this safeguard is in place to help protect the communities served by RoR carriers.

4. Rationalizing Support for Mobility

a. Mobile broadband services are increasingly important to consumers and to our nation's economy. Given the important benefits of and the strong consumer demand for mobile services, ubiquitous mobile coverage must be a national priority.

b. It is clear that the current system does not efficiently serve the nation. In 2008, the FCC concluded that rapid growth in support to CETCs as a result of the identical support rule threatened the sustainability of the universal service fund. Further, it found that providing the same per-line support to CETCs had the consequence of encouraging wireless CETC to supplement or duplicate existing services while offering little incentive to maintain or expand investment in unserved or underserved areas.

c. The FCC adopts reforms that will secure funding for mobility directly, rather than as a side-effect of the CETC system, while rationalizing how universal service funding is provided to ensure that it is cost-effective and targeted to areas that require public funding to receive the benefits of mobility.

d. To accomplish this goal, the FCC establishes the Mobility Fund

   1. Phase I of the Mobility Fund will provide one-time support through a reverse auction with a total budget of $300M, and will provide the FCC with experience in running reverse auctions for universal service support.
   2. The FCC expects to distribute this support as quickly as feasible, with the goal of holding an auction in 2012, with support beginning to flow no later than 2013.
   3. As part of this first phase, the FCC also designates an additional $50M for one-time support for advanced mobile services on Tribal lands, for which it expects to hold an auction in 2013.
   4. Phase II of the Mobility Fund will provide ongoing support for mobile service with the goal of holding the auction in 3Q2013, and support disbursed starting in 2014, with an annual budget of $500M.
   5. This Phase II dedicated support for mobile service supplements the other competitive bidding mechanisms under the CAF.
   6. In the FNPRM, the FCC seeks comment on specific proposals to determine and distribute ongoing support in Phase II of the new Mobility Fund, including proposals to target dedicated funding to Tribal lands.

5. Connect America Fund in Remote Areas

a. The FCC establishes a specific budget for CAF support in remote areas reflecting a commitment to ensuring that Americans living in the most remote areas of the nation, where the cost of deploying wireline or cellular terrestrial broadband technologies is extremely high, can obtain affordable broadband through alternative technology platforms such as satellite and uliccensed wireless.

b. By setting aside designated funding for these difficult-to-serve areas, and by modestly relaxing the broadband performance obligations associated with this funding to encourage its use by providers of innovative technologies like satellite and fixed wireless, which may be significantly less costly to deploy in these remote areas, the FCC ensures that those who live and work in remote locations also have access to affordable broadband service.

c. Although the FCC seeks further comment on the details of distributing dedicated remote-areas funding in the FNPRM, it sets as the budget for this funding at least $100M annually.

d. Based on RUS's prior experience with dedicated satellite funding to remote areas, the FCC is confident that a budget of at least $100M could make a significant difference in expanding availability of affordable broadband service at such locations.

6. Petitions for Waiver

a. During the course of this proceeding, various parties, both incumbents and CETCs, have argued that reductions in current support levels would threaten their financial viability, imperiling service to consumers in areas where they serve.

b. The FCC cannot evaluate those claims absent detailed information about individualized circumstances, and conclude that they are better handled in the course of case-by-case review.

c. The FCC does not expect to grant waiver requests routinely, and cautions petitioners that they intend to subject such requests to a rigorous, thorough and searching review comparable to a total company earnings review. In particular, they intend to take into account not only all revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services as well.

d. The FCC envisions granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available.

e. The FCC will also consider whether specific reforms would cause a provider to default on existing loans and/or become insolvent.

f. Petitioners must include all financial data and other information sufficient to verify the carrier's assertions. (Note: ¶542 provides a detailed listing of the data and showings that would be expected.)

7. Accountability and Oversight

a. The billions of dollars that the USF disburses each year to support vital communications services come from American consumers and businesses, and recipients must be held accountable for how they spend that money.

b. The FCC establishes a uniform national framework for information that ETCs must report to their respective states and the FCC, while affirming that states will continue to play a critical role in overseeing ETCs that they designate. The specific reporting and certification requirements are a floor rather than a ceiling for the states.

c. The FCC modifies and extends existing federal reporting requirements to all ETCs, whether designated by a state or the FCC, to reflect the new public interest obligations adopted in the Order.

d. Reporting requirements for all ETC

- All ETCs that receive high-cost support will file the information required by new Section 54.313 with the FCC, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.
- Section 54.313 reports will be due annually by April 1, beginning April 1, 2012. An officer of the company must certify to the accuracy of the information provided subject to the penalties for false statements imposed under 18 U.S.C. § 1001.
- Starting in 2012, all ETCs must include the results of network performance tests conducted in accordance with the requirements of this Order and any further requirements adopted in the FNPRM.
- Starting in 2013, all ETCs must include a self-certification letter certifying that usage capacity limits (if any) for supported broadband services are reasonably comparable to usage capacity limits for comparable terrestrial residential fixed broadband offerings in urban areas.
- All ETCs must file a new 5-year build-out plan in a manner consistent with 54.202(a)(1)(ii) by April 1, 2013. Under the terms of new Section 54.313(a), all ETCs will be required to include in their annual 54.313 reports information regarding their progress on this five-year broadband build-out plan beginning April 1, 2014.

- All ETCs must submit a self-certification that the pricing of their voice services is no more than two standard deviations above the national average urban rate for voice service, which will be specified annually in a public notice issued by the Wireline Competition Bureau. This certification requirement begins April 1, 2013, to cover 2012.
- All ETCs must also report pricing information for both voice and broadband offerings. They must submit the price and capacity range (if any) for the broadband offering that meets the relevant speed requirement in their annual reporting. In addition, beginning April 1, 2012, subject to PRA approval, all incumbent local exchange company recipients of HCLS, frozen high-cost support, and CAF also must report their flat rate for residential local service to USAC so that USAC can calculate reductions in support levels for those carriers with R1 rates below the specified rate floor, as established above. Carriers may not request confidential treatment for such pricing and rate information.
- All ETCs are required to report annually the company's holding company, operating companies, affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation). In addition, filers will be required to report relevant universal service identifiers for each such entity by Study Area Codes. This will help the FCC reduce waste, fraud, and abuse and increase accountability in our universal service programs by simplifying the process of determining the total amount of public support received by each recipient, regardless of corporate structure.
- ETCs serving Tribal lands must include in their reports documents or information demonstrating that they have meaningfully engaged Tribal governments in their supported areas. The demonstration must document that they had discussions that, at a minimum, included:
    1. A needs assessment and deployment planning with a focus on Tribal community anchor institutions;
    2. Feasibility and sustainability planning;
    3. Marketing services in a culturally sensitive manner;
    4. Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and
    5. Compliance with Tribal business and licensing requirements.

e. Reporting requirements for price cap ILECs

- No later than 3 years after implementation of CAF Phase II, price cap recipients must certify that they are meeting all interim speed and latency milestones, including speeds of 4/1.
- In the calendar year no later than 5 years after implementation of Phase II, price cap recipients must certify that they are meeting the default speed and latency standards applicable at that time.
- No later than 90 days after being informed of its eligible incremental support amount for Phase I CAF, each price cap ETC must provide notice to FCC and the relevant state commission, relevant authority for a U.S. Territory, or Tribal government, as appropriate, identifying the areas, by wire center and census block, in which the carrier intends to deploy broadband, or stating that the carrier declines to accept incremental support for that year. The carrier must also certify:
    1. Deployment funded by CAF Phase I incremental support will occur in areas shown as unserved by fixed broadband on the National Broadband Map that is most current at that time, and that, to the best of the carrier's knowledge, are unserved by fixed broadband with a minimum speed of 768 kbps downstream and 200 kbps upstream, and that, to the best of the carrier's knowledge, are, in fact, unserved by fixed broadband at those speeds;
    2. The carrier's current capital improvement plan did not already include plans to deploy broadband to that area within three years, and that CAF Phase I support will not be used to satisfy any merger commitment or similar regulatory obligation.

3. Within two years after filing a notice of acceptance, they have deployed to no fewer than two-thirds of the required number of locations;
4. Within three years after filing a notice of acceptance, they have deployed to all required locations and that they are offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including VoIP, and with usage limits, if any, that are reasonably comparable to those in urban areas.

- For price cap carriers that receive frozen high cost support:
  1. In the 2013 certification the carrier must certify that they used such support in a manner consistent with achieving the universal availability of voice and broadband.
  2. In the 2014 certification it must certify that at least one-third of the frozen-high cost support they received in 2013 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.
  3. In the 2015 certification, carriers must certify that at least two-thirds of the frozen high-cost support the carrier received in 2014 was used in such fashion.
  4. For 2016 and subsequent years, carriers must certify that all frozen high-cost support they received in the previous year was used in such fashion.

f. Reporting requirements for RoR ILECs

1. RoR ETCs receiving support must include a self-certification letter certifying that they are taking reasonable steps to offer broadband service meeting the requirements established in this Order throughout their service area, and that request for such service are met within a reasonable amount of time.
2. RoR ETCs must notify the FCC, USAC and the relevant state commission, relevant authority for a U.S. Territory, or Tribal government, as appropriate, of all unfilled requests for broadband service meeting the 4/1 standard.
3. All privately-held RoR carriers receiving high-cost and/or CAF support will be required to file with the FCC, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate, beginning April 1, 2012, subject to PRA approval, a full and complete annual report of their financial condition and operations as of the end of their preceding fiscal year, which is audited and certified by an independent certified public accountant in a form satisfactory to the FCC, and accompanied by a report of such audit. The annual report shall include balance sheets, income statements, and cash flow statements along with necessary notes to clarify the financial statements. The income statements shall itemize revenue by its sources. (¶ 598)
4. The FCC does not expect privately held ETCs will face a significant burden in producing the financial disclosures required herein because such financial accounting statements are normally prepared in the usual course of business. In particular, because incumbent LECs are already required to maintain their accounts in accordance with Part 32, the required disclosures are expected to impose minimal new burdens. Indeed, for the many carriers that already provide Part 32 financial reports to RUS, there will be no additional burden.
5. The FCC concludes that these financial disclosures should be made publicly available.

g. Overall, the FCC thinks that the changes to the reporting requirements do not impose an undue burden on ETCs and that the benefits outweigh any burdens. Given the extensive public funding these entities receive, the expanded goals of the program, and the need for greater oversight, as noted by the GAO, it is prudent to impose narrowly tailored reporting requirements focused on the information that will demonstrate compliance with statutory requirements and the FCC's implementing rules.

h. Regarding Annual 254(e) certifications;
    1. States must now certify that all federal high-cost and CAF support was used in the preceding calendar year and will be used in the new calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, regardless of the rule under which that support is provided.
    2. The FCC maintains the states' ongoing role in annual certifications. States will continue to certify to the Commission that support is used by state-designated ETCs for the intended purpose, which is modified to include the provision, maintenance, and upgrading of facilities capable of delivering voice and broadband services to homes, businesses and community anchor institutions.
    3. The FCC expects states to conduct a rigorous examination of the factual information provided in the annual Section 54.313 reports prior to the issuance of the annual Section 254(e) certifications.
    4. The FCC eliminates the different rules for rural and non-rural study areas, and eliminates the separate certification requirements for IAS and ICLS.

i. The FCC adopts the provision of Section 54.209(b) in the new Section 54.313, which provides reductions in support for failing to file reports in a timely fashion, and extends those provisions to all recipients of high-cost support. The FCC also creates a rule that entities receiving support will receive reduced support should they fail to fulfill their public interest obligations by failing to meet deployment milestones, to provide broadband at the seed required by the Order, or to provide service at reasonably comparable rates.

j. To more fully support ongoing oversight, the FCC amends its rules by re-designating Section 54.202(e) as new Section 54.320 to clarify that the 10-year record retention requirements apply to all recipients of high-cost and CAF support, and that all documents be made available upon request to the FCC and any of its Bureaus or offices, the Administrator, and their respective auditors.

k. To facilitate the exchange of information needed to administer and oversee universal service programs, the FCC:
    1. Modifies its rules to clarify that USAC has a right to obtain – at any time and in any unaltered format – all cost and revenue submissions and related information that carriers submit to NECA that is used to calculate payments under any of the existing programs and any new programs, including the new CAF ICC (access replacement) support; and
    2. That USAC (and NECA to the extent USAC does not directly receive such information from carriers) provide to the Commission upon request all underlying data collected from ETCs to calculate payments under current support mechanisms – specifically, HCLS, ICLS, LSS, SNA, SVS, HCMS and IAS – as well as to calculate CAF payments. This includes information or data underlying existing and future analyses that USAC uses to determine the amount of federal universal service support disbursed in the past or the future, including the new CAF.

8. Interstate Rate-of-Return Prescription

a. The FCC has not revisited the current 11.25% rate-of-return for over 20 years, and therefore concludes that that it should begin the represcription process. In so doing, it finds good cause to waive certain procedural requirements in the current rules relating to represcription to streamline and modernize the process to align it with the current FCC practice.

b. The rules provide that the trigger for a new prescription proceeding is satisfied if the monthly average yields on 10-year U.S. Treasury securities remain, for a consecutive 6-month period, at least 150 basis points above or below the average of the monthly average yields in effect for the consecutive six month period immediately prior to the effective date of the current prescription. The monthly average yields for the past six months have been over 450 basis points below the monthly average yields in the six months immediately prior to the last prescription.

c. In the FNPRM, the FCC initiates a new RoR prescription proceeding.

Further Notice of Proposed Rulemaking (FNPRM)

In addition to the specific items decided in the Order and codified in a set of "Final Rules" contained in Appendix A to the Order document, the FCC raises questions in a number of universal service policy areas and initiates a FNPRM to gain additional public input and data on a range of policy alternatives. The FNPRM poses a multitude of questions in a number of specific policy areas. The complex nature of the subject areas in which the FCC seeks input, as well as the large number of highly technical and granular questions that the FCC asks, makes providing a high-level summary of the FNPRM a difficult task. (Indeed, a complete and detailed summary of the FNPRM would almost be as large and complex as the FNPRM itself.)

The following outline provides a complete listing of the universal service policy areas addressed in the FNPRM, and a sampling (generally 3 or less) of the types of questions and requests for data that the FCC makes in each of the specific policy areas. It must be stressed that this is a sampling only to indicate the types of questions the FCC is asking and data that it is seeking, but in no way is a complete listing of all of the questions that the FCC has raised in each policy area. Interested readers are encouraged to review the full text of the FNPRM. The outline below follows the nomenclature used in the FNPRM for easy reference.

A. Broadband Public Interest Obligations

1. Measuring Broadband Service

- Should the FCC adopt a uniform methodology for measuring broadband performance? If so, should that methodology be uniform across different technologies?
- Should the FCC specify a uniform reporting format?
- Should providers be required to provide the underlying raw measurement data to USAC?

2. Reasonably Comparable Voice and Broadband Services

- With respect to determining reasonable comparability of voice service rates for universal service purposes, should the FCC separately collect data on fixed and mobile voice rates?
- Should fixed and mobile voice services have different benchmarks for purposes of reasonable comparability?
- With respect to determining reasonable comparability of broadband services, should the FCC collect data on fixed and mobile pricing and capacity requirements (if any)?

3. Additional Requirements

- Should the FCC require CAF recipients to offer IP-to-IP interconnection for voice service, beyond whatever framework it adopts more broadly?
- Is it sufficient to require CAF recipients to negotiate in good faith with community broadband networks to determine a point of interconnection? If there are disputes, who should resolve them?
- Are there any legal impediments to the FCC running a pilot program to assist communities with deploying their own broadband networks out of the Universal Service Fund?

B. Connect America Fund for Rate-of-Return Carriers

- The Rural Associations proposed a CAF mechanism for rural carriers (i.e., the RLEC Plan). The FCC seeks comment on this plan and how it could be modified to be consistent with the framework adopted in the Order?
- What are the benefits and costs of providing support for "middle mile" facilities and access to the Internet backbone under the Rural Associations' proposal?
- How does the Rural Associations' proposal to alter the current 25% allocation of loop costs fit within or inform the Separations Joint Board's ongoing work to reform the separations process?
- What information would the FCC need to require from carriers in order to evaluate and implement the Rural Association proposal?

C. Interstate Rate of Return Represcription

- The FCC welcomes input from state regulators that may have insights from conducting intrastate RoR represcriptions in recent years.
- Is there a means by which by which the RoR can be adjusted automatically based on some set of financial triggers? How would such triggers operate?
- The FCC seeks input on a number of financial metrics such as weighted cost of capital, capital structure, cost of debt, cost of equity, cost of preferred stock, etc.
- How should the FCC use data and metrics from publicly traded large and mid-size carriers to set an appropriate RoR for privately owned rural carriers. Should Tribal companies be treated differently?

D. Eliminating Support for Areas with an Unsubsidized Competitor

- How should the FCC determine and measure the overlap of a carrier's study area with the serving area of an unsubsidized competitor?
- How should high-cost support levels be adjusted when there is less than 100% overlap?
- How should the FCC deal with the large census blocks that exist in many rural areas?

E. Limits on Reimbursable Capital and Operating Costs for Rate-of-Return Carriers

- The FCC seeks comments on a methodology set forth in Appendix H to the Order document for a methodology to impose limits on reimbursement from HCLS.
- This methodology uses quantile regression that has several advantages over other statistical techniques for identifying outliers. For example, quantile regression estimates the median (or other percentile), rather than the mean, so quantile regression will be more robust in response to large outliers than ordinary least squares regression. Although the FCC finds that quantile regression is an appropriate technique to use in setting benchmarks on reimbursable investment and expenses, it invites further comment on alternative statistical techniques.
- Is the 90^{th} percentile the appropriate dividing line to disallow recovery of costs, or should the FCC establish a lower or higher threshold, such as the 85^{th} percentile or 95^{th} percentile? Would a different percentile be appropriate for Tribally-owned and operated carriers that are just beginning to serve their communities?

F. ETC Service Obligations

- The FCC seeks comment on various methodologies proposed in this proceeding for establishing and defining the service obligations of ETCs
- Should the FCC use geographies based on the actual network architectures of fund recipients, like wire centers? Or should it pick technology-neutral geographies, such as census blocks, census tracts, or counties?
- How can the FCC ensure that low-income consumers across America continue to have access to Lifeline service, both in urbanized areas that will not, going forward, receive support from the new CAF, and rural areas that will, over time, receive support from the CAF?

G. Ensuring Accountability

- Should a recipient of high-cost and CAF support be required to post financial security as a condition of receiving that support to ensure that it has committed sufficient financial resources to complying with the public interest obligations under the FCC's rules? In particular, should all ETCs be required to obtain an irrevocable standby letter of credit (LOC) no later than January 1, 2013?
- Should revocation of ETC designation, denial of certification resulting in prospective loss of support, or recovery of past support be used as alternatives to the financial guarantee?
- The FCC seeks comment on what specific triggers might lead to support reductions, how much support should be reduced, how best to implement support reductions, and how the review and appeal process should be revised?

H. Annual Reporting Requirements for Mobile Service Providers

- The FCC seeks comment on whether there are certain requirements in the new Section 54.313 reporting rule for ETCs that do not reflect basic differences in the nature and purpose of the support provided for mobile services.
- Should the FCC revise the section 54.313 reporting requirements or adopt new reporting requirements that would apply to support an ETC receives to provide mobile services?
- For mobile service providers, how should the number of customers affected by a service outage be counted?

I. Mobility Fund Phase II

1. Overall Design

- The FCC seeks comment on alternatives for the structure of the auction process that will be used to distribute Phase II Mobility Funding, including the use of a model to determine both the areas that would receive support and the level of support?

2. Framework for Support Under Competitive Bidding Proposal

- In establishing the minimum size of geographic unit for Phase II bidding and support, should the FCC consider a census block, census tract, or bidder-defined approach to take advantage of geographic economies of scale or scope?
- Should the FCC target areas without any mobile service for priority treatment under Phase II? For instance, should a form of bidding credit be provided that would promote the support of areas with no mobile service at all or only mobile service a lower than current generation or 3G levels?
- The FCC seeks comment on how to implement, in the context of Mobility Fund Phase II, the statutory principle that supported services should be made available to consumers in rural, insular and high-cost areas at rates that are reasonably comparable to urban areas.

3. Auction Process Framework

- Should reserve prices be set using the results of a wireless model for each state, similar to the CAF Phase II auction in cases where price cap carriers decline the state-level commitment?
- How should the Bureau construct procedures for grouping geographic areas within a bid – package bidding – that could be tailored to the needs of prospective bidders as indicated during the pre-auction notice and comment period? Is package bidding appropriate for this auction and if so, why?
- Should small businesses be eligible for a bidding preference in a Phase II auction?

4. Tribal Issues

- Consistent with the approach for the Phase I Tribal Mobility Fund, the FCC proposes to apply the same Tribal engagement obligation and a 25% bidding credit preference for Tribally-owned or controlled providers in Phase II. The FCC seeks comment on this approach.
- To afford tribes an opportunity to identify their own priorities, the FCC seeks further comment on a possible mechanism that would allocate a specified number of "priority units" to Tribal governments that would have the flexibility to allocate these units to whatever geographic areas they choose.
- Is a different approach warranted for the structure of the Phase II auction for Tribal lands in Alaska?

5. Accountability and Oversight

- The FCC proposes to apply to Mobility Fund Phase II the same rules for accountability and oversight that will apply to all recipients of CAF support.
- Should any of these requirements be modified or omitted for recipients of Mobility Phase II support?
- Are there additional types of information that should be required?

6. Economic Model-Based Process

- Instead of determining support for mobile wireless providers through competitive bidding, the FCC could determine support using a model that estimates the costs associated with meeting public interest obligations, as well as a provider's likely revenues from doing so.
- Commenters advocating for a model should address why a model-based approach would better serve this purpose than a competitive bidding process?
- The FCC seeks more and detailed comment on the design of such a model and a framework for support in which a model might be used as compared to a competitive bidding process.

J. Competitive Process in Price Cap Territories Where the Incumbent Declines to Make a State-Level Commitment

1. Overall Design of the Competitive Bidding Process

- The FCC proposes to use a reverse auction mechanism to distribute support to providers of voice and broadband services in price cap areas where the incumbent ETC declines to accept model-determined support and a state-wide commitment to serve.
- Assigning support in this way should enable the FCC to identify those providers that will make most effective use of the budgeted funds, thereby extending services to as many consumers, businesses, and community anchor institutions as possible.
- The FCC proposes to use a competitive bidding mechanism to identify those eligible areas – and associated providers – where supported services can be offered at the lowest cost per unit.

2. Framework for Awarding Support Under Competitive Bidding

- The FCC proposes that the census block should be the minimum geographic building block for defining areas for which support will be provided, however it believes that it will need to provide at the auction for the aggregation of census blocks for purposes of bidding. The FCC seeks comment on whether a Census Tract-type approach, a Bidder-Defined approach, or another approach would best meet the needs of bidders in the CAF auction for support in price cap areas?
- Should the FCC target areas currently without any broadband service for priority treatment in whatever competitive bidding mechanism it adopts? For instance, should a form of bidding credit be provided that would promote support of such areas?
- The FCC proposes that recipients of support awarded through this competitive bidding process be obligated to provide service meeting performance requirements the same as those that accept model-determined support. The FCC seeks comment on this proposal.

3. Auction Process Framework

- The FCC proposes to give the bureaus discretion to consider various procedures for grouping eligible areas to be covered with one bid – package bidding – that could be tailored to the needs of prospective bidders as indicated during the pre-auction notice and comment period. The FCC invites preliminary comment on whether package bidding may be appropriate for this auction, and if so, why?
- The FCC seeks comment on determining reserve prices based on the support amounts estimated by the model.
- Should small businesses be eligible for a bidding preference in a CAF auction for support in price cap areas? Would such a bidding preference be consistent with the objective of providing such support?

4. Tribal Issues

- Should the FCC adopt revisions to identify eligible geographic areas and appropriate coverage units on Tribal lands consistent with the approach taken in the Tribal Mobility Fund Phase I?
- The FCC proposes Tribal engagement requirements, preferences that reflect the unique relationship with Tribes, including a bidding credit of 25% for Tribally owned or controlled recipients, and ETC designation provisions to allow a Tribally-owned or controlled entity to participate at auction provided that it has an application for ETC designation pending at the short-form application stage. The FCC seeks comment on these issues.
- The FCC seeks comment on establishing a Tribal priority along the lines proposed for the Tribal Mobility Fund Phase II. The FCC believes that these measures would help to ensure service in a way that acknowledges the unique characteristics of Tribal lands and reflects and respects Tribal sovereignty.
- Should the FCC adopt an alternative backstop support mechanism for any Tribal land in which the auction fails to attract a bidder?

5. Accountability and Oversight

- The FCC proposes that all recipients of CAF support awarded through a competitive process would be subject generally to the same reporting, audit, and record retention requirements adopted in the Order. The FCC seeks comment on this proposal.
- In structuring support, the FCC is mindful that it must comply with the Anti-Deficiency Act, which prohibits any officer or employee of the U.S. Government from involving the "government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." Commenters are invited to address how to structure an award of support for a period of years to provide recipients with the requisite level of funding and certainty, while ensuring that the Commission's Anti-Deficiency Act obligations are met?

6. Areas that Do Not Receive Support

- Any areas that do not receive support either via a price cap carrier accepting a state-level commitment or via the subsequent auction would be eligible for support from the Remote Areas Fund budget.

K. Remote Areas Fund (RAF)

1. Program Structure

- A key element of the FCC's reforms to deliver universal broadband is the dedication of an annual budget of at least $100 million to ensure that the less than one percent of Americans living in remote areas where the cost of deploying traditional terrestrial broadband networks is extremely high can obtain affordable broadband. The FCC seeks comment on how best to implement the CAF for remote areas.
- The FCC proposes that support for remote areas be structured as a portable consumer subsidy. Specifically, it seeks comment on CAF support being used to make available discounted voice and broadband service to qualifying residences/households in remote areas, in a manner similar to the Lifeline and Link Up programs.
- The FCC also seeks comment on an alternative structure for the RAF, which would use a competitive bidding process. Such a process could be conducted in one of three ways:

  1. A per-subscribed-location auction;
  2. A coverage auction; or
  3. An auction of support that would include not only remote areas but also areas where the incumbent LEC declines to undertake a state-level commitment.

  Are there other options the FCC should consider?

2. General Implementation Issues

- How should the FCC identify areas eligible for the RAF? Until the model is available, should the FCC use the National Broadband Map? Is the Map data sufficiently granular? Should the FCC shift to the model once it becomes available?
- Should the $100M in support be distributed as one-time grants or as ongoing support?
- Does the FCC have authority under Section 214(e)(6) to designate satellite or other providers as ETCs?
- Because different technologies, which may provide lower speeds and/or higher latencies, are likely to be used to serve extremely high-cost locations, the FCC proposes to modestly relax broadband performance requirements in these areas. The FCC seeks comment on the appropriate performance requirements for broadband service in remote areas.

3. Portable Consumer Subsidy Issues

- If the FCC chooses to distribute Remote Area Funding in a manner similar to the Lifeline program, should CAF support be limited to one subsidy per residence/household?
- Should residences/households be required to meet a means test?
- Should Remote Area Funding be restricted to new subscribers for broadband on the theory that those that are currently subscribing can obviously afford it?
- How should the amount of subsidy be set?

4. Auction Approaches

- Using an auction in which providers compete across areas for support from the Remote Areas Fund could enable the FCC to identify those providers that would offer the services at least cost to the fund, so as to maximize the number of locations that could be served within the budget.
- The FCC seeks comment on three auction-related alternatives;
    1. A per-subscribed location auction where bidders would compete for the opportunity to receive payments in exchange for providing services that meet the technical requirements described above, at a set discounted price, to qualifying locations in an area;
    2. A coverage auction where, rather than competing for a per-subscribed location subsidy based on specified performance and pricing requirements, bidders would compete for support in exchange for making service available at reasonably comparable rates to any requesting location within a geographic area;
    3. A third auction alternative would be combined auction, would take place in combination with the competitive bidding process in areas in which the incumbent LEC declines the state-level commitment.
- Commenters advocating for auction options should discuss to what extent the choice of a particular auction approach should affect decisions about general implementation issues such as definition of remote areas, provider qualifications, and public interest obligations.
- Should small businesses be eligible for a bidding preference if the FCC adopts any of the competitive bidding options?

5. Competitive Evaluation Approach

- The FCC seeks comment on structuring CAF for remote areas as a competitive proposal evaluation process, or RFP. With this option the FCC would solicit proposals to provide broadband service in eligible areas, consistent with our technical requirements, and award support for a fixed term to those proposals that offered the best value in terms of meeting our stated criteria. Using such an RFP process, perhaps modeled after the RUS-BIP program, might permit us more flexibility than an auction in balancing evaluation criteria – for example, with respect to quality standards such as capacity and latency, or quality and price.

6. Other Issues

- If the RAF is administered similar to Lifeline funding, how should the FCC handle the qualification and certification process?
- Except for disbursing support, the FCC proposes to apply the same rules for accountability and oversight, such as reporting, audit and record retention requirements, that apply to other recipients of CAF funding.
- The FCC proposes to disburse support for the remote areas budget on a quarterly, per-location served basis, beginning upon notification that a qualifying location has contracted with the designated support recipient for service consistent with the program technical requirements. The FCC seeks comment on this approach?

The FCC has established the following schedule for parties to comment on the Universal Service related items in the FNPRM:

Comments due January 18, 2012
Reply Comments due February 17, 2012