

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

In the Matter of)
)
Connect America Fund) WC Docket No. 10-90
)

ORDER ON RECONSIDERATION

Adopted: July 15, 2013

Released: July 16, 2013

By the Commission:

I. INTRODUCTION

1. In this Order on Reconsideration, the Commission *sua sponte* reconsiders one aspect of the recent *Phase I Order* and provides a limited waiver of the Phase I election deadline.¹ First, the Commission now requires carriers to report updates to planned Phase I deployments to the Commission, relevant state commissions, and relevant Tribal governments. If the intended new deployment will occur in census blocks not previously identified, the updates must be submitted at least 90 days prior to commencing construction. Making this reporting mandatory will further transparency regarding the use of this funding, for the benefit of regulators and the general public. This will strengthen monitoring and oversight over Phase I recipients and will better ensure that Phase I support is not spent in areas that already receive service through another provider. Second, we provide a 15-day waiver of the deadline for carriers to accept second round Phase I support. This extension makes the second round election period 90 days, which is the same amount of time as was provided for first round Phase I elections.

II. BACKGROUND

2. In the *Phase I Order*, the Commission set forth the framework for a second round of Phase I support.² In particular, carriers were given 75 days from the release of the *Phase I Order* to elect support for the second round.³ In addition, under the modified rules, a carrier is required to certify that the locations it seeks to count toward its deployment obligation are unserved by Internet service with the requisite speeds (either based on the National Broadband Map or the Phase I challenge process), and to

¹ *Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7766 (2013) (*Phase I Order*).

² Throughout this document, the phrase “Phase I support” means Phase I incremental support. In the first round of Phase I, carriers could satisfy their deployment obligations by building out broadband-capable networks to locations lacking Internet service with speeds of 768 kbps downstream and 200 kbps upstream (768 kbps/200 kbps). 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, 17717, 17720, paras. 138, 146 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011). In the second round, eligibility was expanded in certain circumstances, permitting recipients to deploy to locations served by 768 kbps/200 kbps Internet service but unserved by Internet service with speeds of 3 Mbps downstream and 768 kbps upstream (3 Mbps/768 kbps). *Phase I Order*, 28 FCC Rcd at 7771-74, paras. 14-21.

³ *Phase I Order*, 28 FCC Rcd at 7770, para. 10.

certify that, to the best of the carrier's knowledge, the locations are actually unserved by Internet service with those speeds.⁴

3. In the *Phase I Order*, the Commission also adopted new reporting rules that apply to both the first round and second round of Phase I support. In both rounds, funding recipients are required to identify at the time of acceptance what census blocks they intend to deploy in order to satisfy their buildout obligations.⁵ Recognizing that there may be unforeseen circumstances that would result in revised plans, however, the Commission permitted recipients of funding to deviate from those initial plans, both by not deploying to all the census blocks initially identified and by deploying to census blocks that were not initially identified.⁶ The Commission adopted an optional interim reporting requirement, permitting carriers to submit updated census block lists at any time if their plans change.⁷

III. DISCUSSION

A. Reconsideration of Reporting Requirements

4. Under section 1.108 of our rules, the Commission may, on its own motion, reconsider any action made or taken within 30 days from the date of public notice of such action.⁸ In doing so, the Commission may take any action it could take in acting on a petition for reconsideration, including reversing or modifying the original order.⁹

5. We now reconsider the Commission's decision in the *Phase I Order* regarding optional reporting of changes to planned Phase I deployments. On further reflection, we conclude that it is appropriate to require Phase I recipients to report changes in deployment plans when those decisions are made, rather than at the completion of the Phase I deployment period as required under the current rules.¹⁰ If, in satisfying its Phase I buildout obligations, a recipient plans to deploy to locations in a census block not identified when it initially accepted Phase I support, the recipient must report that new census block to the Commission, relevant state commission, and relevant Tribal governments, at least 90 days prior to commencing construction in that new census block.¹¹ Likewise, a recipient of Phase I support must submit updates indicating that it no longer plans to deploy to one or more census blocks it initially identified when accepting support, prior to making the certification required under section 54.313(b)(2) of

⁴ *Id.* at 7775, 7776-79, paras. 23, 28-33.

⁵ *USF/ICC Transformation Order*, 26 FCC Rcd at 17720, para. 146; *Phase I Order*, 28 FCC Rcd at 7777, para. 31.

⁶ *See Phase I Order*, 28 FCC Rcd at 7777, para. 31 n.60.

⁷ *Id.* at 7780, para. 36. In the original implementation of Phase I incremental support, no provision was made for carriers to report changes in their plans to the Commission.

⁸ 47 C.F.R. § 1.108.

⁹ 47 C.F.R. §§ 1.106(k)(1), 1.108.

¹⁰ Carriers are currently required to certify and report on buildout completion in their annual reports three years after accepting support. 47 C.F.R. § 54.313(b)(2).

¹¹ A 90 day time period should provide sufficient time for Commission staff to consider the proposed changes, and for potential unsubsidized providers in the area to notify the price cap carrier that they serve the area, without disruption to construction plans.

our rules.¹² This reconsideration of reporting requirements applies to changes in deployment plans for either the first or second round of Phase I that occur after the effective date of this new rule.¹³

6. This minor change strengthens our ongoing ability to oversee use of this public funding and is consistent with our commitment to accountability and oversight, ensuring that universal service funding is used as efficiently as possible.¹⁴ When a recipient alters its Phase I deployment plans, the Commission, the relevant state commissions, relevant Tribal governments, if applicable, and the general public should be informed of that decision.¹⁵ By requiring Phase I recipients to identify new census blocks, Commission staff will be able to verify that the locations in those census blocks are, in fact, shown as unserved on the National Broadband Map. Additionally, as Phase I election and buildout information is publicly disclosed,¹⁶ the reporting of new census blocks will inform the public, including existing providers, of where the recipient now intends to meet its Phase I buildout obligations. To further ensure that the public is aware of changes in deployment plans, the Wireline Competition Bureau (Bureau) will issue a public notice announcing the updated deployment plans.¹⁷ This will give any existing provider the opportunity to notify the recipient that the provider already serves the census block in question, thereby furthering the Commission's objective of not supporting areas where there are unsubsidized competitors.¹⁸

7. We conclude that it is reasonable to provide potential existing providers 45 days from the Bureau giving public notice of the new planned census blocks to notify the Phase I recipient that they are

¹² 47 C.F.R. § 54.313(b)(2). Parties should ensure that a copy of their changed deployment plans is posted to the Commission's Electronic Comment Filing System (ECFS) under the Connect America Fund docket (Docket No. WC 10-90), and should provide a courtesy copy of their filing to the Wireline Competition Bureau.

¹³ We recognize that some carriers may have already made modifications in their planned deployments for first round Phase I. This new requirement to report changed deployment plans does not apply to census blocks where new construction has already commenced as of the effective date of these rules. The effective date is contingent upon approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. §§ 3501-3521. An updated version of the Commission's Phase I rules is included as the Appendix to this Order on Reconsideration.

¹⁴ See Letter from Ross J. Lieberman, Vice President of Government Affairs, American Cable Association, and Steven F. Morris, Vice President and Associate General Counsel, National Cable and Telecommunications Association, to Julie Veach et al., Chief, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 10-90 (filed June 17, 2013) (noting that a lack of a requirement for reporting of changed deployments could hinder accountability of Phase I funding).

¹⁵ The Commission has yet to rule on pending applications for confidentiality of deployment plans for the first round of Phase I. However, the Commission's recent decision and reasoning rejected confidentiality for second round deployment plans. See *Phase I Order*, 28 FCC Rcd at 7776, para. 27. Disclosure of how public funds will be used serves the public interest. Furthermore, any uncertainty regarding confidentiality that may have existed in first round initial filings is absent for reports on deployment changes, as we clearly decide now that all deployment changes, related to either first or second round deployment, occurring after the effective date of these rules will be publicly disclosed.

¹⁶ See *id.*

¹⁷ To expedite the issuing of the public notice, parties should provide a courtesy copy of their changed deployment plans to the Bureau in addition to posting those plans to ECFS. See *supra* n.12.

¹⁸ If a Phase I recipient receives such a notification from a purported existing provider, in order to make the requisite certification, the recipient would need to undertake some due diligence regarding that provider before making the certification. While a provider's notification is not dispositive, it would raise a question of fact regarding whether the location was in fact unserved, and thus whether the indicated location is eligible for Phase I support.

currently providing service to the locations in question.¹⁹ No sooner than 46 days after the Bureau issues a public notice announcing the change and in any event no later than the commencement of construction in the new census blocks, we require the Phase I recipient to make all appropriate certifications that would have been required had the recipient initially identified the new census blocks at the time it accepted Phase I support.²⁰ A Phase I recipient may disregard any notice from a potential existing provider received after the recipient makes its certifications.²¹ All certifications must be based on information available at the time the certifications are made.²²

B. Waiver of Election Deadline

8. Carriers were initially provided 75 days from the release of the *Phase I Order* to elect to accept or decline Phase I support.²³ One price cap carrier has requested a 15-day extension of time, noting that additional time is needed to analyze new deployment opportunities and to consult with the Commission on planned deployments.²⁴ On our own motion, we grant a limited waiver of the Phase I election deadline, allowing all price cap carriers to submit their elections up to 15 days after the original deadline. We conclude that good cause exists to grant a limited waiver in this circumstance.²⁵ While the Commission had originally predicted that 75 days would be a sufficient period of time for carriers to make second round elections, based on the record, we now determine that additional time is warranted. Because the Commission expanded the eligible areas in the second round of Phase I, carriers now must complete additional analyses that were not previously undertaken for the first round. We find that a brief extension of time will facilitate the ability of Phase I recipients to provide advance notice of Phase I elections to Commission staff before the election deadline.²⁶ We note that the Commission provided 90 days to make an election in the first round of Phase I, and this action will harmonize the time provided for elections in the first and second rounds of Phase I. We conclude that providing a limited extension to all price cap carriers would be appropriate, and we now extend this deadline to 90 days from the release of the *Phase I Order*. Therefore, Phase I elections are due August 20, 2013.

¹⁹ The Commission provided 30 days for existing providers to challenge a proposed deployment in the second round of Phase I. We determine a slightly longer time period is reasonable in this circumstance, as changes in planned deployment can come at any time during the three-year term of Phase I.

²⁰ The upcoming Phase I challenge process is the only opportunity Phase I recipients have to challenge the designation of a census block as served for the purposes of Phase I. *Phase I Order*, 28 FCC Rcd at 7776-79, paras. 28-33. A recipient cannot challenge the designation of an area as served as shown on the National Broadband Map at some future date if it seeks to deploy to newly identified locations.

²¹ “Received” means either actual notice or constructive notice through posting to the Commission’s ECFS.

²² For purposes of a location’s Phase I eligibility, the location in question must be eligible at the time the recipient makes the requisite certifications associated with the location. For example, if a carrier elected to receive support in July 2012, and then in 2014 identifies new locations to which it plans to build, those locations must be shown as unserved on the most recent National Broadband Map available at the time it makes its certification in 2014.

²³ *Id.* at 7770, para. 10.

²⁴ See Letter from Karen Brinkmann, Counsel to FairPoint Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed June 25, 2013).

²⁵ 47 C.F.R. § 1.3.

²⁶ *Phase I Order*, 28 FCC Rcd at 7777, para. 30. This waiver also has the effect of extending by 15 days the date by which carriers are requested to provide advance notice of their elections to the Commission.

IV. PROCEDURAL MATTERS

A. Paperwork Reduction Act

9. This document contains new or modified information collection requirements subject to the PRA. It will be submitted to OMB for review under section 3507(d) of the PRA.²⁷ 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, Public Law 107-198,²⁸ 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.

10. In this present document, we have assessed the effects of requiring carriers to report changes in planned Phase I deployment, and we find that the burden on companies with fewer than 25 employees will be minimal. Only price cap carriers or rate-of-return carriers affiliated with price cap carriers are eligible for Phase I support. All such entities have more than 25 employees. Other providers, including cable companies and wireless Internet service providers, have the option to file with the price cap carrier in question and/or on the Commission's ECFS a notice that they already provide service to a given location. These providers may be small businesses. However, the option to make this filing is designed to benefit such providers by reducing the likelihood that Connect America funds are used to subsidize the overbuilding of their existing networks.

B. Final Regulatory Flexibility Certification

11. The Regulatory Flexibility Act (RFA)²⁹ requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."³⁰ The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³¹ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³² A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.³³

12. This document modifies the reporting requirements contained in the *Phase I Order*.³⁴ This modification does not create any burdens, benefits, or requirements that were not addressed by the

²⁷ 44 U.S.C. § 3507(d).

²⁸ See 44 U.S.C. § 3506(c)(4).

²⁹ See 5 U.S.C. § 601 *et seq.* The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857.

³⁰ 5 U.S.C. § 605(b).

³¹ 5 U.S.C. § 601(6).

³² 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration (SBA) and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

³³ Small Business Act, 15 U.S.C. § 632.

³⁴ *Phase I Order*, 28 FCC Rcd at 7780, para. 36.

Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order*.³⁵ Therefore, we certify that the requirements adopted in this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration, including a copy of this final certification, in a report to Congress pursuant to SBREFA.³⁶ In addition, the Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.³⁷

C. Congressional Review Act

13. The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.³⁸

V. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1, 4(i), 4(j), 5, 201(b), 214, 218-220, and 254 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. §§ 151, 154(i), 154(j), 155, 201(b), 214, 218-220, 254, 1302, and sections 1.1 and 1.108 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.108, that this Order on Reconsideration IS ADOPTED.

15. IT IS FURTHER ORDERED, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), that the "Reconsideration of Reporting Requirements" section of this Order on Reconsideration involves Paperwork Reduction Act burdens, and SHALL BE EFFECTIVE immediately upon announcement in the Federal Register of OMB approval of the information collection requirements and an effective date.

16. IT IS FURTHER ORDERED, pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the deadline for carriers to file Phase I second round elections IS WAIVED to the extent described above, and, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), SHALL BE EFFECTIVE immediately upon release of this Order on Reconsideration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁵ See *USF/ICC Transformation Order*, 26 FCC Rcd at 18324-63, App. O.

³⁶ See 5 U.S.C. § 801(a)(1)(A).

³⁷ See 5 U.S.C. § 605(b).

³⁸ See 5 U.S.C. § 801(a)(1)(A).

APPENDIX

Final Rules

For the reasons discussed in the Order on Reconsideration, the Federal Communications Commission amends 47 C.F.R. Part 54 to read as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority citation for Part 54 continues to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

2. Amend § 54.312 by revising paragraph (b) and paragraph (c) as follows:

§ 54.312 Connect America Fund in Price Cap Territories – Phase I.

* * * * *

(b)(3) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 90 days of being notified of any incremental support for which it would be eligible. Along with its notification, a carrier accepting incremental support must also submit a certification that the locations to be served to satisfy the deployment obligation are not shown as served by fixed broadband provided by any entity other than the certifying entity or its affiliate on the then-current version of the National Broadband Map; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation. If a carrier intends to deploy to census blocks not initially identified at the time of election, it must inform the Commission, the Administrator, relevant state commissions, and any affected Tribal government of the change at least 90 days prior to commencing deployment in the new census blocks. No sooner than 46 days after the Wireline Competition Bureau issues a public notice announcing the updated deployment plans but prior to commencing deployment, the carrier must make the certifications described in this paragraph with respect to the new census blocks. If a carrier no longer intends to deploy to a previously identified census block, it must inform the Commission, the Administrator, relevant state commission, and any affected Tribal government prior to filing its certification pursuant to § 54.313(b)(2).

* * * * *

(c)(4) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, the Administrator, relevant state commissions, and any

affected Tribal government, stating the amount of incremental support it wishes to accept, the number of locations at the \$775 amount, and the number of locations at the \$550 amount, and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation; or stating that it declines incremental support. Such notification must be made within 75 days of being notified of any incremental support for which it would be eligible. If a carrier intends to deploy to census blocks not initially identified at the time of election, it must inform the Commission, the Administrator, relevant state commissions, and any affected Tribal government of the change at least 90 days prior to commencing deployment in the new census blocks. No sooner than 46 days after the Wireline Competition Bureau issues a public notice announcing the updated deployment plans but prior to commencing deployment, the carrier must make the certifications described in paragraph (c)(5) of this section with respect to the new census blocks. If a carrier no longer intends to deploy to a previously identified census block, it must inform the Commission, the Administrator, relevant state commission, and any affected Tribal government prior to filing its certification pursuant to § 54.313(b)(2).

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